

Decision in case 1694/2019/UNK on the European Commission's handling of an infringement complaint against Spain concerning the placing on the market of pyrotechnic articles and the environmental noise caused by them

Decision

Case 1694/2019/UNK - **Opened on** 07/10/2019 - **Decision on** 07/10/2019 - **Institution concerned** European Commission (No maladministration found) |

The complaint to the European Commission

Background

1. On 21 October 2017, the complainant, an expert in urban design, submitted an infringement complaint [1] to the European Commission concerning the Spanish authorities' alleged non-compliance with (i) Directive 2013/29 on the placing on the market of pyrotechnic articles ('fireworks') [2] , and (ii) Directive 2002/49 on the assessment and management of environmental noise [3] .

Directive 2013/29

2. The complainant considered that although Spain has implemented Directive 2013/29 [4] , the administrative practise in Catalonia, in particular in the municipality of Sant Pere de Ribes, is contrary to Directive 2013/29.

3. The complainant claimed that the competent authorities of Catalonia allow the use of certain fireworks (categories F1 and F2) [5] by children below the age limits of 12 (for category F1) and 16 years (for category F2), thus breaching Article 7(1) of Directive 2013/29. She referred to the official website of the competent authorities in Catalonia [6] according to which children above the age of 8 and 10 years are allowed to use category F1 and F2 fireworks, respectively. She also submitted photographs showing children using such fireworks during events organised by the public authorities.



4. Moreover, the complainant claimed that the competent authorities in Catalonia allow persons without the necessary knowledge to use category F4 fireworks (fireworks for professional use), in breach of Article 7(3) of Directive 2013/29. She stated that category F4 fireworks are being used in Sant Pere de Ribes in residential areas, next to children's playgrounds or in spaces which are not open enough to guarantee the safety of citizens.

5. For the complainant the evidence showed that category F1, F2 and F4 fireworks were being placed on the market and used by children below the age limits allowed by Directive 2013/29.

6. In addition, the complainant noted that the use of such fireworks endangers human health and safety, in particular of children who may lose their hearing. For that reason, she asked the Commission to adopt the necessary 'implementing acts', in accordance with the safeguard procedure set out in Article 40 of Directive 2013/29.

Directive 2002/49

7. The complainant considered that the Spanish authorities have failed to inform and consult the public, as well as to take appropriate measures to tackle the noise pollution, in accordance with Directive 2002/49. In that regard, she referred to the World Health Organisation's report finding Spain to be the second noisiest country in the world. [7]

Charter of Fundamental Rights of the European Union

8. The complainant claimed that the use of the fireworks in question by children below the permitted age limits and by persons without the required specialist knowledge in the area where she resides interferes with her right to respect for private and family life guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union (the 'Charter') [8] .

The European Commission's response to the complainant

Background

9. In its pre-closure letter of 12 March 2019, the Commission asked the complainant to provide additional information proving that the Spanish authorities have infringed EU law. After the complainant had done so, the Commission confirmed its initial assessment and closed the case on 22 July 2019.

Directive 2013/29



10. The Commission found that the complainant had not provided “ *evidence of a continued administrative practise allowing pyrotechnic articles to be sold to children by retailers not respecting the age limits or F4 category pyrotechnics sold to persons without having specialist knowledge* ”. It stated that although the information that the complainant provided “ *shows that the age, safety distance and other limits are not respected at the moment of use of the pyrotechnic articles and that the authorities do not intervene in such situations* ”, Directive 2013/29 only concerns the placement of pyrotechnic articles on the market, not their use.

11. In addition, EU Member States enjoy a margin of discretion to prohibit or restrict the use to public of pyrotechnic articles [9] if justified, due to cultural differences in the EU [10] .

12. For the Commission, there was not either any risk to the health or safety of citizens, which would trigger the ‘Union safeguard procedure’ under Article 40 of Directive 2013/29.

13. Finally, the Commission informed the Ombudsman’s inquiry team that it has not received any other similar infringement complaint concerning Spain, and that the issues raised in this complaint concern the administrative practices of a local authority.

Directive 2002/49

14. The Commission stated that according to Directive 2002/49, Member States are required to draw up “ *strategic noise maps* ” [11] and “ *noise management action plans* ” [12] only for agglomerations with more than 100 000 inhabitants and for major roads, railways and airports [13] . The municipality in question, Sant Pere de Ribes, was not included in the list of agglomerations, major roads, railways and airports communicated by the Spanish authorities to the Commission. Even if the obligation of strategic noise maps and noise management action plans were to apply to Sant Pere de Ribes , “ *the Directive does not prescribe the measures that the action plans should contain, nor does it set up noise limit or target values* ”, and therefore, Member States enjoy discretion in that regard. On that basis, the Commission considered that the complainant’s concerns fell under the remit of national legislation, and that there was no breach of Directive 2002/49. [14]

Charter of Fundamental Rights of the European Union

15. The Commission stated that the provisions of the Charter apply only when Member States implement EU law. [15] Since in this case the complainant’s concerns do not relate to the implementation of EU law, the Commission advised the complainant to turn to the Spanish authorities. The Commission also informed the complainant that the Convention for the Protection of Human Rights and Fundamental Freedoms (‘the Convention’) is an international treaty ratified by the Member States of the Council of Europe, not the EU, and therefore, it is not competent for assessing Member States’ compliance with it.

16. The complainant was not satisfied with the Commission’s response and turned to the



Ombudsman on 12 August 2019. She stated that the Commission did not take into consideration the evidence she had provided, and was wrong to conclude that the Spanish authorities were not in a breach of their EU law obligations.

The European Ombudsman's findings

Directive 2013/29

17. Article 7(1) of Directive 2013/29 provides that category F1 and F2 fireworks ‘*shall not be made available on the market to persons below*’ the age of 12 and 16 years, respectively. However, according to Article 7(2) of that Directive, Member States may lower the age limits for persons vocationally trained or undergoing such training. In that regard, the Ombudsman understands that the Spanish implementing law provides that the autonomous communities in Spain (including in this case Catalonia), given their competences on culture and public entertainment, may reduce the minimum age limits for the use of category F1 and F2 fireworks. [16] In particular, according to the website referred to by the complainant, the competent authorities in Catalonia have lowered the age limits in question, provided that users have received appropriate training, are supervised by an adult and have obtained permission from their guardians. Moreover, the Spanish implementing law provides that the decrease of the minimum age limits is without prejudice to the legal provisions concerning the minimum age limits allowed for the sale or commercialization of fireworks to the public. [17]

18. The fact that the evidence adduced by the complainant appears to lend support to her assertions that children above the age of 8 and 10 use F1 and F2 category fireworks, does not, as the Commission also stated, imply that the competent authorities in Catalonia allow such fireworks to be sold to children below the age limits of 12 and 16. In that sense, the Commission was correct to conclude that the complainant did not provide evidence that the Spanish authorities are in a breach of Directive 2013/29. As the Commission pointed the use of fireworks, as opposed to their placing on the market, is a matter falling under national legislation.

19. Concerning the sale of category F4 fireworks to persons without specialist knowledge, the Ombudsman considers that the complainant has not put forward any evidence to support her claim. Thus, the Commission was right to conclude that there was no evidence that the Spanish authorities have infringed Directive 2013/29.

Directive 2002/49

20. The Commission explained to the complainant that the area where she resides, Sant Pere de Ribes, has less than 100 000 inhabitants and therefore does not fall within the list of major roads, railways and airports for which the Spanish authorities need to prepare strategic noise maps and noise management action plans. The complainant has not challenged the



Commission's explanation. Therefore, the Commission's conclusion that in this case there was no breach of Directive 2002/49 was correct [18] .

Charter of Fundamental Rights of the European Union

21. The Ombudsman agrees with the Commission that the Charter applies to Member States only when they are implementing EU law. The Ombudsman understands that the use of the fireworks in question by children in the complainant's neighbourhood may interfere with her right to respect for her private and family life (Article 7 of the Charter). However, as stated above, these concerns do not relate to the implementation of EU law, but fall under the remit of national legislation and the competence of local authorities.

22. Furthermore, as the Commission rightly pointed, the Convention is not ratified by the EU, and thus, the Commission cannot assess the Spanish authorities' compliance with it.

23. Based on the information provided by the complainant, the Ombudsman considers that the Commission was right to close the infringement complaint and finds no maladministration in this case. [19]

Lambros Papadias

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[1] Registered under the reference number CHAP(2017)03201.

[2] Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles. Available at the following link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0029> [Link].

[3] Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise - Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise. Available at the following link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0049> [Link]

[4] Real Decreto 989/2015, de 30 de octubre, por el que se aprueba el Reglamento de artículos pirotécnicos y cartuchería. Available at the following link:

<https://www.boe.es/boe/dias/2015/11/07/pdfs/BOE-A-2015-12054.pdf> [Link].



[5] According to Article 6(1)(a) of Directive 2013/29 category F1 refers to fireworks which present “ *a very low hazard and negligible noise level and which are intended for use in confined areas, including fireworks which are intended for use inside domestic buildings*”, whereas category F2 refers to “ *fireworks which present a low hazard and low noise level and which are intended for outdoor use in confined areas*”.

[6] Website of Department of the Interior of Generalitat de Catalunya:

https://cultura.gencat.cat/es/departament/estructura_i_adreces/organismes/dgcpt/04_formacio/02_responsables_fo
[Link].

[7] Page 5 of the report Childhood Hearing Loss, World Health Organisation.

[8] Charter of Fundamental Rights of the European Union. Available at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012P/TXT> [Link]. The complainant also referred to the judgement of the European Court of Human Rights, *Pilar Moreno Gomez v. Spain*, at [https://hudoc.echr.coe.int/eng#{"itemid":\["001-67478"\]}](https://hudoc.echr.coe.int/eng#{) [Link] .

[9] Article 4(2) of Directive 2013/29: “ *This Directive shall not preclude measures taken by a Member State to prohibit or restrict the possession, use and/or the sale to the general public of category F2 and F3 fireworks, theatrical pyrotechnic articles and other pyrotechnic articles, which are justified on grounds of public order, security, health and safety, or environmental protection*”.

[10] Recital (16) of Directive 2013/29: “ *The use of pyrotechnic articles and, in particular, the use of fireworks, is subject to markedly divergent cultural customs and traditions in the respective Member States. It is therefore necessary to allow Member States to take national measures to limit the use or sale of certain categories of pyrotechnic articles to the general public for reasons, inter alia, of public security or health and safety.* ”

[11] According to the Commission, strategic noise maps “ *assess and determine the exposure to environment noise* ”.

[12] According to the Commission, noise management action plans “ *address environmental noise where it is problematic* ” and “ *preserve noise quality where it is good* ”.

[13] According to the Commission, “ *major roads are those with more than 3 million vehicles a year, major railways are those with more than 30 000 trains a year, and major airports are those with more than 50 000 movements a year, including small aircrafts and helicopters* ”.

[14] The Commission informed the complainant that it has initiated an infringement procedure on 30 September 2016, concerning the Spanish authorities’ failure to adopt strategic noise maps and noise management action plans for several agglomerations, major roads, railways and airports, and that that procedure is still ongoing

[15] Article 5(1) of Charter provides that: “ *The provisions of this Charter are addressed to the*



institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law”.

[16] Disposición adicional sexta, Real Decreto 989/2015.

[17] Disposición adicional sexta, Real Decreto 989/2015.

[18] The Commission has however opened an infringement procedure against Spain for its non-compliance with key provisions of Directive 2002/49/EC, see https://europa.eu/rapid/press-release_MEMO-18-4486_EN.htm [Link]

[19] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]