



Decision in case 1553/2019/NH on the role of the EU's Special Envoy for the promotion of freedom of religion or belief outside of the EU

Decision

Case 1553/2019/NH - Opened on 15/10/2019 - Decision on 30/07/2020 - Institution concerned European Commission (No further inquiries justified) |

The case concerned the role and mandate of the Special Envoy for the promotion of freedom of religion or belief outside of the EU. The Special Envoy served as a special adviser to the Commission between 2016 and 2019. The complainant, an MEP, was concerned about the Special Envoy's interactions with certain organisations which she argued pursue an "anti-human rights agenda". The Ombudsman opened an inquiry into how the Commission monitored the role of the Special Envoy.

The Ombudsman found that the mandate of the Special Envoy, as a unique function in the EU administration, was not sufficiently clear. Moreover, the documents setting out this mandate and the Special Envoy's work plan were not available to the public. The Special Envoy was mandated however, to engage in dialogue with civil society organisations. The Commission assessed that the Special Envoy did not breach this mandate by engaging with the organisations mentioned in the complaint. The Ombudsman however has judged that greater attention should have been paid to the risk from the perception of this highly sensitive post being exploited given the clashes that can emerge between freedom of religion and belief and other fundamental rights and freedoms.

Given the shortcomings identified, the Ombudsman closed the inquiry with three suggestions for improvement. She invited the Commission to give clearer guidance to future Special Envoys about the need to take into account the full range of human rights when making statements and interacting with stakeholders. She further suggested that the Commission clarify the extent to which future Special Envoys have the mandate to speak on behalf of the Commission and invited the Commission to make their mandate and work plan publicly available.

Background to the complaint

1. The complainant, a Member of the European Parliament, raised concerns about the professional conduct of the then EU Special Envoy [1] for the promotion of freedom of religion or belief outside the European Union.

2. The President of the European Commission created the position of Special Envoy through a decision taken in 2016. The mandate of the Special Envoy includes supporting the



promotion and protection of freedom of religion or belief in third countries, engagement and dialogue with international organisations, civil society and religious actors, and support to EU coordination on the topic. The Special Envoy was the first of its kind. Administratively, the Special Envoy is a special adviser [2] to the Commissioner for International Cooperation and Development.

3. The complainant considers that the Special Envoy failed to fulfil his mandate because he did not promote an inclusive notion of freedom of religion, nor the respect for *all* human rights of believers and non-believers. In particular, the complainant argued that the Special Envoy had met with, and publicly acknowledged the work of, two civil society organisations which the complainant claimed were "*from the ultra-conservative fringes of Christianity*" and which she argued pursue an "*anti-human rights agenda*". In particular, the complainant pointed out that the Special Envoy had publicly thanked one of the organisations through social media.

4. The complainant expressed her concerns directly to the Special Envoy in an exchange of letters between January and June 2019. She asked the Special Envoy to distance himself from the organisations in question. The complainant also asked the Commission to give access to all documents related to contacts that the Special Envoy had had with individuals and organisations since 2018. [3]

5. Dissatisfied with the replies she received regarding her concerns, the complainant turned to the Ombudsman in August 2019.

The inquiry

6. As the Ombudsman investigates EU institutions, and not individual staff members of those EU institutions, this inquiry focused on how the European Commission dealt with the concerns about the Special Envoy and how it monitored his role.

7. In the course of the inquiry, the Ombudsman asked the Commission to provide clarifications on the rules applicable to the Special Envoy regarding his role, professional conduct and meetings with third parties. The Ombudsman also asked the Commission how it monitors the way in which the Special Envoy carries out his role. The Commission sent the Ombudsman its reply on the complaint as well as two internal documents setting out the mandate and work plan of the Special Envoy. Subsequently, the complainant provided comments in response to the Commission's reply.

Arguments presented to the Ombudsman

8. The complainant argued that some of the organisations that the Special Envoy had engaged with were campaigning against LGBTI rights, same-sex marriage or women's health rights. The complainant thus claimed that the fact that the Special Envoy chose to appear and to speak at events alongside such organisations severely affects the trust in the independence of his function. The complainant also argued that, as the Special Envoy acts as a special adviser to a Commissioner, his apparent closeness to such organisations could influence decisions taken in third countries regarding sexual and reproductive health and rights, or LGBTI rights.

9. In its reply, the Commission said the following:



- The mandate of the Special Envoy is set out in the decision of the President of the Commission, dated 6 May 2016, as well as in the "*Mandate and Work Plan of the Special Envoy on freedom of religion or belief*", dated 26 September 2016. The Commission updated the Special Envoy's work plan on 23 November 2017. The mandate and work plan include supporting the promotion of freedom of religion or belief at country level, engaging within international fora, supporting EU coordination, and engaging in dialogue with a broad range of civil society and religious actors.
- The mandate and work plan also give the Special Envoy the task of supporting the implementation of the "*EU Guidelines on the promotion and protection of freedom of religion or belief*", [4] approved by the EU Member States in 2013. These guidelines provide tools to support freedom of religion or belief in EU external relations and in EU international cooperation and development. They set out the framework within which the Special Envoy should act to implement a balanced approach when engaging on freedom of religion or belief, focusing on respect for diversity and religious tolerance.
- The Special Envoy reports directly to the Commissioner for International Cooperation and Development. He coordinates and prepares his activities, missions and speeches in cooperation with several Commission departments and with the European External Action Service (EEAS). For each official visit, the Special Envoy drafts a report which is then assessed by the Commission and the EEAS. According to the Commission, these reports showed that the Special Envoy was acting in accordance with his mandate.
- The Special Envoy had not considered it necessary to distance himself publicly from the organisations mentioned in the complaint, because the interactions with these organisations had taken place exclusively on the promotion of freedom of religion or belief and not on issues related to the broader human rights agenda. The Special Envoy had acted in accordance with his mandate in respect of the principles of impartiality and transparency.

10. In her comments on the Commission's reply, the complainant argued that the Special Envoy's failure to distance himself from the organisations in question impedes the Commission's commitment to the EU human rights agenda, which is imperative for any EU external action, as outlined in Article 21 of the EU Treaty. She rejected the Commission's argument that the Special Envoy had interacted with the organisations on the topic of freedom of religion only. She considered that the Commission should have assessed the organisations in light of the wider respect for human rights and EU values. Had the Commission carried out such an assessment, it would have found that one of the organisations had been refused participatory status at the Council of Europe because it did not adhere to the values of the Council of Europe. The Commission would also have found that another organisation had actively campaigned against LGBTI and sexual and reproductive health rights.

The Ombudsman's assessment

11. The position of Special Envoy for the promotion of freedom of religion or belief is a unique feature in the EU administration.

12. Given the uniqueness of the position, the Ombudsman finds it surprising that the mandate and work plan of the Special Envoy are not publicly available. [5] Without complete information about this unique role, citizens risk not getting a clear understanding of the relevant mandate and tasks. Some of the complainant's concerns relating to the Special



Envoy speaking in public and engaging with civil society organisations might have been answered immediately, had the mandate and work plan of the Special Envoy been publicly available. The Ombudsman will make a suggestion for improvement in this regard.

13. The mandate and work plan for the Special Envoy clearly set out that the Special Envoy may engage in dialogue with religious actors, civil society organisations and stakeholders. There is nothing to suggest that the interactions that the Special Envoy had with the two organisations mentioned in the complaint do not fall within the remit of such dialogue, and thus of the Special Envoy's mandate.

14. However, because fundamental rights are expressed, in the main, quite generally, conflicting interpretations can lead to clashes as between, for example, freedom of religion and certain equality rights, or freedom of expression and equality rights. This is a sensitive and contested area which has given rise to court rulings that attempt to define where appropriate limits may be placed on the expression of freedom of religion in order to protect other fundamental rights. Indeed, paragraph 26 of the EU's 2013 guidelines on the promotion and protection of freedom of religion or belief which constitute the policy framework for the Special Envoy's work, says:

"Certain practices associated with the manifestation of a religion or belief, or perceived as such, may constitute violations of international human rights standards. The right to freedom of religion or belief is sometimes invoked to justify such violations. The EU firmly opposes such justification, whilst remaining fully committed to the robust protection and promotion of freedom of religion or belief in all parts of the world. Violations often affect women, members of religious minorities, as well as persons on the basis of their sexual orientation or gender identity." [6]

It is therefore important that the Special Envoy avoid any perception of being instrumentalised by organisations that may use the promotion of freedom of religion to advance agendas that are contrary to the EU's commitment to international human rights standards. A failure to do so also risks undermining the important work of protecting those who are persecuted around the world because of their religious or other beliefs.

15. As a special adviser, the Special Envoy has to respect the rules and obligations laid down in the EU Staff Regulations. In particular, Article 12 of the Staff Regulations sets out that "*An official shall refrain from any action or behaviour which might reflect adversely upon his position* ." EU case law has consistently interpreted that provision as referring to serious insults against other persons, affecting their dignity as human beings, or serious misconduct. The Ombudsman believes that the Special Envoy's social media message, thanking an organisation in general terms in relation to a matter falling within the Special Envoy's mandate, does not fall into that category. The Ombudsman notes that the Special Envoy later stated in a letter to the complainant that the social media message was about the work of the organisation in relation to freedom of religion or belief only. Even if that is the case, the Ombudsman believes - in light of the conflicting interpretations outlined in paragraph 14 above - that greater caution may have been necessary and that the Commission itself should have exercised greater vigilance.



16. The issue of public perception is of utmost importance in relation to a prominent figure like the Special Envoy. There must be no doubt in the mind of the public that EU staff members with a prominent role, such as the Special Envoy, fully adhere to EU values, which include *all* human rights. This is particularly important as certain organisations active in the area of freedom of religion or belief might hold views that are indeed perceived as being at odds with international human rights standards, in particular women's rights or LGBTI rights.

17. It is not within the Ombudsman's mandate to assess whether a civil society organisation respects EU values and human rights. However, it is very important that the Commission demonstrate an alertness to the sensitivities and challenges posed by the creation of the post of Special Envoy and the risk that any ambiguities in relation to the term 'freedom of religion and belief' may be exploited. The Ombudsman sees room for improvement in how the Commission should deal with the matter in future. The Ombudsman thus suggests that the Commission give clearer guidance on this issue in the mandate and work plan of any future Special Envoy and that it also considers monitoring the issue more closely. To do so would be entirely in line with the current mandate of the Special Envoy, which recalls that "*the EU is committed to support a human rights approach based on the principle of protection of all human rights including freedom of religion or belief and freedom of expression, in all their aspects*" (emphasis added). The Ombudsman will make a suggestion for improvement in this regard.

18. Finally, neither the decision establishing the position of Special Envoy, nor the mandate and work plan of the Special Envoy, provide sufficient clarity as to whether the Special Envoy should be considered to be speaking on behalf of the Commission, and thus the EU. As far as the Ombudsman is concerned, he must be understood to be doing so. The Commission should therefore provide greater clarity on this point for the future so that there is no doubt either in the public mind nor for the Special Advisor himself. The Ombudsman will also make a suggestion for improvement to the Commission in this regard.

19. The Ombudsman notes that, on 8 July 2020, the Commission announced that it would renew the function of Special Envoy for the promotion of freedom of religion or belief outside the EU. The Ombudsman trusts that the Commission will take her suggestions for improvement into consideration when preparing the new mandate and work plan of the future Special Envoy.

Conclusion

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

While this inquiry has identified shortcomings that should be addressed for the future, no further inquiries are justified at this stage.

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

Suggestions for improvement

The Ombudsman makes the following suggestions for improvement to the Commission:

- **The Commission should monitor more closely, and give clearer guidance to future Special Envoys, as to the need to take into account all human rights when making statements and interacting with stakeholders, bearing in mind also the importance of**



public perception.

- The Commission should clarify the extent to which future Special Envoys have the mandate to speak on behalf of the Commission, or represent the institution, when engaging with stakeholders.

- The Commission should ensure that key documents setting out the mandate and work plan of future Special Envoys for the promotion of freedom of religion or belief are made available to the public.

Emily O'Reilly European Ombudsman

Strasbourg, 30/07/2020

[1] The mandate of the Special Envoy finished in November 2019.

[2] Special advisers are persons who, due to special qualifications, are engaged to assist EU institutions either regularly or for a specified period. Special advisers are considered as staff members of the EU institution and, as such, the EU's Staff Regulations apply to them. See: Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501>

[3] The complainant made the request for public access to documents under Regulation 1049/2001. Since she had not requested the Commission to review its decision to give merely partial access to certain documents (by making a "confirmatory application"), the Ombudsman could not inquire into that aspect of her complaint.

[4] The guidelines are available at:

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf

[5] The work plan specifies that the document is for internal use and that an "adapted version" should be published on the Commission's website.

[6] See footnote 4.