



Protection of Landscape and height of buildings

Findings of the Court of Justice of the European Union

The question referred to the CJEU by the national court was, whether Article 17 of the Charter and the principle of proportionality must be construed as precluding a provision of national legislation such as Article 167(4)(a) of Legislative Decree No 42/04, obliging the owner of a property which is protected by law not destroy or alter it in such a way as to impair the features of the landscape which are under protection, and to apply for landscape compatibility clearance before carrying out any alterations.

The Court however as a preliminary question had to decide, whether it had the jurisdiction to answer the question referred as there is not a sufficient connection between the national legislation at issue and EU law. And this became the decisive question in this case.

The Court reiterated that the concept of ‘implementing Union law’ requires a certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other. It enumerated a number of non-exhaustive criteria that should be examined:

1. whether that legislation is intended to implement a provision of EU law;
2. the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also
3. whether there are specific rules of EU law on the matter or capable of affecting it

In particular, the Court also has found that fundamental EU rights can not be applied in relation to national legislation, if the provisions of EU law in the subject area concerned do not impose any obligation on Member States with regard to the situation at issue in the main proceedings.

In the case at stake the conclusion was that there was not enough connection between the specific case and EU law and therefore the Charter was not applicable.

See: Cruciano Siragusa v Regione Sicilia, C-206/13, Judgement of the Court, 06.03.2014



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