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DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Directorate D: Equality and Union citizenship
Unit D.1: Non-Discrimination and Roma Coordination

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JUST/D1/

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Email: dorde.jovanovic@errc.org

Reference: NIF 2016/2001

Subject: Discrimination in housing of Roma people in Italy; closure of case

Dear Mr. Jovanović,

I refer to the correspondence between your organisation and my services regarding the Commission staff's investigation on discrimination in housing of Roma people in Italy (previously EU PILOT 3495/12/JUST, now NIF 2016/2001), notably the letter of 24 February 2016 signed by the Open Society European Policy Institute, the European Roma Rights centre, the Associazione 21 luglio and Amnesty International requesting the Commission to initiate an infringement procedure, as well as the Commission services' reply of 18 April 2016.

Background

As you are aware, on 24 September 2012, the Commission sent an EU Pilot request to Italy (3945/12/JUST), concerning the conformity of the Italian Decree of the President of Ministers of 21 May 2008 ("the Decree") with Directive 2000/43/EC.

The EU PILOT request was launched on the basis of the Commission's country report on Italy assessing the implementation of National Roma Integration Strategies, which disclosed problems in connection with the Decree.

The Commission analysed documents provided by the Italian authorities submitted in November 2012 and January 2013, and collected further complementary information

(including its Report on Discrimination in Housing, which was finalised in February 2013). In the meantime, there were indications of further positive developments in Italy as the Corte di Cassazione (the Italian Supreme Court) dismissed the appeal of the Italian government and upheld in its judgment of 26 March 2013 the Council of State's previous decision to declare unlawful the Decree, which had been applied until then.

Initially, the question raised thus concerned only the Decree. Once the Decree was finally declared illegal by the Corte di Cassazione, the Commission services could in principle have closed the EU Pilot case. However, they chose not to do so. The reason for this is that they were informed that despite the annulment of the Decree, which provided for evictions from Roma camps, there was widespread indirect discrimination against Roma in Italy as regards conditions to access to social housing, which were designed in such a way that Roma people regularly did not qualify. According to this information, Roma were instead channelled towards separate Roma camps of low quality, often in remote locations. As the questions of discriminatory conditions for access to social housing were also raised in the EU Pilot letter, the Commission decided to continue the EU Pilot procedure regardless of the annulment of the Decree. As you know, a lengthy correspondence between the Commission and the Italian authorities followed.

In the spring of 2019, the situation was reassessed in order to decide on the next step.

At that point, the unsolved grievances in the Commission's investigation during the pre-infringement procedure state following the rejection of the Italian authorities' reply, were the following:

1. Conditions to access to social housing in Italy were designed in order to exclude Roma people. In particular, the Commission services were informed that a requirement for a certain period of residence within the competent region (normally five years) was applied as excluding residence in official or unofficial Roma camps.
2. Roma people were instead actively channelled by the authorities towards separate Roma camps of low quality, often in remote locations.

We note that both these grievances have been part of your organisations concerns raised in its correspondence with the Commission services.

Since the investigation was entirely based on factual situations, namely certain administrative practices of which the Commission services could not find sufficient recent evidence, we concluded in April 2019 that it was necessary to undertake a fact-finding mission to Milan and Rome. The mission took place on 3-5 June 2019. We were accompanied by a representative of the European Union Agency for Fundamental Rights.

The mission consisted in visits to four Roma camps established by the Italian authorities in Milan[1] and Rome[2] and separate meetings with the respective municipal authorities as well as with UNAR (the Italian equality body). A bigger meeting was held with the national authorities, namely the Ministry of Labour and welfare, the Ministry of Education, the Ministry of Health, the Ministry of Interior, the National Authority for Active Labour Policies, the National Institute of Statistics, the National association of Municipalities, the National Agency for Cohesion, the Emilia Romagna Region, and

[1] Via Bonfadini and Via della chiesa rossa.
[2] La Barbuta and Castel romano.

UNAR. Finally, a national Roma platform meeting was arranged with 39 civil society organisations working for Roma rights. Your organisation also participated in the meeting.

The main purpose of the mission was to find out whether the grievances were still valid, and if so, to find evidence supporting them.

Our conclusion is that the administrative practices appear to have changed too much for the case to be sustainable at present.

Applicable EU legislation

Articles 2 and 3(1)(h) of Directive 2000/43/EC prohibit direct and indirect discrimination on grounds of racial or ethnic origin *inter alia* in access to goods and services which are available to the public, including housing.

Legal conclusions

Initial remarks

According to the case law of the European Court of Justice, an administrative practice may infringe EU law, even if the applicable national legislation itself complies with that law, if the administrative practice is, to some degree, of a consistent and general nature.[3]

In such a situation, it is for the Commission to prove the existence of the infringement. With regard to a complaint about the implementation of a national provision, proof of a Member State's failure to fulfil its obligations can be established only by means of sufficiently documented and detailed proof of the alleged practice of the national administration and/or courts, and the Commission may not rely on any presumption for that purpose.[4]

To prove the existence of a consistent administrative practice, a relatively small number of individual cases is not sufficient, even if the infringements are sufficiently established in each case, if together they do not represent a substantially adequate percentage of the overall number of possible occurrences of the challenged administrative practice.[5] This means that a single or a small number of possibly isolated cases of incorrect application of a national provision in contravention with EU law are not sufficient for the Commission to initiate an infringement procedure. Moreover, each individual case needs to be duly substantiated.

Alleged active channelling by the authorities of Roma people into nomad camps

Neither during the mission nor otherwise have the Commission services found any recent precise evidence supporting that the Italian authorities are at present actively directing Roma people to so-called "nomad camps". Both the authorities and UNAR confirmed that the situation has clearly changed in the past five years in this respect. No one, including Roma organisations, was able to provide any recent concrete example of such practices. The authorities no longer seem to construct any new camps or to direct anyone to the existing ones; instead, the official current policy is to overcome camps.

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[3] See judgment of 28 April 2004 in Case C-387/99, Commission v Germany [2004] ECR I-3751, paragraph 42; judgment of 12 may 2005 in Case C-278/03, Commission v Italy [2005] ECR I-3747.

[4] See judgment of 12 May 2005 in Case C-287/03, Commission v Belgium [2005] ECR I-3761, paragraphs 27 and 28.

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

Camps have been closed in many places in Italy, including Milan and Rome. The municipality of Rome is working proactively to close camps and has granted camp inhabitants extra priority points for the access to social housing in this respect.[6] The Commission services agree that the situation in certain camps is very bad. However, in itself, the circumstance that they are still open due to the practical difficulties to find alternative accommodation for inhabitants does not necessarily amount to discrimination in access to social housing, considering the big shortage in this respect in the major Italian cities.[7]

In this respect, it must be noted that an infringement procedure cannot be based on a past administrative practice. A potential procedure before the Court of Justice of the European Union must be based on the legal situation at hand at the expiry of the deadline set for the Member State to respond to the reasoned opinion, the second stage of the infringement procedure.

In the absence of tangible and precise recent evidence, this grievance cannot be pursued any further.

Criteria for access to social housing

Likewise, as regards the grievance that conditions for access to social housing in Italy are designed in order to exclude Roma people, the Commission staff have found no evidence that this practice was still ongoing, during the mission or otherwise.

The alleged practice of not taking residence in nomad camps into account for the purposes of the requirement for a certain period of residence within the competent region is neither applied in Lombardy/Milan nor in Lazio/Rome, where a "fictitious residence" can be established also in a non-official nomad camp. Neither UNAR nor the Italian authorities or the Commission's legal expert in Italy has any knowledge of any such current practice elsewhere in Italy. Moreover, none of the Roma organisations could give any precise indications about any places where this would currently be applied.

In this regard, it should be added that a Guidance Note of the Ministry of Interior of 1995 on this matter stated that "the sort of housing, such as building without the necessary licenses, grotto or trailer cannot prevent the residence registration."[8] Moreover, an Opinion of the Consiglio di Stato of 2012[9] and a Guidance Note of the Ministry of

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[6] Public tenders have been attributed or are ongoing regarding the three biggest Roman camps, La barbuta, La monachina, and Castel romano, including a task for the contractor to find alternative accommodation for inhabitants, for which the municipality of Rome guarantees the rent. The finalised calls for tenders have been attributed to well-respected major non-governmental organisations such as the Red Cross.

[7] At the time of the Commission's mission to Italy there were 27,000 and 10,000 families respectively on the waiting lists for social housing apartments in Milan and Rome respectively alone, with a very low apartment turnover. An additional problem in Milan is that its social housing apartments tend to be too small for the often big Roma families.

[8] Circolare 8/1995 ["non può essere di ostacolo alla iscrizione anagrafica la natura dell'alloggio, quale ad esempio un fabbricato privo di licenza di abitabilità ovvero non conforme a prescrizioni urbanistiche, grotte, alloggi in roulottes."] available at: http://www2.immigrazione.regione.toscana.it/?q=norma&doc=/db/nir/DbPaesi/circolari/circolare-8-1995.xml&datafine=20150909 .

[9] Opinion no. 4849/2012 of 13 June 2012, issued at the request of the Ministry of Interior, available at: http://www2.immigrazione.regione.toscana.it/?q=norma&doc=/db/nir/DbPaesi/pareri/_parere-4849-2012.xml&datafine=20150909

Interior of 2013[10] considered that the absence of sanitary conditions "does not preclude, in principle, the establishment of the registered residence in a [sanitarily] unsuitable place". The Commission staff has not found any evidence that the local authorities at present generally, or indeed in any specific case, fail to comply with these Guidance Notes.

According to UNAR, Roma people's main hurdle in access to social housing is that certain regions and municipalities require a certain minimum income to qualify. However, indirect discrimination is at hand when a national measure, albeit formulated in neutral terms, works to the disadvantage of far more persons possessing the protected characteristic than persons not possessing it.[11] It would be difficult to claim, let alone prove that most of the people with insufficient income in Italy are Roma; accordingly, the Commission notes that this condition in itself therefore cannot amount to indirect discrimination of Roma people.

Certain municipalities, such as Rome, consider living in nomad camps a housing emergency and grants priority points for access to social housing to inhabitants. Generally, numerous children entitle applicants to priority points. This criterion often works in the favour of Roma families. Contrary to the past, there are municipalities – such as Rome - and regions – such as Emilia Romagna - who are active in encouraging and helping camp inhabitants to apply for social housing, and in trying to find alternative accommodation for them, in social housing and elsewhere. At the time of the fact-finding mission in June 2019, 28 families from camps in Rome had been assigned social housing apartments so far that year, whilst 15 families were waiting for the keys to apartments that would be granted to them shortly. Keeping in mind the long local waiting list mentioned in footnote 9 above as well as the slow apartment turnover, this is not a low number, and the municipality intends to continue its activities in this respect.

Given the change in the situation on the ground, the Commission therefore presently has no evidence of a consistent administrative practice of criteria for access to social housing designed in particular to exclude Roma people in general or camp inhabitants in particular and cannot pursue this grievance.

Evictions from camps

In your submission, you also mentioned evictions from nomad camps and alleged failure to grant the former inhabitants alternative accommodation as a further grievance against Italy.

Directive 2000/43 prohibits discrimination in access to goods and services available to the public, including housing. It does not follow clearly from the wording of the Directive that evictions are covered. "Access to goods and services available to the public" seems to refer to goods and services offered on the market or by the public sector, not to one's own house or one's residence in an unofficial camp, neither of which is "available to the public".

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[10] Circolare 1/13 : http://www.meltingpot.org/IMG/pdf/circolare_min_interno_1_2013.pdf .

[11] See in particular, to this effect, judgment of 18 March 2014 in Case C-363/12, Z. v A Government department and The Board of management of a community school, EU:C:2014:159, paragraph 53 and the case-law cited; judgment of 14 April 2015 in Case C-527/13, Lourdes Cachaldora Fernández v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS), EU:C:2015:215, paragraph 28 and the case-law cited; judgment of 16 July 2015 in Case C-83/14, "CHEZ Razpredelenie Bulgaria" AD v Komisia za zashtita ot diskriminatsia, EU:C:2015:480, paragraph 101.

This differs from the two grievances dealt with above, which clearly fall within the scope of the Directive.

It should also be noted that the case law of the European Court of Human Rights assessing situations in which vulnerable Roma persons may be entitled to alternative accommodation also when evicted from unofficial camps[12] is not based on Article 14 of the European Convention on Human Rights, which prohibits discrimination, but on its Article 8. The scope of Article 8 is the right to respect for private and family life and home, not discrimination. Also for that reason, this case law does not seem directly transposable to the scope of Directive 2000/43. It only seems to be of partial relevance for the purposes of the Directive, namely as regards the proportionality assessment, provided discrimination in access to housing available to the public is proved.

Discrimination under Directive 2000/43 could be proved by substantiating that persons in a comparable situation evicted from other types of housing are generally granted alternative accommodation on more favourable terms than people evicted from nomad camps. In this respect, persons evicted from official nomad camps could be compared to persons evicted from a regular housing situation without any fault of their own, whereas those evicted from unofficial camps could be compared to persons evicted from long-term squatted land or from buildings with no building permit.

Presently, we do not have any evidence of practices referred to in the previous paragraph, but you are welcome to provide it. Since the issue of this type of potential discrimination in the provision of alternative accommodation after eviction was not directly discussed with Italy in course of the closed EU PILOT procedure, it would not be procedurally possible to include it at this stage of the present procedure. Potential evidence for this should therefore be reported in a new complaint. For this purpose, the following form must be used:

https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/index.html

However, unless there are administrative regulations containing provisions that are discriminatory in themselves, I refer to the explanations above under the heading "Initial remarks" regarding the need for a high amount of clearly substantiated cases, excluding cases where the parties give differing accounts of the facts. It is not possible for the Commission to assess what exactly occurred in past individual cases; mere allegations would not be sufficient evidence before the Court of Justice.

In the absence of sufficient evidence in support of this case, it will be closed unless we receive, within four weeks from the date of this letter, further information that may disclose a failure by Italy to implement EU law and would lead us to change our assessment, as regards either discriminatory criteria for access to social housing or active channelling of Roma people into camps.

[12] See inter alia judgments of the Court of Human Rights of 24 April 2012 in the Case Yordanova and others v Bulgaria (application no. 25446/06), and of 17 October 2013 in the Case Winterstein and others v France (application no. 27013/07).

The situation of Italy will however be kept under monitoring in the framework of the assessment of the National Roma Strategy, and a new infringement procedure could be launched in case sufficient new evidence emerges.

Should you wish to arrange a meeting to discuss the matter in more detail, please do not hesitate to get into contact with my office (JUST-D1@ec.europa.eu).

Yours sincerely

Szabolcs Schmidt

Head of Unit