Evropski varuh človekovih pravic

Odločba v zadevi 2071/2013/EIS - Zavrnitev podaljšanja roka za zbiranje podpisov za evropsko državljansko pobudo proti vivisekciji

Odločba
Primer 2071/2013/EIS - **Preiskava uvedena dne** 02/12/2013 - **Odločba z dne** 12/12/2014 - **Zadevna institucija ali organ** Evropska komisija (Nepravilnosti niso bile odkrite) |

Ta primer zadeva evropsko državljansko pobudo „Stop Vivisection“ (Zaustavite vivisekcijo). Njeni organizatorji so prijavili pobudo, nato pa vzpostavili digitalni sistem za zbiranje izjav o podpori. Za pomoč so se obrnili na Komisijo, in ta se je strinjala, da bo sistem brezplačno gostila na svojih strežnikih v Luxembourgu, če ga bo potrdil ustrezen nacionalni organ. Ker organizatorji potrditve niso mogli dobiti pravočasno, so Komisijo prosili, naj podaljša 12-mesečno obdobje za zbiranje podpisov na spletu. Komisija je to zavrnila.

Glede na to, da (i) je Komisija organizatorjem zagotovila precejšnjo podporo, da (ii) se je med preiskavo varuhinje človekovih pravic pokazalo, da so organizatorji prejeli zahtevano število potrjenih izjav o podpori, kar je Komisija potrdila, in da (iii) varuhinja človekovih pravic v okviru preiskave na lastno pobudo OI/9/2013/TN trenutno proučuje sistemska proceduralna vprašanja v zvezi z ustreznim delovanjem ECI, je sklenila, da v ravnanju Komisije ni bilo nepravilnosti, zato je primer zaključila.

The background to the complaint

1. The complainant, an Italian citizen, is a representative of a citizens' committee established for the collection of signatures in favour of the European Citizens' Initiative " *Stop Vivisection* ", which aims at phasing out animal experiments [1] .

2. The European Citizens' Initiative (the 'ECI') is a democratic tool created by the Treaty of Lisbon and enshrined in Article 11(4) of the Treaty on the European Union. The ECI, which enables citizens directly to participate in the legislative process at the European level, is an invitation to the European Commission to propose legislation on matters where the EU has competence to legislate. An ECI has to be backed by at least 1 000 000 EU citizens, coming from at least seven of the 28 Member States. A minimum number of signatories is required in each of those seven Member States. The detailed rules and procedures governing the ECI are set out in Regulation (EU) No 211/2011 on the citizens' initiative [2] (the 'Regulation').

3. According to Article 4(1) of the Regulation, prior to initiating the collection of statements of support from signatories for a proposed ECI, the organisers are required to register it with the Commission, providing certain information set out in Annex II of the Regulation, and in particular on the subject matter and objectives of the proposed initiative. In accordance with Article 5(5) of the Regulation, the statements of support must be collected " *after the date of registration of the proposed citizens' initiative and within a period not exceeding 12 months* ". According to Article 8 of the Regulation, after the required statements of support from signatories have been collected, it is up to the national authorities to verify and certify them. Provided that all relevant procedures and conditions set out in the Regulation have been complied with, in accordance with Article 9 of the Regulation, the organisers may then submit the initiative to the Commission.

4. Upon the registration of the initiative on 22 June 2012, the organisers of " *Stop Vivisection* " launched the collection of statements of support in paper form and electronically, in accordance with Article 5(2) of the Regulation. They faced technical problems in setting up a system for the online collection of signatures. This, in their view, endangered the future of the initiative itself. Since the organisers of the other initial ECIs were in a similar situation, the Commission offered to help the organisers and host the online statements of support collection free of charge on its digital servers in Luxembourg. However, in order to make use of that facility, the ECIs' committees had to seek prior certification of their systems from the Luxembourgish authorities. The Commission added that the organisers would be given 12 months to collect statements of support as of the moment at which the hosting environment became operational. This offer was sent to and accepted by the " *Stop Vivisection* " organising committee in July 2012.

5. The Commission, at the request of the organisers of the initial ECIs, extended the deadline for collecting signatures to 1 November 2013 and notified the relevant committees that it would accept all statements of support as of 1 November 2012. This solution gave all ECI committees an equal chance to collect signatures for a full 12 months.

6. However, the organisers of " *Stop Vivisection* " could not obtain certification from the Luxembourgish authorities until late December 2012. They started the online collection of signatures on 24 December 2012 and thus had available to them just over 10 months instead of the full 12 months.

7. Due to the time constraints, on 19 March 2013, the representatives of " *Stop Vivisection* " and the other initial initiatives sent a joint letter to the Commission, asking it to postpone the starting date for the collection of signatures (that is 1 November 2012), since the initiatives concerned could not obtain the required audit certification from the Luxembourgish authorities within a reasonable period of time. In their view, this drastically reduced the 12-month deadline available to them. The representatives asked the Commission to adjust the starting date for the collection of signatures " *so that it corresponds* [to] *the date of the stamp on the final audit certification* ".

8. By letter of 15 April 2013, the Commission refused to extend the deadline. It argued that Article 5(5) of the Regulation makes it clear that the collection of statements of support starts on the date of registration of the initiative and not on the date of certification of the online

registration system.

9. In September 2013, the organisers of " *Stop Vivisection* " reiterated their request, this time individually, and argued that the national authorities did not validate some of the signatures—which was a matter beyond their influence and responsibility. Moreover, they stated that the online collection of signatures is a key component of the ECI, and another initiative had 15 months to collect them, as opposed to the time available to " *Stop Vivisection* ". This was thus against the principle of equal treatment. Lastly, the Commission failed to acknowledge that the problems were caused by the pioneering development of the new instrument, which was beyond the complainant's responsibility.

10. In its reply of 7 October 2013, the Commission explained that it did its utmost to help the first initiatives, including " *Stop Vivisection* ", during the pioneering stage of the ECI. The " *Stop Vivisection* " initiative was hosted on the Commission's server and the standard 12-month deadline had already been extended to 16 months from the date of registration of the initiative. Any further extension would be contrary to the general logic of the Regulation and, should the Commission grant it, it would have to give such extensions in future cases. It further argued that (i) the Regulation does not, as such, guarantee a full 12-month collection period, and (ii) the same extended deadline applied to all initiatives without discrimination. The organisers of " *Stop Vivisection* " did not agree with these arguments.

11. On 29 October 2013, the complainant submitted this complaint to the European Ombudsman. The collection of signatures for " *Stop Vivisection* ", both in paper form and electronically, was closed three days later, that is to say, on 1 November 2013.

The inquiry

12. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

(1) The Commission wrongly decided not to further extend the period of time available for the collection of signatures.

(2) The Commission should grant additional time for the collection of signatures.

13. In the course of the inquiry, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, gave the complainant the opportunity to submit observations on the Commission's opinion. However, the complainant did not use this opportunity. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that the Commission wrongly decided not to further extend the period of time available for the

collection of signatures and related claim

Arguments presented to the Ombudsman

14. In support of his allegation, the complainant argued that:

(i) the Commission failed to take sufficiently into account the pioneering development of the new instrument;

(ii) the Commission failed properly to ensure that all the initial initiatives were treated equally in terms of the period of time available to them for collecting signatures online;

(iii) the national authorities did not validate some of the signatures, which was beyond the complainant's responsibility; and

(iv) contrary to the Commission's statements, the complainant collected most of the signatures online.

15. In its opinion, the Commission explained that it had developed, tested and made available to the organisers free of charge open source software for the collection of the statements of support, which is compliant with the relevant technical specifications. All other aspects of the online collection process, such as ensuring the appropriate hardware installation of the online collection system and its certification by the competent national authorities, remained the sole responsibility of the organisers. The organisers of the initial ECIs could not find affordable solutions to set up systems for the online collection of signatures due to the high level of data protection standards and the strict retention policy. Because of this, the Commission tried to facilitate the launching of these ECIs in the most effective and expeditious way. The Commission offered to host their online collection systems on its own servers in Luxembourg and to provide its assistance in the certification process with the competent Luxembourgish authority. Furthermore, the Commission stated that all ECIs registered before 31 October 2012 (the date as of which the service offered by the Commission was considered fully operational) were given fair and equal time for the online collection of signatures until 1 November 2013. This was meant to give the organisers a period as close as possible to that of 12 months of online collection.

16. Given the exceptional circumstances of the early stages of the implementation of the Regulation and the problems in launching the first ECIs, the Commission showed its goodwill by accepting the statements of support collected in the additional period of time (that is to say, the time between the expiry of the 12-month period and 1 November 2013). The signatures are subsequently verified by the competent national authorities. In this process, the extended period of time appeared legally problematic to several Member States. In accordance with Article 12(3) of the Regulation, the organisers must destroy all statements of support and any copies of those statements at the latest 18 months after the date of registration of their proposed ECI. The only exception is in cases where there are ongoing legal or administrative proceedings relating to the

initiative.

17. As regards the issue of equal treatment of the relevant ECIs, the Commission rejected the complainant's view and explained that all initiatives were given the same opportunity to conclude the hosting agreement with the Commission and carry out the certification procedure before 1 November 2012. All initiatives were given the possibility of benefitting from the same time span in relation to online collection. It added that the Regulation does not guarantee the organisers a full 12-month period of online collection, but merely defines the collection period as 12 months from the date of registration of the proposed initiative. The Commission stressed that the deadline does not start running from the date on which the organisers' online collection systems are fully operational.

18. As regards the complainant's argument that some of the statements of support were not accepted by the competent national authorities, the Commission pointed out that, to its knowledge, the process of verification by the competent national authorities had not even started when the complaint was made.

19. In conclusion, the Commission was of the opinion that it took a very citizen-friendly and proactive approach to the initial ECIs by developing constructive solutions within the limits allowed by the law in order to give full effect to the potential of this instrument. The Commission also highlighted that, according to an announcement made by " *Stop Vivisection* " itself on its website, the initiative had collected enough support statements. The Commission was verifying this information at the time when it submitted its opinion.

The Ombudsman's assessment

20. The ECI constitutes a specific means by which citizens can participate in the democratic life of the Union and by which the Commission can ensure that its decisions on legislative proposals are taken as closely as possible to the citizens. It is thus crucial for the Commission to do its utmost to make the tool work in practice and thereby seek to enhance citizens' trust in the democratic legitimacy of EU institutions.

21. The Ombudsman acknowledges that the Commission extended the initial deadline for the collection of signatures by about four months, and indeed provided significant support to the organisers of " *Stop Vivisection* " by hosting the online collection of statements of support free of charge on its digital servers in Luxembourg.

22. In these circumstances, the Ombudsman finds reasonable the Commission's argument that granting the complainant a **further** extension of the period of time for the collection of signatures would not have been in line with the principle of equal treatment between the different initiatives. She thus concludes that there was no maladministration in the Commission's conduct.

23. In any event, the complainant originally claimed additional time to collect the signatures in

order to be able to proceed further. The Ombudsman notes that, in the meantime, and according to information available on the website of the " *Stop Vivisection* " ECI, the organisers of " *Stop Vivisection* " collected a total of 1 170 326 certified signatures and, despite the Commission's refusal to further extend the deadline of 12 months, the initiative " *has received the approval of the European Commission to proceed* " [3] . She thus considers that the complainant's allegation and claim have become obsolete in the course of the inquiry. Furthermore, the Ombudsman is currently looking into systemic procedural issues concerning the proper functioning of the ECI instrument in the context of her own initiative inquiry OI/9/2013/TN [4] .

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

There was no maladministration in the Commission's conduct.

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

Emily O'Reilly

Done in Strasbourg on 12 December 2014

[1] " *Stop Vivisection* " primarily aims at shifting the manner in which biomedical and toxicological research is being conducted. More information can be found at: http://www.stopvivisection.eu/.

[2] Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ 2011 L 65, p. 1.

[3] http://www.stopvivisection.eu/en/content/why-stop-vivisection [Povezava]

[4] Own-initiative inquiry OI/9/2013/TN concerning the proper functioning of the European citizens' initiative (ECI) procedure and the Commission's role and responsibility in this regard, available at: http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54609/html.bookmark [Povezava]