



Notified: 28/11/2019 | Attorney: Olga Alvarez
Garcia | Dossier: 2018/19587
Paloma Telenti Alvarez

**AMINISTRATIVE CHAMBER OF THE HIGH COURT OF JUSTICE OF ASTURIAS
(SOLE SECTION)
003 - OVIEDO**

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Model: S40120

C/ SAN JUAN S/N

Phone: **Fax:** 985.202613

Email:

Computer/user: AOL

N.I.G (General Id Number): 33044 33 3 2019 0300686

Proceedings: PO PROCEDIMIENTO ORDINARIO

0000704 /2019 /

On REGIONAL ADMINISTRATION

From: COORDINADORA ECOLOXISTA D'ASTURIES

Attorney:

Party agent [procurador]: PALOMA TELENTI ALVAREZ

Against: REGIONAL DEPARTMENT OF THE
PRESIDENCY AND CITIZEN PARTICIPATION

Attorney: ATTORNEY OF THE AUTONOMOUS COMMUNITY

Party agent [procurador]:

**Ms MARIA MONTAÑA SANCHEZ-AREVALO RODRIGUEZ, Attorney of the Justice
Administration of the HIGH COURT OF JUSTICE OF ASTURIAS ADMINISTRATIVE
CHAMBER (SOLE SECTION) 003, of OVIEDO.**

**I CERTIFY AND BEAR WITNESS: That a ruling, worded as follows, has been handed
down in the orders pertaining to ORDINARY PROCEEDINGS No. 0000704 / 2019:**

ORDER

PRESIDENT:

Mr JULIO LUIS GALLEGO OTERO

JUDGES:

Ms MARIA OLGA GONZALEZ-LAMUÑO ROMAY

Ms MARIA PILAR MARTINEZ CEYANES



In OVIEDO, on the fifteenth of November of the year two thousand and nineteen.

FACTS AS FOUND

SOLE FACT. Following the receipt, by this Chamber, of the challenge filed and the accompanying documents submitted by the appellant “Coordinadora Ecoloxista D’Asturies” against the decision of the Legal Aid Committee of the Principality of Asturias of 29 March 2019, a hearing was scheduled for 7 November of the current year and held on that date, with the outcome reflected in the dossier on the proceedings.

LEGAL ARGUMENTS

ONE. The appellant association has challenged the decision of the Legal Aid Committee of the Principality of Asturias adopted at the session of 29 March 2019, amending the decision of the Bar Association of Oviedo and thus denying the association’s right to legal aid for the proceedings to be held in this Court of Justice, as said association requesting legal aid is not one of the types of person included within the scope of application determined in article 2 of Act 1/1996 of 10 January, on Legal Aid, given that it is not an association of public interest as defined in article 32 of Organic Law 1/2002 of 22 March, regulating the Right of Association.

It is argued in defence of the claim for recognition of the right denied in the impugned decision that said decision did not take into account the nature of the non-profit association, nor that one of the association’s purposes, as per its articles of association, is to pursue environmental *actio popularis*. It is also argued that the decision is not based on articles 22 and 23 of Act 27/2006 of 18 July, regulating the Rights of Access to Information, Public Participation and Access to Justice in Environmental Matters, which provide that those entities that pursue environmental *actio popularis* shall have the right to legal aid, without needing to be declared entities of public interest, as required of other associations by Act 1/1996 of 10 January, on Legal Aid. Such were the findings of the orders issued by this Chamber on 29 October 2015, 16 January 2018 and 29 March 2019, and the Supreme Court order of 13 March 2013. The Legal Aid Committee of the Principality of Asturias has also issued decisions recognizing the right of the appellant association to legal aid on the grounds that it was challenging decisions with a clear environmental impact.

The Attorney of the Legal Service of the Principality of Asturias is opposed to the recognition of the applicant’s right to legal aid that it has requested, and it is therefore necessary to refer to the terms of the Legal Aid Act. Consequently, the association should meet the requirement of being an association of public interest, accredited by means of entry on the corresponding Register pursuant to article 2.c of the Act to whose requirements article 23.2 of Act 27/2006 expressly refers. On these grounds, a prior decision of the Committee denied the applicant entity’s right to legal aid, a criterion endorsed by the order of 14 February 2019 of Administrative Court No. 1 of Oviedo. The requirement is not met, as the association has only substantiated that it is entered on the Register of Associations of the Principality of Asturias.

TWO. The purpose of the appeal being limited to determining whether or not the right claimed by the appellant association should be recognized, any formal, extemporaneous submissions of documents accrediting the association’s statutory purposes with a view to challenging the decision must be considered separately from whether the association undertakes its activities in this territorial scope and from the existence of binding precedents and acts. While these may be relevant due to this jurisdiction’s powers of review—the Committee not having had the opportunity to examine these data prior to issuing the decision—this relevance is diminished in this case due to the public record referred to in the association’s substantiation of its existence and activities during many years, of its involvement in environmental proceedings held in this

Autonomous Community and due to the fact that it has called for the recognition of the right being disputed today on other occasions.

From amongst the criteria expounded, this Chamber favours the criterion argued by the appellant in the aforementioned decisions.

Given this precedent, and having no reason to break with it, nor to generate the corresponding theses for doing so, the appropriate course of action is to adopt the same solution for obvious reasons of equality in the application of the law and of legal certainty. The previous ruling asserted that “Given that the interested party’s application is founded on article 23 of Act 27/2006 of 18 July, regulating the Rights of Access to Information, Public Participation and Access to Justice in Environmental Matters, the content of said article must be referred to in settling this matter. Said article 23 stipulates the following:

“Locus standi.

1. Any non-profit legal person able to certify compliance with the following requirements is entitled to pursue an *actio popularis* as regulated in article 22:
 - a) The statutory objectives set forth in its articles of association include the protection of the environment in general, or of one of its elements in particular.
 - b) The legal person was incorporated at least two years before bringing the *actio popularis*, and has been actively undertaking the activities required to meet its objectives as set forth in its articles of association.
 - c) Pursuant to its articles of association, the legal person carries out its activity in a territorial scope that is affected by the administrative action or omission
2. The non-profit 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.”

Said provision was interpreted by Section Three of the Administrative Chamber of the Supreme Court in its order of 16 January 2018, appeal 405/2017, as follows: “Thus, according to article 22 (‘Locus standi’) of Act 27/2006, any non-profit legal person able to certify compliance with the requirements indicated therein—objectives, incorporation at least two years prior, and territorial scope pursuant to article 23.1, paragraphs a), b) and c)—questions which are not in dispute here—is entitled to bring an *actio popularis*, and said legal persons that are non-profit entities shall be entitled—under article 23.2—to legal aid as set forth in Act 1/1996.

The requirement stipulated in article 2 of Act 1/1996 for the legal persons mentioned therein in general and for the bringing of actions of any class—that they provide evidence substantiating that they have insufficient means to litigate—is not enforceable here. Otherwise, the express provision of article 23.2 with regard to the bringing of actions by non-profit legal persons would be rendered unnecessary or nugatory.

Consequently, in strict application of article 23.2—which would otherwise be superfluous—such recognition is appropriate.”

Pursuant to this interpretation of the High Court, there is no choice but to agree with the appellant that the provision it invokes in its favour confers upon it the right to legal aid, given that it substantiates and there is no doubt regarding the fact that it meets the criteria stipulated in paragraph 1, and given that the reference to Act 1/1996 of 10 January, on Legal Aid, is solely to determine the benefits it confers.

It therefore behoves this Court to allow the challenge and revoke the decision of the Legal Aid Committee, thus recognizing the requested right to legal aid”.

The case-law is strengthened by the existence of prior decisions recognizing this right issued by the Legal Aid Committee of the Principality of Asturias and of other Autonomous Communities as regards associations with the same objectives; although these decisions are not binding in this case as the decision denying the right to legal aid was supported by arguments,

there is no question that where the situations are the same the decision must also be the same, which in this case has been substantiated.

The other pertinent and applicable legal provisions were considered with the aforementioned articles.

RULING

For all the above reasons, the Administrative Chamber of this High Court of Justice of Asturias, has decided: To allow the challenge submitted by Ms Paloma Telenti Alvarez, party agent [*procuradora*], on behalf of and in representation of *Coordinadora Ecoloxista d'Asturies*, against the decision of the Legal Aid Committee of the Principality of Asturias adopted at the session of 29 March 2019, a decision that is revoked and annulled and, in its stead, the requested right to legal aid to participate in Ordinary Proceedings No. 704/2019 is recognized, and record of this decision shall be sent to the Legal Aid Committee. Without any express imposition of costs.

By virtue of this order, against which no appeal as of right may be filed, as decided, ordered and signed by the Judges whose names are included in the margin of this page, in my presence, as Attorney of the Justice Administration, to which I attest.

- Attach the literal certification to the appeal and the original to the corresponding ledger.

The judges whose names are included in the margin of this page have so decided, ordered and signed, in my presence, as Attorney of the Justice Administration, to which I attest.

And in witness whereof and for all appropriate purposes I issue and sign this testimony in Oviedo on the twenty-sixth of November of the year two thousand and nineteen.

THE ATTORNEY OF THE JUSTICE ADMINISTRATION