

In the case under examination the plaintiff requested a declaration of invalidity for the violation of the *res iudicata* defined in a previous ruling of the same Court and the annulment, on the basis of a breach of the law and misuse of power in several ways, of the acts with which the City Council of Velletri revoked the decisions that confirmed the presence of the public interest of the project finance proposal formulated by the plaintiff for the awarding in concession of the local public transport.

The revocation has been made after a decision of the National Anti-Bribery Authority (ANAC) that invited the Municipality to outsource the service through a tender procedure, and the plaintiff also requested the assessment of this decision and the declaration of invalidity and the annulment for the lack of evaluation of the potential presence of assumptions to give a new impulse to the supervision procedure and for an inadequate statement of reasons, breach and misapplication of articles 30, 152 e 153 of the legislative decree no. 163/2006 due to the alleged full compliance between a reduced risk for the company and the presence of burdens imposed on the public subject through the project finance. The plaintiff also asked for the Municipality and/or ANAC to pay the for the damages and for the contractual liability and/or ex. art. 2043 of the Civil Code and/or to pay a compensation.

The Municipality argued that the contested decision is just an application of the ANAC's decision. ANAC has, on its behalf, objected the inadmissibility of the appeal due to a lack of interest in relation to the decision since it is a non-binding act.

For the above-mentioned issues, the Court has delivered a non-final judgment declaring the inadmissibility and set a public hearing for the annulment action, which has then declared groundless.

The Court made reference to the EU Regulation no. 1370/2007, which specifically disciplines the awarding modalities of public transport services.

According to the Regional Administrative Court the provisions of the Regulation shall be considered as "special rules" when compared to the ones provided for in the directives on the awarding procedures of public tenders and therefore prevailing on these latter.

Therefore, in this case, the project finance cannot be applied in consideration of the discipline reservation present in art. 5 lett. 1 of the Regulation that excludes, as already stated in ANAC's decision, the application of the tender regulations when the busses and trams transport service is intended to be awarded through a concession of services.

Furthermore, it has highlighted that, in this case, two fundamental requirements of PPP of the involvement of private resources and of the transfer of the risks to the private operator and would have been lacking.

Lastly, with regards to the claim for compensation of the plaintiff, the Court has concluded that there is a failure to meet the conditions for the success of the request. With regards to the claim to pay compensation, the Court has stated the principle according to which: "it must be ruled out that the revocation of a previous measure of public interest, lawfully adopted, can be a valid condition to request and obtain a compensation for the expenses potentially borne by the proponent". Indeed: "the declaration of public interest for a project finance proposal does not give the proponent a final legal position, since the Administration may or may not give rise to a subsequent procedure or may not follow the proposals, which are considered of public interest as well. The recognition of a economically

significant legal position of the proponent only happens at the end of the tender with the identification of the concessionaire; more generally, as a result of the actual application of the proposal useful to consolidate the right of the offeror or of the proponent to a compensation for the incurred expenses and to transform the legal position of the proponent from unstable to durable.