

Decision on how the European Commission dealt with an infringement complaint against Poland concerning EU-funded survey works in south-eastern Poland and the Polish judicial system (case 1296/2022/ABZ)

Decision

Case 1296/2022/ABZ - Opened on 04/08/2022 - Decision on 23/11/2022 - Institution concerned European Commission (No maladministration found) |

Dear Mr X,

On 7 July 2022, you submitted a complaint to the European Ombudsman about how the European Commission dealt with your infringement complaint against Poland. In a subsequent e-mail, on 5 August 2022, you clarified that the complaint that you made in January 2021 was not to the Commission.

In the context of our inquiry, we asked the Commission to inform us how it dealt with your complaints.

Based on the information provided in your complaint and obtained in the course of the inquiry, we decided to close it with the conclusion that:

There was no maladministration by the Commission . [1]

The Commission has wide discretion in deciding whether and when to commence an infringement procedure. [2] Regarding the substance of an infringement complaint, the Ombudsman may only intervene (by asking the Commission to look at the complaint again) in case there is an indication that the Commission was manifestly wrong in its presentation of the facts or of law.

The Commission informed us that it addressed your complaint of 27 May 2020 on 7 December 2020 and that it replied to your subsequent e-mails on 25 November and 20 December 2021. In its replies, the Commission observed that the matter raised in your complaint did not concern the implementation of EU law. It informed you that it had no general powers to intervene in the area of fundamental rights and observed that the Charter of Fundamental Rights of the European Union applies only when Member States are implementing EU law. [3] It advised you to turn to the relevant national authorities in Poland and to the European Court of Human



Rights.

We consider that the Commission clearly explained to you why it could not deal with your complaint. The Commission also engaged in further exchanges with you on the matter, providing you with comprehensive and reasonable explanations. We thus find that there was nothing manifestly wrong in how the Commission assessed the facts or the law in this case. We consider that the Commission addressed your complaint in appropriate manner.

In light of the above considerations, the Ombudsman has closed this aspect of the case.

Your subsequent communication to the Ombudsman

On 10 September 2022, you made a new complaint to the Ombudsman, in which you allege irregularities of the Polish Supreme Medical Council and the Regional Chamber of Physicians and Dentists in Rzeszów, Poland. You argue that you have raised this matter with the Commission in your complaint in January 2021, and that its reply was unsatisfactory. However, based on the information in your e-mail of 5 August 2022 and the information provided by the Commission, it appears that you did not lodge an infringement complaint with the Commission in January 2021.

The Ombudsman may only open an inquiry into complaints where the complainant has first raised the issue in an appropriate manner with the EU institution concerned, and allowed it sufficient time to reply. This means that the Ombudsman may not look into this aspect of your complaint.

However, as the matter does not seem to fall within the Commission's remit, it appears that the Ombudsman would not find grounds to inquire into this aspect of your complaint.

Please note that the European Ombudsman investigates complaints concerning the European Union's institutions, bodies, offices and agencies. The Ombudsman is not able to investigate complaints concerning national authorities.

While you may be disappointed with the outcome of the case, we hope that you find the above explanations helpful. Thank you for having contacted the European Ombudsman.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 23/11/2022



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

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