Court of Justice of the European Union
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Press and Information

Judgment in Case C-301/12
Cascina Tre Pini Ss v Ministero dell'Ambiente e della Tutela del Territorio e le Mare and Others

Member States are required to propose the declassification of a site of Community importance when that site has become irretrievably unsuitable to achieve the objectives of the Habitats Directive

Continuing to restrict the use of that site might be an infringement of the right to property

The Habitats Directive[1] has established the largest ecological network in the world, 'Natura 2000'. That network is made up of special areas of conservation ('SACs') established on the basis of the sites of Community importance ('SCIs') designated by the Commission in agreement with the Member States.

Cascina Tre Pini Ss ('Cascina') owns an area which forms part of the 'Brughiera del Dosso' site in the Comune di Somma Lombardo, near to Milan-Malpensa airport in Lombardy (Italy). In 2002, that site was placed inside the perimeter of the Ticino Valley Natural Park created by a Law of the Regione Lombardia. By decision of the Commission, in 2004 the site was included in the list of SCIs in accordance with the Habitats Directive.

In the meantime, in the context of the Malpensa area development plan, by a Law of the Regione Lombardia of 1999 it was decided to extend the airport of Milan-Malpensa and to earmark areas of the Comune di Somma Lombardo for development of a commercial and industrial nature.

In 2005 Cascina asked the body which manages the park to adopt measures to prevent the environmental degradation of the site. Receiving no reply, in 2006 Cascina sent the Italian Ministry of the Environment an application on the basis of the Habitats Directive and the corresponding Italian legislation. By that application, Cascina asked the Ministry to re-draw the boundaries of, or declassify, that site, since, in the view of Cascina, the conditions for identifying the site as an SCI were no longer satisfied. Cascina's interest follows from the fact that the property right over its land has been affected by the restrictive legislation governing SCIs which prevents any change of use of the land, while such changes are provided for in the Malpensa area development plan.

Both the Ministry and the Regione Lombardia, to which Cascina subsequently applied, refused to rule on the application.

The question went to the Italian Council of State which, in turn, asked the Court of Justice whether the Habitats Directive authorises the State concerned to review the list of SCIs in lieu of the Regions and whether that power of review may be exercised not only of the competent administrative authority's own motion, but also at the request of an individual, the owner of land forming part of an SCI.

[1] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7). This directive requires the Member States to monitor the conservation status of species and natural habitats by requiring them to adopt measures to avoid their deterioration. It also requires them to carry out an appropriate assessment of the implications for the environment of projects incompatible with its provisions and, if necessary, to adopt all compensatory measures necessary.

In today's judgment, the Court, after having recalled the procedure laid down by the directive for the entry of a site in the list of SCIs[2], finds that, although there is no provision which expressly provides for the declassification of a site on the list of SCIs, **the directive allows the declassification of an SAC** where this is warranted by natural developments in the area. Since all SCIs must be classified as SACs by the Member States, **the declassification of an SAC necessarily implies the declassification of an SCI**. In the absence of specific provisions, such a declassification must be carried out **following the same procedure as that for entry** in the list.

Where the results of the monitoring undertaken by the Member States give rise to the conclusion that the criteria laid down in the directive can irretrievably no longer be met and that an SCI is definitively no longer capable of contributing to the achievement of the objectives of the directive, it appears no longer warranted for the site to remain subject to the provisions of that directive, so that the State concerned is required to propose to the Commission that the site be declassified. If that State were to refrain from making such a proposal, it could continue to use resources in vain to manage that site which would prove to be of no use to the conservation of natural habitats and species. In addition, keeping sites in the Natura 2000 network which no longer definitively contribute to the achievement of those objectives does not meet the quality requirements of that network.

As long as the quality of the site in question meets the requirements for its classification, the restrictions of the right to property are justified by the objective of protecting the environment. Where those qualities definitively disappear, and if the degradation should make the site irretrievably unsuitable to ensure the conservation of natural habitats and of the species, **continuing to restrict the use of that site might be an infringement of the right to property**.

However, the Court points out that a mere allegation of environmental degradation of an SCI, made by the owner of land included in that site, cannot suffice of itself to bring about its declassification. Similarly, the failure of a Member State to fulfil that obligation of protecting a particular site does not necessarily justify the declassification of that site.

Furthermore, the directive does not make any reference to the division of powers within domestic law. However, while binding the Member States as to the result to be achieved, it leaves to the national authorities the choice of form and methods. EU law does not require the power conferred on the regional or local authorities to perform the obligations under that directive be supplemented by a subsidiary power of the State, provided that the national measures effectively ensure the proper application of the provisions of the directive.

The Court declares, in consequence, that the competent national authorities are required, at the request of the owner of land included in an SCI, to propose to the Commission the declassification of the SCI, where that site, following environmental degradation and despite compliance with the directive, can no longer definitively contribute to the conservation of natural habitats and species.

EU law accepts national legislation under which a power is conferred on the regional and local authorities alone to propose the adaptation of the list of the SCIs, but not on the State, provided that the proper application of the provisions of the directive is ensured.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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[2] Entry of a site on the list of SCIs is the subject of a Commission decision on a proposal from the Member State concerned. The Member States to designate all sites on the list of SCIs as SACs. Where appropriate, Member States are to propose the adaptation of the list of SCIs in the light of the results of the surveillance of the conservation status of the natural habitats and species concerned.

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