

Decision of the European Ombudsman in the case 299/2020/KT on how the European Commission dealt with a complaint that Ireland had breached the right to good administration contained in the EU Charter of Fundamental Rights

Decision

Case 299/2020/KT - Opened on 10/03/2020 - Decision on 10/03/2020 - Institution concerned European Commission (No maladministration found) |

Dear Mr X,

On 9 February 2020, you submitted a complaint [1] to the European Ombudsman against the European Commission as regards how it dealt with your above complaint against the Irish authorities.

In your complaint to the Commission, you argued that An Garda Síochána and the Garda Síochána Ombudsman Commission (‘GSOC’) had breached your right to good administration, as enshrined in the EU Charter of Fundamental Rights (‘Charter’). You asked the Commission to take action against Ireland, also on the basis of the European Convention on Human Rights (‘ECHR’). You also asked the Commission to grant you the protected status of a whistle-blower under EU law [2] .

In your complaint to the Ombudsman, you argue that it took the Commission too long to reply to your complaint against Ireland and that the Commission was wrong to decide not to take any action.

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

There was no maladministration by the European Commission.

While it is unfortunate that the Commission was delayed in acknowledging receipt of your complaint, the Commission has explicitly apologised for this delay. It has also made up for the delay by directly providing you with a reply *on the substance* of your complaint within a relatively short period of time (4 months).



In its reply to you, the Commission has correctly explained that the Charter applies to Member States only when they are implementing EU law [3] . The Commission found that the issues you raised did not appear to be related to the implementation of EU law and that it thus does not have the authority to intervene in your case. Having reviewed the material you sent us, we have not identified anything to suggest a manifest error of assessment by the Commission in this regard.

The Commission was also right to suggest that, if you consider that your rights or freedoms guaranteed by the ECHR have been violated, you may consider turning to the European Court of Human Rights (ECtHR). Given that the ECtHR is not an EU institution, the Commission's statement that it is not in a position to take any steps in relation to the ECtHR is accurate.

Regarding whistle-blower protection under EU law, the Commission has also correctly informed you that the EU Directive on whistle-blower protection has to be transposed into Member State legislation by December 2021. Once this has been done, it will be for the national authorities, including national courts, to determine whether, under the applicable rules, a person qualifies as a whistle-blower.

In light of the above, we consider that the Commission has provided you with correct and complete information as to why it cannot take any action in relation to your complaint.

Finally, please note that your request to the Ombudsman for support in a possible action before the ECtHR and in a campaign for changes in the EU legislation on whistle-blower protection falls outside the mandate of this Office [4] .

We appreciate that you are likely to be disappointed by this response but we hope you will understand that both the European Commission and the European Ombudsman have to operate in line with the rules governing our work.

Thank you for having contacted the European Ombudsman.

Yours sincerely,

Tina Nilsson Head of Inquiries - Unit 4

Strasbourg, 10/03/2020

[1] Full information on the procedure and rights pertaining to complaints can be found at

<https://www.ombudsman.europa.eu/en/document/70707> [Link].



[2] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32019L1937> [Link].

[3] Article 51 of the Charter.

[4] For full information on the Ombudsman's mandate, see the Ombudsman's Statute, available at: <https://www.ombudsman.europa.eu/en/legal-basis/statute/en> [Link].