

Decision in case 1420/2016/JAS on the European Commission's handling of concerns about infringements of EU law in custody proceedings in Germany

Decision

Case 1420/2016/JAS - Opened on 24/10/2016 - Decision on 24/10/2016 - Institution concerned European Commission (No maladministration found) |

The case concerned the European Commission's handling of the complainant's concern that Germany failed to respect the rule of law in custody proceedings involving the complainant.

The Commission explained to the complainant that it could not inquire into the issue as it did not concern the application or implementation of EU law. However, the Commission outlined other possible remedies that could be available to the complainant.

The Ombudsman inquired into the issue and found that the Commission's reply was entirely reasonable. There was thus no maladministration by the Commission.

The background to the complaint

1. In the course of 2015 and 2016, the complainant, a Czech national, sent several letters to the European Commission concerning Germany's alleged failure to respect the rule of law in custody proceedings involving the complainant.
2. The Commission replied to the complainant three times. Not satisfied with the Commission's replies, the complainant turned to the Ombudsman in September 2016.

The inquiry

3. The Ombudsman opened an inquiry into the complaint that the Commission had failed to inquire into the issues put forward by the complainant.
4. In the course of the inquiry, the Ombudsman's inquiry team duly considered the information provided in the complaint. In particular, the inquiry team carried out a thorough analysis of the correspondence that had taken place between the Commission and the complainant before the complainant turned to the Ombudsman. The Ombudsman's inquiry team asked the complainant



for additional information and carried out its own research in relation to the matter complained about.

Allegation that the Commission had failed to inquire into the issues put forward by the complainant

Arguments made by the complainant and the institution

5. The complainant argued that the actions taken by the German courts in custody proceedings involving the complainant, including an allegedly incorrect diagnosis of a mental illness, violated EU law and the rule of law, which the Commission was obliged to guarantee. The Commission was wrong in considering that Germany had not violated EU law.

6. In its letters to the complainant, the Commission explained that it can only investigate Member States when it comes to the general implementation and enforcement of EU law. The Charter of Fundamental Rights, for example, is applicable only when Member States implement EU law [1] .

7. According to the Commission, the issues described by the complainant did not constitute a violation of EU law, in particular because child custody is an area of Member State responsibility which cannot be investigated by the Commission. The soundness of the rulings of German courts in these matters can be assessed by German appeal courts only. The Commission was thus not authorised to inquire into the issue.

8. The Commission stated that Germany nevertheless has to ensure that citizens' fundamental rights are respected, in accordance with national rules and the European Convention on Human Rights [2] . The Commission explained that the complainant could consider consulting information on how to submit a complaint to the European Court of Human Rights and set out some of the basic legal prerequisites for such a complaint.

The Ombudsman's assessment

9. The Commission's response to the complainant regarding the matter is entirely reasonable. The Commission has correctly explained, several times, that it cannot intervene in the complainant's case because the area complained about does not concern the application or implementation of EU law. Furthermore, the Commission has outlined other possible remedies that could be available to the complainant.

10. There was thus no maladministration by the Commission.

Conclusion

On the basis of the inquiry into the complaint, the case is closed with the following conclusion :

There was no maladministration by the Commission.



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

Strasbourg, 24/10/2016

[1] Article 51 of Charter of Fundamental Rights of the European Union, OJ 2000 C 364, p. 1.

[2] http://www.echr.coe.int/Documents/Convention_ENG.pdf [Link]