



Entscheidung in der Sache 369/2018/JAP zu der Art und Weise, wie die Europäische Kommission eine Vertragsverletzungsbeschwerde gegen Italien in Bezug auf die Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse und die Wohnverhältnisse der Roma behandelt hat

Entscheidung

Fall 369/2018/JAP - **Geöffnet am** 20/03/2018 - **Entscheidung vom** 13/09/2019 -

Betroffene Institution Europäische Kommission (Kein Missstand festgestellt) |

Der Fall betraf die Art und Weise, wie die Europäische Kommission eine Beschwerde über die mögliche Verletzung der Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse und der Wohnverhältnisse der Roma durch Italien behandelt hat.

Der Beschwerdeführer, Amnesty International, brachte der Kommission die Angelegenheit im Jahr 2012 vor. Daraufhin leitete die Kommission von Amts wegen ein EU-Pilotverfahren ein, um die Angelegenheit zu untersuchen.

Nach fast sechs Jahren hatte die Kommission immer noch keine Entscheidung darüber getroffen, ob ein förmliches Vertragsverletzungsverfahren gegen Italien eingeleitet wird. Da der Beschwerdeführer mit dieser Verzögerung unzufrieden war, wandte er sich an die Bürgerbeauftragte.

Da es in diesem Fall um eine möglicherweise schwerwiegende Verletzung der Grundrechte einer ethnischen Minderheit in einem EU-Mitgliedstaat geht, ist es besonders wichtig, dass die Kommission erkennbar Maßnahmen ergreift.

Die Bürgerbeauftragte erkennt die Komplexität des Falls und die Bemühungen der Kommission an, die erforderlichen Beweise zu beschaffen, um festzustellen, ob gegen EU-Recht verstoßen wird. Die Bürgerbeauftragte würdigt ferner, dass die Kommission ihre Untersuchung fortsetzte, indem sie die Lage weiter überwachte, anstatt den Fall abzuschließen, als das einschlägige italienische Recht für nichtig erklärt wurde. Entscheidend ist letztlich, dass die von der Kommission gewählte Vorgehensweise die wirksamste ist, um die Einhaltung des EU-Rechts zu gewährleisten.

Nach Prüfung der Akte der Kommission stellte die Bürgerbeauftragte weder Fahrlässigkeit noch unbegründete Verzögerungen in ihrer administrativen Bearbeitung des Falls fest. Sie stellt somit keinen Missstand in der Verwaltungstätigkeit fest. Die Bürgerbeauftragte fordert



die Kommission jedoch nun dringend auf, sich um den Abschluss ihrer Informationserhebung in diesem Fall zu bemühen und alle ihr zur Verfügung stehenden Optionen zu prüfen. Zu diesem Zweck fordert die Bürgerbeauftragte die Kommission auf, ihr innerhalb von drei Monaten mitzuteilen, welche nächsten Schritte sie in Bezug auf das Vertragsverletzungsverfahren unternommen hat.

Background to the complaint

- 1.** In July 2012, the complainant, Amnesty International, contacted the European Commission to draw attention to what it viewed as Italy's infringement of EU law. [1] The complainant argued that the Italian authorities were discriminating against Romani people in terms of access to social housing and housing conditions. The complainant contended that this could be in breach of the Race Equality Directive [2] . Among the problems identified in reports by civil society organisations (CSOs) were the segregation of Romani people in camps in remote places, with poor living conditions and insufficient facilities; discrimination against Romani families concerning access to social housing; and repetitive forced evictions.
- 2.** The Commission replied that it was examining the complainant's letter, as well as reports from other organisations on the same issue. The Commission opened an own initiative 'EU Pilot' [3] procedure into the matter in September 2012.
- 3.** In the course of 2012 and 2013, the Commission was in contact with the Italian authorities to obtain information. In 2014, the Commission organised a field mission to Italy and discussed the situation with the 'national Roma contact point' [4] . The Commission had further contact with the Italian authorities in 2015 and 2016.
- 4.** In 2016, the complainant, together with other CSOs, invited the Commission to launch formal infringement proceedings against Italy. Although the Commission had in the meantime created a formal infringement file for the case [5] , it replied that it was reflecting on the appropriate follow-up action. The Commission added that the legal and factual complexity of the case meant it required thorough analysis.
- 5.** In 2017, the complainant wrote to the Commission to request information about the state of play, believing the delays to be unjustified. The Commission replied that it was still evaluating the possibility of opening formal infringement proceedings.
- 6.** In February 2018, dissatisfied with the delay, the complainant turned to the Ombudsman. It argued that the Commission had failed to provide specific and valid reasons for the delay. In its view, given the serious, systemic and ongoing fundamental rights violations against the Roma community, the Commission should launch formal infringement proceedings against Italy without any further delay.

The inquiry



7. The Ombudsman opened an inquiry into the delay by the Commission in its handling of this infringement file.

8. In the course of the inquiry, the Ombudsman's inquiry team inspected the Commission's file on the case. The Ombudsman also received the Commission's reply on this complaint and the complainant's subsequent comments.

Arguments presented to the Ombudsman

9. In the context of the inspection meeting and in its reply to the Ombudsman, **the Commission** argued that the case was probably one of the most complex infringement files it had ever dealt with. There were a number of reasons for this:

- Initially, there was not enough information available about the situation for the Commission to make a concrete case [6] .

- Housing for Romani people is regulated at regional (and not national) level in Italy, which made it more complicated and time consuming for the Commission to conduct a detailed analysis of the issue.

- The relevant Italian law (Nomad Decree) [7] was repealed in May 2013, but the repeal did not resolve the problem. This was further confirmed by the Commission's field missions to Italy, which enabled it to get more detailed information about the practical aspects of the situation. The Commission pointed out that it could have closed the EU Pilot procedure after the Nomad Decree was declared illegal, but chose to monitor the situation closely instead.

- There is no EU case-law about the matter.

- The issue concerns a "*moving target in a very fragmented context*". The situation was constantly evolving, with camps that accommodate Romani people closing and opening, and urban and regional authorities changing their policies. Therefore, regular collection of up-to-date information was necessary.

10. The Commission further stated that it had started its investigation into the issue before it was contacted by the complainant. As such, Amnesty International did not have the formal status of a complainant under the EU Pilot procedure. Nevertheless, the Commission kept it regularly informed of the progress of the case.

11. In response to a request from the Ombudsman for a detailed timeline for action in this case, the Commission clarified that it planned to gather up-to-date information about the situation in the different regions in Italy by:

(i) meeting the United Nations High Commissioner for Human Rights (OHCHR) and the Roma inclusion team of the European Economic and Social Committee;



(ii) analysing the content of the reply it had received from the Italian Anti-Racial Discrimination National Office (UNAR);

(iii) discussing the issue with the Commission representation in Rome;

(iv) contacting its partners on the ground, a network of legal experts, and the Italian authorities; and

(v) *potentially* carrying out a further fact-finding mission in Italy.

12. The Commission said that, based on the information it gathers, it would decide whether to launch formal infringement proceedings, close the case, or continue to monitor the situation.

13. In its comments, **the complainant** contended that Italy continued to breach the Race Equality Directive, in spite of the dialogue between the Commission and the Italian authorities. In its view, the Italian authorities had continued systematically to deprive Romani people of adequate housing conditions on discriminatory grounds. [8] In the complainant's view, the urgency of the situation called for speedy and effective action by the Commission to ensure the full and correct application of the Race Equality Directive.

14. The complainant noted that, according to the Commission's guidelines [9], it should decide whether to open infringement proceedings or to close an investigation within one year. In the complainant's view, it was unreasonable for the Commission to have taken almost six years in this case. It noted that the case was particularly serious as it pertained to systemic and ongoing fundamental rights breaches by an EU Member State.

15. The complainant also challenged the Commission's argument about the complexity of the situation. It argued that NGOs with limited resources had been able to maintain an overview of the situation over the years. It argued that the Italian authorities' failure to provide sufficient information should be a reason to open infringement proceedings, rather than an obstacle.

16. Finally, the complainant welcomed the Commission's plan to collect further updated information, but argued that swift action was necessary. In this context, it pointed out that, in July 2019, the European Committee of Social Rights, a Council of Europe body, requested that Italy take immediate measures to guarantee the housing rights of the Roma, with a view "to *eliminat [ing] the risk of serious and irreparable harm to people who have been evicted*" [10]. This shows that the situation in Italy has not improved.

The Ombudsman's assessment

17. It is the task of the Commission, as the guardian of the Treaties, to ensure that EU law is upheld within the Union. The infringement procedure is a mechanism for ensuring that



Member States are brought into compliance with EU law. The Commission initiates infringement proceedings either in response to a complaint or on its own initiative.

18. Complaints are important for the Commission as they help it to detect possible shortcomings in the application of EU law by the Member States. Even if, in this case, the Commission started investigating the matter before the complainant contacted it, the complainant has clearly been of great assistance to the Commission in terms of providing information [11]. The fact that information gathering has proved challenging in this case means that the complainant, and other CSOs, have played a particularly important role.

19. The Ombudsman's role in this area extends to the administrative and procedural handling of infringement cases by the Commission, including as regards the time taken and reasons given for any delays. Generally speaking, the Ombudsman will find maladministration in this context only if the time the Commission has taken to handle the matter was unnecessarily extended as the result of negligence by the Commission or unfounded postponements. [12]

20. The Commission has essentially argued that it was justified in taking six (now seven) years for dealing with the case because it is particularly complex, both from a legal and factual perspective.

21. The Ombudsman acknowledges the complexity of this case and the Commission's efforts to obtain the necessary evidence to determine whether EU law is being infringed. It has maintained regular contact with the Italian authorities and monitored the situation of Romani people on the ground, following up on various developments in Italy and acting on information received from relevant stakeholders and CSOs. The Ombudsman also appreciates that rather than closing the case when the relevant Italian law was annulled, the Commission chose to pursue its investigation.

22. Having inspected the Commission's very large file in this case, the Ombudsman did not identify either negligence or unfounded postponements. Rather than starting formal infringement proceedings or closing the case [13], the Commission has chosen to pursue its investigation by continuing to monitor the situation (see paragraph 12 above). It is not for the Ombudsman to second guess the Commission in deciding to proceed like that. The complainant, for its part, welcomes the Commission's plan to collect further updated information, while arguing that swift action is necessary.

23. What matters, ultimately, is that the course of action chosen by the Commission is the most effective in ensuring that EU law is respected. The fact that this case concerns a possible serious violation of the fundamental rights of an ethnic minority in an EU Member State makes it particularly important that the Commission takes action and is seen to take action. The seven years the Commission has been active on the case corresponds to the entire early childhood of someone who might find himself in the type of situation described by the complainant, resulting indeed in *"irreparable harm"* as described above. The complainant's contention that the situation in Italy has not improved therefore gives genuine cause for concern.



24. On this basis, while the Ombudsman has found no maladministration in terms of the administrative and procedural handling of the case, she calls on the Commission, as a matter of urgency, to seek to finalise its information gathering and to consider all the options at its disposal. To this end, the Ombudsman asks the Commission to inform her, within three months, of any further action it has taken on the infringement case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

While the Ombudsman has found no maladministration in this case, she requests that the Commission inform her, within three months of the date of this decision, of any further action taken on the infringement case.

The complainant and the European Commission will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 13/09/2019

[1] The Commission did not register this contact as an official infringement complaint.

[2] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin:
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043> . In particular, the complainant referred to Article 2, which defines the concept of discrimination, and Article 3(1)(h) on access to and supply of goods and services that are available to the public, including housing.

[3] “EU Pilot” is an informal dialogue between the Commission and the Member State concerned that may take place prior to launching a formal infringement procedure. Further information about EU Pilot is available at:
http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/eu_pilot/index_en.ht

[4] In the context of the EU Framework for National Roma Integration Strategies, each EU Member State should draw up a national integration strategy and designate a ‘national Roma contact point’ that is responsible for the strategy:
<https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-c>



. In Italy, this contact point is the national office against racial discrimination:

<https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-e>

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[5] Dissatisfied with its dialogue with the Italian authorities under the EU Pilot, the Commission had transferred the case to its infringement database. The case was given the reference number NIF 2016/2001.

[6] According to EU case-law, the Commission has to compile evidence to demonstrate that a Member State is failing to fulfil its obligations under EU law.

[7] The Nomad Decree, which provided for evictions from Roma camps, was declared illegal by the Italian Court of Cassation.

[8] To support its argument, the complainant referred to 24 documents available on its website.

[9] Point 8 of Annex to Commission Communication 2017/C 18/02 ' *EU law: Better results through better application* '.

[10] Amnesty International: *Italy: Council of Europe Committee takes important steps to protect Roma from forced evictions* , available at:

<https://www.amnesty.org/en/latest/news/2019/07/italy-council-of-europe-committee-takes-important-st>

Decision of the European Committee of Social Rights on admissibility and on immediate measures on complaint 178/2019 *Amnesty International v Italy* , 4 July 2019, available at: <http://hudoc.esc.coe.int/eng?i=cc-178-2019-dadmissandimed-en>

[11] In her own-initiative inquiry OI/5/2016/AB, the Ombudsman welcomed the fact that the Commission gives the status of complainant to individuals or organisations who submit a complaint on a case the Commission is already investigating. The Commission added that the administrative provisions on relations with complainants, as set out in the Annex to its Communication on the matter, apply. See paragraph 24 of the Ombudsman's Decision in OI/5/2016/AB available at: <https://www.ombudsman.europa.eu/en/decision/en/83646>

[12] See for example cases: 706/2007/BEH, 230/2011/EIS, 731/2012/JN and 425/2017/ANA.

[13] Please see above footnote no 9 for the reference to the Commission's Communication on how it deals with infringement complaints.