



Protection of Landscape and height of buildings

Fact of the case:

Mister Archibaldo is owner of a property in a landscape conservation area. He made alterations to that property without first obtaining landscape compatibility clearance and then applied to the Comune di Trabia (Municipality of Trabia) for retrospective planning permission for those alterations, subject to a declaration of no impediment from the Soprintendenza.

On 4 April 2011, the Soprintendenza adopted an order (*ordinanza-ingiunzione*) requiring Mr Archibaldo to restore the site to its former state by dismantling, within 120 days of receipt of that order, all work which had been carried out illegally. The order was made on the grounds that the work in question is not eligible for certification as compatible with the landscape conservation rules for the purposes of Articles 167 and 181 of Legislative Decree No 42/04 since that work has resulted in an increase in volume.

Mr Archibaldo brought an action contesting that order before the referring court.

Legal Framework

The referring court points out that, under European Union ('EU') law, protection of the landscape does not stand alone as a concept separate from protection of the environment, but is an aspect of such protection. In that regard, the referring court refers to several provisions of EU law and to the fact that environmental matters fall within the remit of the European Union pursuant to Articles 3(3) TEU and 21(2)(f) TEU, as well as Articles 4(2)(e) TFEU, 11 TFEU, 114 TFEU and 191 TFEU.

According to the referring court, under the national landscape conservation rules, the constraints on activities of private individuals do not necessarily involve a complete ban on construction. It follows that not every construction-related activity – including, in theory, activity resulting in an increase in volume – will damage, inevitably and in all circumstances, features, which are protected by the legislation in question.

Questions

- (1) Is the Charter applicable in this case?
 - a. How could you argue in favour or against applicability?
 - b. How would you decide?
- (2) Which articles of the Charter would be relevant in this case?
 - a. How could restrictions of these Charter rights be argued for?
 - b. Could restrictions be legitimised?
- (3) Would the application of Charter rights make a difference when you take into account the situation in your national context?

