

Decision on how the European Commission dealt with letters concerning an alleged breach of the fundamental right to an effective remedy and a fair trial by the Dutch courts (case 1487/2022/ABZ)

Decision

Case 1487/2022/ABZ - Opened on 01/09/2022 - Decision on 01/09/2022 - Institution concerned European Commission (No maladministration found) |

Dear Dr X,

You recently submitted a complaint to the European Ombudsman on how the European Commission dealt with your letters dated 22 January and 16 February 2022, concerning an alleged breach of the fundamental right to an effective remedy and a fair trial [1] by the courts in the Netherlands.

In your letters to the Commission, you argued that the Dutch courts failed to follow case law on state liability for lack of compliance with EU law [2] , in violation of your above-mentioned fundamental right.

In your complaint to the Ombudsman, you argue that the Commission was wrong to consider that it could not intervene in this matter.

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

There was no maladministration by the European Commission [3] .

The Commission has wide discretion in deciding whether and when to commence an infringement procedure [4] . The Commission may decide not to open a formal infringement procedure, even if it considers that a breach of EU law has occurred [5] . When it comes to complaints about how the Commission has dealt with concerns regarding actions of Member States, the Ombudsman's role is limited to ensuring that the Commission complied with principles of good administration by adequately addressing the concerns raised in a clear and reasonable manner. The Ombudsman will intervene only if there is an indication of a *manifest error* of assessment by the Commission.



The Commission has informed you that it has no general powers to intervene with the Member States. It also said that it could not intervene in individual cases before the national courts or review their decisions, which was the reason why it could not deal with the matter.

We find nothing to indicate that the Commission manifestly misinterpreted the facts or the law relating to the matter you complained about.

In particular, we note that the underlying issue concerns the national court's refusal of your application for compensation. The Commission was right to conclude that it cannot review the decisions of the national courts nor intervene in individual cases. Please note that the Member States remain free to regulate their judicial proceedings, as long as they provide effective legal protection in the areas covered by EU law [6] . Moreover, the Charter of Fundamental Rights of the European Union applies to the Member States only when they are implementing EU law [7] .

In light of the above, the Ombudsman has closed the case.

While I understand that this is not your expected outcome, I hope that you find the above explanations helpful.

Thank you for having contacted the European Ombudsman.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 01/09/2022

[1] Art. 47 of the Charter of Fundamental Rights of the European Union.

[2] Judgment of the Court of 19 November 1991, C-6/90 and C-9/90, *Francovich v Bonifaci* , available *here* .

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

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

[4] Judgment of the Court (Second Chamber) of 14 February 1989, case 247/87, *Starfruit v Commission* : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61987CJ0247>.

[5] Section 'What the Commission can and cannot do?', available *here* .



[6] Arts. 4(2), 5(2) and 19(1)(2) of the Treaty on European Union.

[7] Art. 51(1) of the Charter of Fundamental Rights of the European Union.