



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

6 March 2014*

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — General principles of European Union law — Implementation of European Union law — Scope of European Union law — A sufficient connection — Lack of such a connection — Lack of jurisdiction of the Court)

In Case C-206/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per la Sicilia (Italy), made by decision of 14 February 2013, received at the Court on 18 April 2013, in the proceedings

Cruciano Siragusa

v

Regione Sicilia – Soprintendenza Beni Culturali e Ambientali di Palermo,

THE COURT (Tenth Chamber),

composed of E. Juhász, President of the Chamber, A. Rosas (Rapporteur) and D. Šváby, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, assisted by G. Palatiello, avvocato dello Stato,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the Netherlands Government, by M. Bulterman and C. Schillemans, acting as Agents,
- the European Commission, by L. Pignataro-Nolin and C. Zadra, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Italian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 17 of the Charter of Fundamental Rights of the European Union ('the Charter') and of the principle of proportionality.
- 2 The request has been made in proceedings between Mr Siragusa and the Regione Sicilia – Soprintendenza Beni Culturali e Ambientali di Palermo (Region of Sicily – Directorate for the Cultural and Environmental Heritage, Palermo) ('the Soprintendenza') concerning an order requiring a site belonging to Mr Siragusa to be restored to its former state.

Legal context

- 3 The Tribunale amministrativo regionale per la Sicilia (Regional Administrative Court, Sicily) ('the referring court') explains that the owner of land falling within a landscape conservation area may not carry out any work on that land without clearance from the relevant authority.
- 4 Under Article 146(1) and (2) of Legislative Decree No 42 of 22 January 2004 (Codice dei beni culturali e del paesaggio) (Code of Cultural Heritage and the Landscape) ('Legislative Decree No 42/04'), in the version applicable at the material time, the owner of a property which is protected by law may not destroy it or alter it in such a way as to impair the features of the landscape which are under protection, and must apply for landscape compatibility clearance before carrying out any alterations. If he carries out alterations without applying for clearance, the authority may authorise those alterations retrospectively if the work carried out is compatible with the features which are under protection, pursuant to Article 167(4) and (5) of that legislative decree.
- 5 Article 167 of Legislative Decree No 42/04 lists the consequences of non-compliance with the obligations under that legislative decree. Article 167(4) thereof states that the competent administrative authority is to assess the compatibility of the work in question with the landscape conservation rules in the case of:

'(a) work which has been carried out without the landscape compatibility clearance or not in accordance with such clearance, [but] which has not resulted in the creation of floor areas or volumes or an increase in the size of those which were constructed legitimately.'
- 6 Where the work has not resulted in the creation of floor areas or volumes or an increase in the size of those which were constructed legitimately and it is established that the work is compatible with the landscape conservation rules, the offender may be required to pay a fine.

The facts in the main proceedings and the question referred for a preliminary ruling

- 7 Mr Siragusa owns 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.
- 8 On 4 April 2011, the Soprintendenza adopted an order (*ordinanza-ingiunzione*) requiring Mr Siragusa 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.

- 9 Mr Siragusa brought an action contesting that order before the referring court.
- 10 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 the following provisions of EU law:
- Article 2(3)(a) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters ('the Aarhus Convention'), approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1);
 - Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to Community institutions and bodies (OJ 2006 L 264, p. 13);
 - Article 2(1)(a) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26); and
 - Articles 1 and 3 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1).
- 11 In addition, the referring court observes 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.
- 12 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.
- 13 An assessment, entailing the possibility of retroactively regularising the situation with the imposition of a fine, could be undertaken on a case-by-case basis, if Legislative Decree No 42/04 did not adopt the rigid, abstract and presumptive approach of ruling out as *a priori* unacceptable work involving the 'creation of floor areas or volumes or an increase in the size of those which were constructed legitimately': here again, protection of the landscape could, on the basis of a specific assessment, be compatible with retaining the structure resulting from that work.
- 14 Accordingly, the referring court is uncertain whether Article 167 of Legislative Decree No 42/04 – in so far as it excludes, on the basis of a presumption, a category of work from being assessed in terms of its compatibility with protection of the landscape and imposes in that regard the penalty of demolition – constitutes an unjustified and disproportionate infringement of the right to property guaranteed under Article 17 of the Charter, if the Charter were to be construed as meaning that property rights may not be restricted unless the actual – rather than merely hypothetical – existence of an opposing interest has been identified. The referring court also makes reference to the principle of proportionality as a general principle of EU law.

- 15 In those circumstances, the Tribunale amministrativo regionale per la Sicilia decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do Article 17 of the Charter ... and the principle of proportionality, as a general principle of [EU] law, preclude the application of a provision of national law such as Article 167(4)(a) of Legislative Decree No [42/04], under which a landscape compatibility clearance (*autorizzazione paesaggistica*) may not be issued by way of retrospective regularisation in any cases where human activity has resulted in an increase in floor area and volume, regardless of whether a specific appraisal has been undertaken as to whether the activity in question is compatible with the features of the landscape of the particular site which merit protection?’

Jurisdiction of the Court

- 16 By its question, the referring court asks, in essence, 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.
- 17 All the interested parties which have submitted observations argue that the Court has no jurisdiction to answer the question referred as there is not a sufficient connection between the national legislation at issue and EU law. They also maintain that it is for the referring court to explain the relationship between Article 167(4)(a) of Legislative Decree No 42/04 and the provisions of EU law in respect of which interpretation is sought.
- 18 Nevertheless, the European Commission has examined the various texts referred to by the referring court, making the following comments:
- Decision 2005/370 merely incorporates the Aarhus Convention into the EU legal order: it is an EU measure which does not stand in need of reception at national level in the Member States;
 - Regulation No 1367/2006 is addressed, not to the Member States, but to the EU institutions, and has no connection with the facts in the main proceedings; nor, *a fortiori*, does it have any connection with Legislative Decree No 42/04;
 - the same is true of Directive 2003/4 on public access to environmental information;
 - there is nothing in the case-file to suggest that Directive 2011/92 is relevant to the dispute before the referring court, given that the fact that no environmental impact assessment was undertaken in respect of the work carried out by Mr Siragusa does not seem to raise any issues regarding compliance with that directive;
 - the obligations laid down in Articles 3(3) TEU and 21(2)(f) TEU are incumbent upon the European Union, not the Member States;
 - Article 4(2)(e) TFEU concerns the distribution of powers between the Member States and the European Union and appears in the part of that treaty which is dedicated to principles;
 - the obligation laid down in Article 11 TFEU, too, is incumbent upon the European Union;
 - the obligations laid down in Article 114 TFEU are incumbent upon the EU institutions, not the Member States; and

- even assuming that the national legislation at issue in the main proceedings falls within the scope of EU law by reason of the reference made to Article 191 TFEU, the Court has already had occasion to state that, since that provision is directed at action at EU level, it cannot be relied on as such by individuals in order to exclude the application of national legislation in an area covered by environmental policy for which there is no EU legislation adopted on the basis of Article 192 TFEU that specifically covers the situation in question (Case C-378/08 *ERG and Others* [2010] ECR I-1919, paragraph 46).
- 19 In that regard, it should be borne in mind that, under Article 94(c) of the Rules of Procedure of the Court of Justice, a request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the main proceedings. That statement of reasons, like the summary of the relevant findings of fact required under Article 94(a) of those Rules, must be of such a kind as to enable the Court to ascertain, not only whether the request for a preliminary ruling is admissible, but also whether it has jurisdiction to answer the question referred.
- 20 Under Article 51(1) thereof, the provisions of the Charter are addressed to the Member States only when they are implementing EU law. Article 6(1) TEU and Article 51(2) of the Charter specify that the provisions of the Charter are not to extend in any way the competences of the Union as defined in the Treaties. Accordingly, the Court is called upon to interpret, in the light of the Charter, the law of the European Union within the limits of the powers conferred on it (see Case C-256/11 *Dereci and Others* [2011] ECR I-11315, paragraph 71 and the case-law cited).
- 21 The Court has already observed that it has no jurisdiction to examine the compatibility with the Charter of national legislation falling outside the scope of EU law. On the other hand, if such legislation falls within the scope of EU law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures (see Case C-617/10 *Åkerberg Fransson* [2013] ECR, paragraph 19 and the case-law cited).
- 22 That definition of the scope of the fundamental rights of the European Union is borne out by the explanations relating to Article 51 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the purposes of interpreting the Charter (see, to that effect, Case C-279/09 *DEB* [2010] ECR I-13849, paragraph 32). According to those explanations, the obligation to respect fundamental rights defined in the context of the European Union is binding upon the Member States only in respect of matters covered by EU law.
- 23 According to the description provided by the referring court, the main proceedings concern an order requiring Mr Siragusa to dismantle work carried out in breach of a law protecting the cultural heritage and the landscape. There is a connection between such proceedings and EU environmental law since protection of the landscape – the aim of the national legislation in question – is an aspect of protection of the environment. In that regard, the referring court refers to various provisions of EU environmental law.
- 24 However, it should be borne in mind that the concept of ‘implementing Union law’, as referred to in Article 51 of the Charter, 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 (see, to that effect, Case C-299/95 *Kremzow* [1997] ECR I-2629, paragraph 16).
- 25 In order to determine whether national legislation involves the implementation of EU law for the purposes of Article 51 of the Charter, some of the points to be determined are whether that legislation is intended to implement a provision of EU law; 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 whether there are specific rules of EU law on the matter or capable of affecting it (see Case C-309/96 *Annibaldi* [1997] ECR I-7493, paragraphs 21 to 23; Case C-40/11 *Iida* [2012] ECR, paragraph 79; and Case C-87/12 *Ymeraga and Others* [2013] ECR, paragraph 41).

- 26 In particular, the Court has found that fundamental EU rights could not be applied in relation to national legislation because the provisions of EU law in the subject area concerned did not impose any obligation on Member States with regard to the situation at issue in the main proceedings (see Case C-144/95 *Maurin* [1996] ECR I-2909, paragraphs 11 and 12).
- 27 As the interested parties which have submitted observations have argued, no specific obligations to protect the landscape, akin to those laid down by Italian law, are imposed on the Member States by the TEU and TFEU provisions referred to by the referring court; nor are such obligations imposed by the legislation relating to the Aarhus Convention, nor by Directives 2003/4 and 2011/92.
- 28 The objectives pursued by that EU legislation are not the same as those pursued by Legislative Decree No 42/04, even though the landscape is one of the factors to be taken into consideration in assessing the impact of a project on the environment in accordance with Directive 2011/92 and among the factors to be taken into consideration as part of the environmental information referred to in the Aarhus Convention, Regulation No 1367/2006 and Directive 2003/4.
- 29 In *Annibaldi*, cited in the explanations relating to Article 51 of the Charter, the Court held that the fact that national legislation is capable of indirectly affecting the operation of a common organisation of the agricultural markets cannot in itself constitute a sufficient connection between that legislation and EU law (*Annibaldi*, paragraph 22; see also *Kremzow*, paragraph 16).
- 30 In that regard, there is nothing to suggest that the provisions of Legislative Decree No 42/04 which are relevant to the case before the referring court fall within the scope of EU law. Those provisions do not implement rules of EU law, a fact which distinguishes the case in which the present request for a preliminary ruling has been made from the case which gave rise to the judgment in Case C-416/10 *Križan and Others* [2013] ECR, cited by the referring court.
- 31 It is also important to consider the objective of protecting fundamental rights in EU law, which is to ensure that those rights are not infringed in areas of EU activity, whether through action at EU level or through the implementation of EU law by the Member States.
- 32 The reason for pursuing that objective is the need to avoid a situation in which the level of protection of fundamental rights varies according to the national law involved in such a way as to undermine the unity, primacy and effectiveness of EU law (see, to that effect, Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125, paragraph 3, and Case C-399/11 *Melloni* [2013] ECR, paragraph 60). However, there is nothing in the order for reference to suggest that any such risk is involved in the case before the referring court.
- 33 It follows from all the foregoing that it has not been established that the Court has jurisdiction to interpret Article 17 of the Charter (see, to that effect, Case C-245/09 *Omalet* [2010] ECR I-13771, paragraph 18; see also the orders in Case C-457/09 *Chartry* [2011] ECR I-819, paragraphs 25 and 26; Case C-134/12 *Corpul Național al Polițiștilor* [2012] ECR, paragraph 15; Case C-498/12 *Pedone* [2013] ECR, paragraph 15; and Case C-371/13 *SC Schuster & Co Ecologic* [2013] ECR, paragraph 18).
- 34 As for the principle of proportionality, that is one of the general principles of EU law which must be observed by any national legislation which falls within the scope of EU law or which implements that law (see, to that effect, Case 77/81 *Zuckerfabrik Franken* [1982] ECR 681, paragraph 22; Case 382/87 *Buet and EBS* [1989] ECR 1235, paragraph 11; Case C-2/93 *Exportslachterijen van Oordegem* [1994] ECR I-2283, paragraph 20; and Joined Cases C-422/09, C-425/09 and C-426/09 *Vandorou and Others* [2010] ECR I-12411, paragraph 65).

- 35 Given that the referring court has failed to establish, by demonstrating a sufficient connection, that Article 167(4)(a) of Legislative Decree No 42/04 falls within the scope of EU law or implements that law, it has by the same token not been established that the Court has jurisdiction to interpret the principle of proportionality in the present case.
- 36 In those circumstances, the Court has no jurisdiction to answer the question referred by the Tribunale amministrativo regionale per la Sicilia.

Costs

- 37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

The Court of Justice of the European Union has no jurisdiction to answer the question referred by the Tribunale amministrativo regionale per la Sicilia (Italy).

[Signatures]