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Reference: B1966

Mr. Szabolcs Schmidt
Head of Unit
Unit D.1: Non-Discrimination and Roma Coordination
Directorate-General Justice and Consumers
European Commission
1049 Brussels
Belgium

18 December 2019

Dear Mr Schmidt,

CALL TO RECONSIDER CLOSING THE INFRINGEMENT PROCEDURE CASE AGAINST ITALY FOR DISCRIMINATION AGAINST ROMA IN HOUSING

Thank you for your letter dated 20/11/19 (Ref. NIF 2016/2001) which we read with interest.

Firstly, we note your request for further information, within four weeks, on access to social housing or active channeling of Roma people into camps in Italy, without which, you intend to close this case. As you will no doubt be aware, in the early years of this investigation and before it even started, Amnesty International was producing high quality research on the situation of Roma in Italy on a regular basis. However, even at the peak of Amnesty's focus on discrimination suffered by Roma in Europe, between 2010-2016, it would have been challenging for us to respond to such a specific request within such a limited period. Furthermore, we believe that information which we have hitherto provided to the Commission provides more than sufficient evidence to justify continuing the investigations formally in the form of an infringement proceeding.

What constitutes sufficient evidence and when should it apply?

In your letter you indicate that there is currently insufficient evidence of a consistent discriminatory administrative practice which would allow the triggering of the infringement procedure. Regarding the question of what amounts to 'sufficient' evidence of a consistent administrative practice, you refer to the European Court of Justice which has found that *"a small number of individual cases does not represent a substantially adequate percentage of the overall number of possible occurrences of a challenged administrative practice*".

However, it is important to note that this jurisprudence of the Court applies to the situation when the Commission refers a case to the Court[1]. This occurs at the end of the infringement procedure when the Commission has found that EU law has been infringed and when efforts to ensure the Member State's compliance with the law have failed. This situation is not comparable with the launching of an infringement procedure the purpose of which, inter alia, is to investigate whether a Member State is actually breaching EU law and, if that is the case, to engage with the Member State to bring the infringement to an end. Hence, for the initiation of an infringement procedure, the threshold for evidence cannot be the same but must be lower than the threshold for referring a case to the European Court of Justice. In these

[1] See judgement of 7 June 2007 in Case C-156/04, Commission v Greece [2007] ECR I-4129, paragraph 51

circumstances, we would respectfully submit that it should suffice that there is evidence to show *the plausibility* of a consistent discriminatory administrative practice.

Applying these criteria, we strongly believe that based on our own research findings and those from other credible sources including both the Council of Europe and the UN which we have formally and informally shared with the Commission in numerous communications since 2010, there is sufficient evidence to support the argument that it is plausible there is a consistent discriminatory administrative practice, which justifies the triggering of an infringement procedure. Indeed, even if the ECJ test is applied we maintain that there has been, and continues to be, more than *"a small number of individual cases"* demonstrating a such a practice. For instance, this year's report by the UN Office of the High Commissioner for Human Rights clearly shows that 'commitments at the national level to move away from segregated housing have had limited success, especially in large urban areas such as Milan, Naples, Rome and Turin'.[2]

Ultimately, the infringement procedure will permit the Commission to collect the necessary evidence for court proceedings, should the Commission choose to take this avenue. In these circumstances, we would respectfully submit that it is premature to shut down such a process in the face of reports of continuing violations across the country.

Criteria for access to social housing – the appropriate discriminatory test

In your letter, you also mention that according to UNAR, the Roma people's main hurdle in access to social housing is that particular regions and municipalities require a certain minimum income to qualify. You then conclude that this measure does not lead to an indirect discriminatory practice, after you respond negatively to the test whether the national measure works to the disadvantage of far more persons possessing the protected characteristic than persons not possessing it. We believe however that this test does not address correctly the fact that as regards numbers, Roma constitute a minority group vis-à-vis other groups within the population. The test should incorporate this and ask whether Roma people are disproportionally affected by the requirement of a certain minimum income in order to qualify for social housing.

Material scope of Race Equality Directive

You further argue that it does not follow from the wording of the Directive that evictions from informal settlements fall within the material scope of the Racial Equality Directive.

The term 'housing' is indeed not further qualified within the Directive. Yet, the absence of any further qualification indicates that housing should be understood in broad terms: there should be neither a restriction on the form of housing – whether formal, informal, makeshift or mobile – nor as regards the nature of measures that impact on how people access housing. This interpretation aligns with the jurisprudence of the European Court of Human Rights. In *Yordanova and others v. Bulgaria* (n°25446/06 judgment of 24 April 2012) for instance, the Court acknowledged evictions compromise the right to housing and concluded that the accommodation that had been subjected to evictions was protected under Article 8 of the European Convention despite being illegally built.[3]

Furthermore, international law makes clear that forced evictions are inextricably linked to the right to adequate housing: in resolution 1993/77, the UN Commission on Human Rights highlighted that the "practice of forced eviction

[2] 'In the case of the "River Camp" in Rome, community members reported that the dismantling of the camp in 2018 resulted in some people being sent to Romania, while the majority now live in smaller slums or squats. In Naples, the public authorities had designed a segregated housing project for a group of Roma from the former Yugoslavia, but the European Union declined to fund it due to the illegality of segregation. The team learned that the persons concerned still lacked adequate housing.' OHCHR *Report of mission to Italy on racial discrimination, with a focus on incitement to hatred and discrimination,* 28 January – 1 February 2019, page 18; https://www.ohchr.org/Documents/Countries/IT/ItalyMissionReport.pdf

[3] European Court of Human Rights, *Yordanova and others v. Bulgaria* (n°25446/06 judgment of 24 April 2012)

constitutes a gross violation of human rights, in particular the right to adequate housing"[4] and General Comment 7 on the Right to Adequate Housing addresses violations through forced evictions.[5]

In your letter you suggest that the case law of the European Court of Human Rights on discrimination against Roma in housing can be drawn on only to a limited extent to interpret the scope of the Racial Equality Directive following that its jurisprudence is based on Article 8 (respect for private and family life) in contrast to the Directive's focus on discrimination.

Yet, as regards the interpretation of the scope of the right to housing and whether informal settlements or makeshift accommodation fall within this scope, it is in fact the jurisprudence on Article 8 which should be considered as relevant.

As regards the issue of discrimination against Roma in housing, the ECtHR has in fact reverted to Article 8 in conjunction with Article 14 (discrimination) in a case where police had failed to protect Roma residents from a pre-planned attack on their homes by a group motivated by anti-Roma sentiment. The Court found that there had been a violation of Article 8 taken in conjunction with Article 14 because of the role the authorities played prior to and during the course of the attack.[6]

In addition, the European Committee of Social Rights has found that the practice of evictions constitutes a violation of the revised European Social Charter in view of Article E of the Charter (prohibition of discrimination) in conjunction with Article 31§2 of the Charter (right to housing).[7]

Conclusion

In conclusion, Amnesty International; along with several key non-governmental organisations, intergovernmental organisations and monitoring bodies; firmly believe that discrimination against Roma in housing is ongoing and widespread in Italy. We would also underline that the purpose of the infringement procedure is to investigate, and there are sufficient grounds for such an investigation to be conducted under the auspices of a formal infringement proceeding by the Commission into the discriminatory practices of the Italian government towards Roma in the field of housing. As detailed above, we come to this conclusion based on disagreement with several elements in your legal interpretation with respect to the infringement process and the scope of the Race Equality Directive.

Amnesty International therefore strongly urges you to revisit your conclusions, and not to close this case. We would very much welcome the opportunity to meet and discuss this with you further.

We are actively cooperating with other Roma rights' organisations as well as international bodies on our shared concerns, including on the interpretation of the Racial Equality Directive, and together we are committed to engaging with Commissioner Dalli on the implementation of this Directive, which we strongly believe should be prioritized during her mandate.

[4] UN Commission on Human Rights, Resolution 1993/77; https://ap.ohchr.org/Documents/E/CHR/resolutions/E-CN_4-RES-1993-77.doc

[5] General comment No. 7 of the Committee on Economic, Social and Cultural Rights: *The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions*; https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CESCR/GEC/6430&Lang=en

[6] European Court of Human Rights, *Burlya and Others v. Ukraine*, (n°3289/10 judgment of 6 November 2018), paragraph 169-170.

[7] European Committee of Social Rights, Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, paragraph 79.

Yours sincerely,

Eve Geddie