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Constitutional illegitimacy of the rules introducing absolute bans on the installation of plants in agricultural areas and derogations from the model of the single authorization procedure referred to in art. 12 of legislative decree 387/2003

By means of sentence no. 177/2021 the Constitutional Court, accepting the appeal by the President of the Council of Ministers, declared the constitutional illegitimacy of art. 2, paragraphs 1, 2 and 3 of Law no. 72 of August 7, 2020 of the Tuscan Regional Council.

The aforementioned regulation had in fact made changes to art. 9 of Regional Law 11/2011, concerning "*Provisions on the installation of plants for the production of electricity from renewable energy sources*", introducing three new paragraphs (paragraph 1 bis, paragraph 1 ter and paragraph 1 quater).

I. With regard to the provision set forth in paragraph 1 bis, which had introduced a maximum power limit of 8 KW for the installation of ground-mounted photovoltaic systems in rural areas, the Court noted a conflict between the aforesaid provision and the discipline dictated by art. 12, paragraph 7 of Legislative Decree no. 387/2003, which provides for the possibility of installing systems in rural areas under certain conditions and by the Guidelines, par. 17.1 and 17.2, which provide for the right of the Regions to introduce limitations to the aforesaid right by observing a specific procedural procedure.

In particular, the Guidelines prescribe that any limitations on the installation of systems in certain areas, such as agricultural areas, may only be imposed by the regional planning act as governed by paragraph 17.1 of the Guidelines, adopted following a special preliminary investigation; a procedure that was not observed in the case in question. The Court has also specified that the planning act must not be a tool aimed at introducing an absolute impediment to the installation of photovoltaic systems, but rather a first-level assessment that requires to verify the feasibility of the same case by case.

Therefore, according to the Court's decision, a general rule aimed at introducing general restrictions not provided for by the state legislation is not admissible, since such a provision "*escapes the possibility of balancing the interests in practice, which the legislator entrusts to the administrative procedure*".

II. The Constitutional Court also declared illegitimate the amendment to paragraph 1b, which had made the issue of the Single Authorisation for the installation of plants

of over 1000 KW subject to "*prior agreement with the municipality and the municipalities affected by the plant*".

According to the Court, this provision is in contrast with the model of the single procedure dictated by art. 12, paragraph 4 of Legislative Decree no. 387/2003 which, by establishing the prior completion of the services conference (i.e. *conferernza di servizi*), already provides an instrument for the concentration of all administrative contributions and, therefore, responds to the logic of simplification and rationalization.

III. Finally, the provision contained in paragraph 1b of art. 9 of Regional Law 11/2011, which had extended the application of the amendment referred to in the previous paragraphs to proceedings underway, was also deemed constitutionally illegitimate.

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