

Press Release of 15 March 2022

CHALLENGES CONCERNING CONTRIBUTIONS TO
VOLUNTARY ORGANISATIONS ARE UNFOUNDED.
HOWEVER, PARLIAMENT SHOULD ENACT LEGISLATION
TO REGULATE THE MATTER

The system of third sector bodies is an expression of social pluralism rooted in the fundamental principles laid down by the Constitution. Moreover, the activities of general interest carried out by these bodies on a not-for-profit basis also provide “a new and indirect form of contribution to public spending”.

This is an extract from [judgment no. 72](#) filed today (author Luca Antonini) in which the Constitutional Court declared unfounded the various questions referred by the Council of State concerning Article 76 of the Third Sector Code concerning contributions, specifically for ambulances, available exclusively for voluntary organisations.

The Court held that although the Code undoubtedly performs a unifying function, with the aim *inter alia* of resolving the previous fragmentation and overlaps, this has not however resulted in a wholesale standardisation of the various types of body. In fact, differences remain, also in terms of forms of public support. The requirement that the voluntary aspect must be predominant within the structure of voluntary organisations results in a particularly stringent constraint that limits it to obtaining merely the reimbursement of expenses. The rationale for this constraint is to underscore the non-remunerative nature of the activity carried out by a volunteer. This excludes any scope to generate positive margins from the conduct of activities for reinvestment in expanding those activities. This is not the case by contrast for social undertakings, which may receive forms of consideration from the recipients of services provided.

Accordingly, there is a risk that entities comprised predominantly of volunteers may be unable to finance the acquisition or replacement of

goods, such as those considered by the contested provision. This is however paradoxical, considering the central role that the Third Sector Code assigns to volunteering, which has moreover been recognised within the case law of the Constitutional Court as a model “for positive and responsible action” and as a “fundamental framework for civic participation and the accumulation of the social capital of democratic institutions”.

Whilst concluding that the contested provision was not unreasonable, the Court however expressed the hope that the legislator would relax the stringent prerequisite laid down by Article 76 of the Third Sector Code, thus allowing the resources concerned to be accessed also by those entities the operations of which – whether by legislative requirement, as is the case for associations for social advancement, or by virtue of the specific organisational choice made by the body to rely on a significant number of volunteers compared to the number of employees – are most heavily affected by the general scope of the constraint whereby volunteering may result in the reimbursement “only of expenses actually incurred and documented for the activity carried out”.

Rome, 15 March 2022