



Roj: **ATS 451/2018** - ECLI: **ES:TS:2018:451A**

Id Cendoj: **28079130032018200010**

Body: **Supreme Court. Administrative Chamber**

Location: **Madrid**

Section: **3**

Date: **16/01/2018**

Appeal no.: **405/2017**

Decision no.:

Procedure: **Administrative**

Rapporteur: **ANGEL RAMON AROZAMENA LASO**

Type of Decision: **Order**

SUPREME COURT

ADMINISTRATIVE CHAMBER

SECTION: THREE

ORDER

Order: ORDINARY APPEAL (c/d)

Date of order: 16/01/2018

Appeal no.: 405/2017

Judgment:

Rapporteur: The Honourable Judge Ángel Ramon Arozamena Laso

Source: COUNCIL OF MINISTERS

Chamber Secretariat: The Honourable Aurelia Lorente Lamarca

Written by: MDC

Note:

Appeal no.: 405/2017 ORDINARY APPEAL(c/d)

Rapporteur: The Honourable Judge Ángel Ramon Arozamena Laso

Chamber Secretariat: The Honourable Aurelia Lorente Lamarca

SUPREME COURT

ADMINISTRATIVE CHAMBER

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The Honourable:

President:

Pedro Jose Yague Gil

Judges:

Eduardo Espin Templado

Jose Manuel Bandres Sanchez-Cruzat

Eduardo Calvo Rojas

Maria Isabel Perello Domenech

Jose Maria del Riego Valledor

Angel Ramon Arozamena Laso

In Madrid, on the sixteenth of January of the year two thousand and eighteen.

FACTS

ONE. By virtue of the writ submitted on 9 May 2017, Mr Enrique Ríos Argüello, the lawyer acting in the name and on behalf of Asociación Vallisoletana de Afectados por Antenas de Telecomunicaciones-AVAATE [Association of the city of Valladolid of parties affected by telecommunications antennae], lodged with this Chamber an administrative appeal against Royal Decree 123/2017, of 24 February, approving the Regulation on the use of the public radio spectrum (BOE [Official State Gazette] no. 57, of 8 March 2017).

TWO. By virtue of the case management order of 10 May 2017, the aforementioned appeal was considered to have been lodged, and, *“given that no party agent had been designated to represent the appellant, Asociación Vallisoletana de Afectados por Antenas de Telecomunicaciones-AVAATE, due to said party having requested the benefit of legal aid, the designation of a party agent shall be accepted once said designation has been confirmed”*.

THREE. The Central Legal Aid Committee decided, at its session of 8 September 2017, to deny the legal aid requested by the appellant for administrative proceedings no. 405/2017.

FOUR. By virtue of the writ submitted on 26 September 2017, party agent Ms Sonia Rivas Farpón appeared in court in the name and on behalf of Asociación Vallisoletana de Afectados por Antenas de Telecomunicaciones-AVAATE. The aforementioned writ was admitted by the Chamber, leading to the publication of the mandatory notice in the Official State Gazette, and the petition for the administrative dossier which, once it had been received, was delivered to the appellant in order for the lawsuit to be formalized within a period of twenty days.

FIVE. The case management order of 5 December 2017 acknowledged the receipt by this Court of an official communication from the Ministry of Justice’s Management of Central Bodies of the Justice Administration contributing documentation referring to the request for legal aid submitted by the appellant in this appeal. The case management order also stipulated that the parties and State Legal Counsel should be called upon to submit the arguments and evidence that they deemed appropriate.

SIX. Party agent Ms Sonia Rivas Farpón, in the name and on behalf of Asociación Vallisoletana de Afectados por Antenas de Telecomunicaciones-AVAATE, by virtue of the writ submitted on 15 December 2017, stated that she had nothing to add to or retract from the arguments and documentary evidence contributed with the writs corresponding to the request for legal aid, the arguments presented to the court, and the challenge to the Legal Aid Committee’s Decision. Ms Sonia Rivas Farpón affirmed it was her understanding that by virtue of the arguments set forth, the Association should be declared a beneficiary of the legal aid requested.

SEVEN. The State Legal Counsel, in a writ submitted on 15 December 2017, argued that the appellant expressly recognizes that it is not one of the entities listed in letter c) of Article 2 of Act 1/1996, of 10 January, on legal aid. Additionally, as regards evidencing that it lacks the means with which to litigate, it has limited itself in the administrative channels to indicating that it is exempt from filing corporation tax returns (without substantiating this claim), and to submitting two bank statements in its name, from the middle of the year. Said documentation in no way proves that the Association meets the requirements of Article 3.5 of Act 1/1996, and the written challenge submitted to this Chamber makes no reference to this point.

The State Legal Counsel adds that the appellant seeks to base its request on Article 23 of Act 27/2006, of 18 July, regulating the rights of access to information, of public participation, and of access to justice in environmental matters. The appellant (citing some erroneous court decisions which clearly show more enthusiasm than expertise) purports that said provision of Act 27/2006 directly confers the right to legal aid, as long as the stipulations of paragraph 1 thereof are met, and that the cross-reference to Act 1/1996 is only for the purposes of determining the benefits to be conferred. In so doing, the appellant avoids addressing both the exceptional nature of the circumstances under which this benefit is granted to legal persons, and, above all, the need to evidence a lack of sufficient means with which to litigate, which is one of the conditions for legal aid.

The State Legal Counsel affirms that the aforementioned Article of Act 27/2006 does not confer this right unconditionally, but in the terms of Act 1/1996, which entails meeting the conditions or requirements thereof. The legal standard whose proclaimed purpose is the comprehensive regulation of this right (Act 1/1996) does not exempt entities such as that we are dealing with in this instance from the obligation to meet the requirements considered therein, in logical coherence with the cross-reference of Act 27/2006 to the “terms” thereof.

In short, the State Legal Counsel argues that consideration of the constitutional objectives and purpose of the recognition of the right to legal aid, as well as of the exceptional nature not only of its recognition to legal persons, but above all, of its recognition to parties that fail to evidence a lack of sufficient means with which to litigate, all support a restrictive interpretation and the dismissal of the appeal submitted.

EIGHT. In the writ submitted on 14 December 2017, party agent Mr José Carlos García Rodríguez, in the name and on behalf of AUDIOVISUALES SOGAVI S.L.—another defendant—argued that, in view of the dossier processed in respect of the request for legal aid, he deems the decision to deny the request for legal aid to be fully compliant with the law, considering that the criteria for granting said legal aid have not been met. Accordingly, the Court must agree to adopt the corresponding order maintaining the aforementioned decision to deny legal aid.

With the Honourable Judge Ángel Ramon Arozamena Laso acting as Rapporteur,

LEGAL ARGUMENTS

ONE. The Central Legal Aid Committee’s Decision of 8 September 2017, to which this appeal refers, was to deny Asociación Vallisoletana de Afectados por Antenas de Telecomunicaciones-AVAATE the right to legal aid.

This Decision indicates in Fact One that:

“The Bar Association of Madrid, by virtue of Act 1/1996, processed the request submitted by ASOCIACIÓN VALLISOLETANA DE AFECTADOS POR ANTENAS DE TELECOMUNICACIONES (AVAATE), in which it solely requested that a party agent be designated to it”,

and in Fact Four that:

“From the documentation provided with the request submitted by ASOCIACIÓN VALLISOLETANA DE AFECTADOS POR ANTENAS DE TELECOMUNICACIONES (AVAATE), it is clear that the Association does not fall within the scope of application of Article 2 of Act 1/1996 for the recognition of the right to legal aid.”

The Central Legal Aid Committee recognizes that this falls under its competence in Legal Ground One; and, subsequently, in Legal Ground Two, offering succinct arguments, it denies the request:

“TWO. Article 2 c) of Act 1/96, on legal aid, sets forth that the following legal persons shall be entitled to legal aid as long as they evidence that they lack sufficient means with which to litigate: 1. Associations of public utility, defined in Article 32 of Organic Law 1/2002, of 22 March, regulating the right of association. 2. Foundations entered on the corresponding public register”.

The stock arguments of the contested Decision are limited, therefore, to a mere literal citation of a legal provision, without any explanation of or reference to the request and the documentation attached to the request by the appellant which would support the application of the cited provision and the denial of the right to legal aid. It must be understood, from Fact Four above, and in view of the dossier, that from the documentation provided with the submitted request it is clear that the Association does not fall within the scope of application of Article 2 of Act 1/1996, of 10 January, for the recognition of the right to legal aid.

And, finally, from the arguments presented by the parties—both the appellant and the defendants—it must be concluded that the denial is due to the lack of evidence provided that the appellant lacks sufficient means with which to litigate.

TWO. Be that as it may, the interested party based its request on Article 23 of Act 27/2006, of 18 July, regulating the rights of access to information, of public participation, and of access to justice in environmental matters. The appellant maintains that this law automatically confers the right to legal aid, provided that the interested party meets the stipulations of paragraph 1, and that the cross-reference to Act 1/1996, of 10 January, on Legal Aid, is only for the purposes of determining the benefits to be conferred.

Article 23 stipulates: "*Locus standi*."

1. Any non-profit-making legal persons meeting the following requirements have the standing to pursue the *actio popularis* regulated in Article 22:

- a) The statutory activity set forth in their articles of association encompasses the protection of the environment in general, or of one of its elements in particular.
- b) The entity was incorporated at least two years before bringing the action, and has been actively undertaking the activities required to meet its statutory objectives.
- c) Pursuant to its articles of association, the entity carries out its activity in a region that is affected by the administrative action or omission.

2. The non-profit-making legal persons referred to in the preceding paragraph shall be entitled to legal aid in the terms set forth in Act 1/1996, of 10 January, on Legal Aid".

Thus, pursuant to Article 22 ("*Actio popularis regarding environmental matters*") and the aforementioned Article 23 ("*Locus standi*") of Act 27/2006, *actio popularis* may be brought by any non-profit-making legal persons that meet the requirements indicated therein—objectives, incorporation of the entity at least two years before bringing the action, and territorial scope, pursuant to Article 23.1, sections a), b) and c)—which are not disputed here, and said non-profit-making legal persons shall be entitled—pursuant to Article 23.2—to legal aid under the terms of Act 1/1996.

The requirement in Article 2 of Act 1/1996, namely to evidence a lack of the necessary means with which to litigate, generally stipulated for the legal persons defined therein for them to bring actions of any kind, is not applicable in this case. The express provision of Article 23.2 for the bringing of actions by non-profit-making legal persons would otherwise prove unnecessary or pointless.

Consequently, by strict application of Article 23.2—which would otherwise be superfluous—recognition of this right is appropriate.

Finally, it is unnecessary in this case to evaluate the documentation that the interested party provided to evidence a lack of sufficient means with which to litigate—the bank certificates showing its balances in May 2017, which amount to 932.14 euros and 227.26 euros. Nor need reference be made to the fact that the Association has never filed a single corporation tax return, being exempt from such an obligation as it is a non-profit-making association which does not carry out any kind of remunerated activity. This last question shall be governed, where applicable, by Act 27/2014, of 27 November, on corporation tax, and by Royal Decree Law 1/2015, of 27 February, on the second-chance mechanism, financial burden reduction and other social measures.

It therefore behoves the Court to uphold the challenge and revoke the Central Legal Aid Committee's Decision, recognizing the requested right to legal aid.

THE CHAMBER HEREBY RESOLVES:

To uphold the appeal lodged by Asociación Vallisoletana de Afectados por Antenas de Telecomunicaciones-AVAATE against the Central Legal Aid Committee's Decision of 8 September 2017 to refuse the right to legal aid, which we revoke. And to recognize the requested right to legal aid, issuing a copy of this decision to the Central Legal Aid Committee. Without costs.

The Chamber so rules and the Honourable Judges listed above sign below

Pedro Jose Yague Gil

Eduardo Espin Templado

Jose Manuel Bandres Sanchez-Cruzat

Eduardo Calvo Rojas

Maria Isabel Perello Domenech

Jose Maria del Riego Valledor

Angel Ramon Arozamena Laso