

Decision on how the European Commission dealt with a complaint about alleged violations of fundamental rights in Italy CHAP(2021)02649 (case 1861/2021/FA)

Decision

Case 1861/2021/FA - **Opened on** 18/11/2021 - **Decision on** 18/11/2021 - **Institution concerned** European Commission (No maladministration found) |

Dear Mr X,

In October 2021, you made a complaint to the European Ombudsman about how the European Commission dealt with your infringement complaint CHAP(2021)00273 against Italy.

You complained to the Commission about an expropriation procedure initiated by an Italian municipality to build social housing. You argued that this procedure violated your property rights and your right to an effective remedy and a fair trial, as protected by the EU Charter of Fundamental Rights [1] . You also refer to the European Convention on Human Rights.

In your complaint to the Ombudsman, you contend that the Commission was wrong to close your infringement complaint.

After a careful analysis of all the information you have submitted, we have decided to close this inquiry with the following conclusion:

There was no maladministration by the European Commission in this case.

The Commission has wide discretion in deciding whether and when to commence infringement proceedings [2] . Regarding the substance of an infringement complaint, the Ombudsman may only intervene (by asking the Commission to look at the complaint again) in case there is an indication that the Commission was manifestly wrong in its presentation of the facts or of the law.

The Commission has clearly explained the limits of its competence regarding protection of fundamental rights. In particular, it informed you that it may only intervene if a violation of fundamental rights occurs in the implementation of EU law by a Member State [3] .

The areas of competence of the EU are clearly defined under Articles 2 to 6 of the Treaty on the



Functioning of the European Union [4] . In this regard, the EU has no direct competence on matters related to private property, including expropriation procedures in Member States. Additionally, Directive 2011/7/EU does not seem to apply to the issue at stake as it concerns commercial transactions. In view of the above, the Commission considered that the subject matter of your complaint **was not related to the implementation of EU law** and it decided to close the case.

On this basis, we find nothing to suggest that the Commission manifestly misinterpreted the facts or the law.

We further note that the Commission provided you with appropriate information and advice. It explained that, in the context of the Rule of Law Report, it is currently monitoring the compliance of EU Member States with the rule of law, including as regards the efficiency of their judicial systems. As it could not intervene on the matter, it advised you to refer the matter to the European Court of Human Rights, which is not a body of the European Union.

Although we understand you will be disappointed with this reply, we nevertheless hope you find these explanations helpful [5] .

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 18/11/2021

[1] Charter of Fundamental Rights of the European Union (2000/C 364/01) available here: https://www.europarl.europa.eu/charter/pdf/text_en.pdf

[2] Judgment of the Court of 14 February 1989, *Starfruit v Commission* , case 247/87, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61987CJ0247> [Link] .

[3] As provided under Article 51 of the Charter and in line with Article 6(1) of the Treaty on European Union (TEU)

[4] As provided under Article 5(2) Treaty of European Union “2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.”

[5] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707>