



Emily O'Reilly  
European Ombudsman

## Decision

in case 845/2017/PL on the European Commission's decision to close an infringement case concerning the expropriation of a house in Croatia

*The complaint concerned the European Commission's decision to close an infringement case concerning the expropriation of a property owned by an Italian family in Croatia.*

*The Commission considered that, since the property was expropriated before Croatia became a member of the EU, the matter was outside the scope of EU law.*

*The Ombudsman wrote to the Commission setting out a number of points for it to consider to ensure that it dealt as thoroughly and comprehensively as possible with this important matter and that it addressed all the relevant aspects in coming to the conclusion that this case is not covered by EU law.*

*After obtaining the Commission's reply, as well as a number of relevant facts from the complainant, the Ombudsman concluded that the Commission's explanation was reasonable and closed the inquiry finding no maladministration.*

## Background to the complaint

1. The complainant<sup>1</sup> is an Italian national. Her family's property, a house in Croatia, was nationalised following an international agreement concluded between Italy and the former Yugoslavia in 1965 (the Agreement). Under the Agreement, Yugoslavia acquired all the properties in Istria whose owners chose to keep their Italian citizenship. The complainant's family, which owned a property there, decided to keep their Italian citizenship.

2. On the basis of the Agreement, the complainant's property was expropriated in 1986. However, the expropriation measure was not enforced, and the

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<sup>1</sup> The complaint to the European Ombudsman was submitted by a lawyer on the complainant's behalf.



complainant continued using the property and paying the corresponding local taxes.

**3.** In 2008, the municipality formally notified the complainant that it intended to claim ownership of the property. However, no steps were taken to repossess the property. In August 2014, the municipality ordered the complainant to vacate the property.

**4.** The complainant challenged this order before the national courts and, in 2015, she submitted an infringement complaint to the European Commission against Croatia (which had taken over some of the property rights of the former Yugoslavia). She stated that, since Croatia had joined the EU in 2013, the expropriation could no longer be enforced as it discriminated against Italian citizens and breached the fundamental freedoms set out in the EU Treaty (in this case free movement of people, services and capital).

**5.** In June 2016, the Commission informed the complainant that it had no powers to intervene in this case as it did not concern EU law. The international agreement between Italy and Yugoslavia, and the expropriation measures that followed thereafter, predated Croatia's EU membership. The Commission therefore closed the case in November 2016.

**6.** Dissatisfied with the Commission's decision, the complainant turned to the Ombudsman.

## **The inquiry**

**7.** The Ombudsman opened an inquiry into the complainant's concern that the Commission was wrong to dismiss her infringement complaint against Croatia concerning the expropriation of her property.

## **Arguments presented to the Ombudsman**

**8.** The Commission stated that, since the expropriation decisions taken by the municipality on the basis of the Agreement predated Croatia joining the EU (1 July 2013), it was not covered by EU law, and the Commission had no authority to intervene.

**9.** The fact that the municipality ordered the complainant to vacate the property on 6 August 2014, that is after Croatia joined the EU, did not mean that EU law became applicable. That order was merely giving effect to (i) an expropriation decision taken in 1986 and (ii) a formal claim of ownership made by the municipality in 2008, before Croatia joined the EU. Moreover, the order to vacate the property did not raise any issue of discrimination under EU law, since it was based on a title of ownership issued before Croatia joined the EU, and not on the nationality of the complainant.



**10.** The complainant stated that the contested property has always been, and remains, in her possession. Therefore, there has not yet been any actual expropriation. For that reason, she argued that, after Croatia joined the EU, the order issued by the municipality to vacate the property could no longer be enforced, as it is based on a decision taken in 1986 that discriminates against Italian citizens.

**11.** In the complainant's view, the rules governing property ownership in the Member States are subject to the rules set out in the EU Treaty, which include the prohibition of discrimination, the freedom of establishment and the free movement of capital.<sup>2</sup> The planned repossession of the contested property by the municipality will not breach these rules alone, but also the Charter of Fundamental Rights of the European Union.<sup>3</sup>

## The Ombudsman's assessment

**12.** The principle of non-discrimination on grounds of nationality is a particularly important EU principle that should be upheld. It is provided for in the Treaties and in the Charter of Fundamental Rights of the EU.

**13.** In her letter opening this inquiry, the Ombudsman's set out a number of points for the Commission to consider to ensure that it dealt as thoroughly and comprehensively as possible with this important matter and that it addressed all the relevant aspects in coming to the conclusion that this case is not covered by EU law.

**14.** Specifically, the Ombudsman took the preliminary view that the provisions of an Accession Treaty also apply to future effects of situations arising prior to the entry into force of that Treaty<sup>4,5</sup>

**15.** During the inquiry, the complainant clarified to the Ombudsman that the expropriation in question took place in 1986 by means of a decree, which nationalised her property. That decree was registered in the local land register and, based on this, the municipality made a formal claim of ownership for the

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<sup>2</sup> The complainant referred to Article 345 of the Treaty on the Functioning of the European Union and the judgment of the Court of Justice of 22 October 2013, *Staat der Nederlanden*, Joined Cases C-105/12 to C-107/12,

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=143343&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10555454>.

<sup>3</sup> The complainant referred to Articles 7 (respect for private and family life), 17 (right to property), 19 (protection against removal, expulsion or extradition) and 21 (non-discrimination) of the Charter.

<sup>4</sup> Judgment of the Court of Justice of 29 January 2002, Case C-162/00 *Beata Pokrzepowicz-Meyer*, paragraph 50; available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-162/00>

<sup>5</sup> For example, the Union Courts, in a case which concerned the Accession Treaty of Austria, ruled that from the date of accession, nationals of another Member State can no longer be made subject to a procedural rule which discriminates on grounds of nationality, provided that such a rule is within the scope of the EC Treaty. Judgment of the Court (Sixth Chamber) of 2 October 1997, C-122/96 *Saldanha and MTS*, paragraph 14. Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-122/96>



property in question in 2008. Since then, the municipality has sent many letters to the complainant asking her to vacate the property.<sup>6</sup>

**16.** Therefore, it is not contested that the expropriation measure in 1986 and the formal claim of ownership of 2008 predate Croatia's EU membership. While the municipality issued the order to vacate the property in August 2014, that order seeks to implement the applicable property laws of Croatia, under which the municipality obtained ownership of the property in 1986. In other words, and contrary to what was at issue in the case-law cited in footnote 5 above, the expropriation of the complainant's property took effect before Croatia's accession.

**17.** While the Ombudsman therefore recognises the seriousness of the issue of principle raised by the complainant and the particular hardship in this case in terms of loss of a family home, she finds - based on the facts of this particular case - that the Commission's explanation that this matter is outside the scope of EU law is reasonable.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion<sup>7</sup>:

**There was no maladministration by the European Commission.**

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

Emily O'Reilly  
European Ombudsman

Strasbourg, 28/02/2019

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<sup>6</sup> The complainant is currently engaged in two actions before the Croatian courts. The first relates to the expropriation measure of 1986, the second to the order issued by the municipality in 2014. As the complainant has invoked EU law in those cases, it is possible that the Court of Justice of the European Union would be asked to take a position on the interpretation of EU law, notwithstanding the Commission's position in this case that the matter is not covered by EU law.

<sup>7</sup> Information on the review procedure can be found on the Ombudsman's [website](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark): <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>