

Removable constructions on beaches and neighbouring wooded areas: a view on the recent italian experience

Alessandro Palmieri

Associate Professor of Comparative Private Law, Department of Law, University of Siena

palmieri15@gmail.com

As observed in the relevant literature, notwithstanding the combined efforts of the national and of the various regional legislatures, Italy has not been able to ensure the implementation of a consistent and coherent coastal policy. The situation was expected to improve after the launch of a European Union campaign, which was intended to induce member States to elaborate national initiatives for coastal management according to the Integrated Coastal Zone Management principles. However, commentators have pointed out that the complete absence of a system strategy amounts to an insurmountable hurdle to put into effect the necessary measures. The integrity of several beaches has been seriously threatened as a consequence of a series of unforgivable mistakes committed by public agencies in the making of great public works, such as ports and railway lines running close to the sea. The coastal erosion attributable to human activities not only gave rise to serious social and environmental problems, but caused also injury to property and harm to personality rights of legal public persons. Civil courts have sometimes awarded damages in respect of similar claims. On one particular occasion a leading railways company, held responsible for the erosion, has been obliged to pay to a coastal municipality a sum of money to be spent on beach nourishment. Due to the uncertainty of the statutory framework, the task of solving specific problems, which may arise in connection with the need to protect the littoral, has been primarily left to the local planning authorities and to the courts. One of the most controversial issues in this field relates to the ascertainment of the categories of constructions that can be legally built on beaches and neighbouring wooded areas. Usually, land use instruments drafted by local authorities allow the operators of concessions on the public domain to construct structures for recreational activities. Once it has been identified such a purpose, a

central role in deciding whether or not a building permit shall be granted, or in determining whether or not an existing construction shall be dismantled, is played by the distinction between removable and stable structures. Recent administrative decisions and judicial opinions have tried to balance the incentives to use land for tourism purposes and the preservation of coastal zones, clarifying some aspects and giving useful guidance. Expressive of the said trend are the rulings delivered in 2015 by two different Regional Administrative Courts in the cases of the Sicilian beach of Randello and of the Sardinian beach of Poetto. The first case was about an initiative to build some structures in an area included in a Site of Community Importance, as defined in the European Union Directive on the «Conservation of natural habitats and of wild fauna and flora». The owner of a tourist resort in the vicinity of Randello beach, after having applied for a provisional authorisation to use it for recreational purposes, began some works there, and then asked to build a bathhouse, partially on the same beach, and partially located in the nearby forest. Since the local authority ordered the demolition of structures already built and denied any kind of permission, the owner of the resort started a dispute before the Regional Administrative Court for Sicily, whose decision was in favour of the public administration. In the second case, the municipality annulled a building permit which was granted, approximately seven years before, to the holder of a concession on a part of Poetto beach, allowing him to construct wooden cabins for bathers, together with a wooden kiosk to be used as a place for selling food and beverages. The Regional Administrative Court for Sardinia upheld the decision, and the verdict was affirmed on appeal by the Council of State. This new wave of judgments has elucidated that constructions are deemed to be removable only to the extent that the way in which they are assembled reveals their temporary and ephemeral nature. Besides, the increased awareness of environmental values has led the municipalities and the judges to believe that the requirement of temporariness ought to be construed narrowly.