



29.6.2016

## NOTICE TO MEMBERS

**Subject: Petition 1079/2011 by Aris Christidis (Greek and German), on alleged infringement of civil and human rights by the German judicial authorities**

### 1. Summary of petition

The petitioner, who has lived in Germany for more than 30 years and has been elected onto the municipal council of the town of Giessen, claims that the German judicial authorities have been guilty of serious infringements of civil and human rights in their handling of the case concerning his right of access to his two sons, of whom he and his former wife have joint custody. The petitioner points out that the boys' mother systematically attempts to alienate them from Greek culture and language, and that this happens with the blessing of the responsible German authorities. He therefore requests the European Parliament to take a number of more closely defined measures and to intervene in his case.

### 2. Admissibility

Declared admissible on 30 January 2015. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 29 September 2015

Under the Treaties on which the European Union is based<sup>1</sup>, the European Commission has no general powers to intervene with the Member States. It can only do so if an issue of European Union law is involved.

On the basis of the information provided in the petition, it does not appear that the matter to which the petitioner refers is related to the implementation of European Union law.

The first issue raised by the petitioner concerns court orders which were issued by the family judge in the application of German national law. The Commission does not have the

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<sup>1</sup> Treaty on European Union and Treaty on the Functioning of the European Union.

competence to review these court orders. If the petitioner is convinced that these court orders are not valid in the light of German or international law, he can seek redress via regular appeal procedures in Germany.

The Commission is not aware of the existence of a Decree of the Ministry of Hessen for Home Affairs which would regulate the prolongation of non-German passports. As regarding the question of which spouse can apply for a passport for children of whom the spouses have shared custody, this is regulated by national law, not by European Union law. If the petitioner is of the opinion that this violates his children's rights under the UN Convention on the Rights of the Child, he could seek redress at UN level. The third Optional Protocol on a communications procedure, which allows individual children and their parents to submit complaints regarding specific violations of their rights under the Convention, entered into force in April 2014.<sup>1</sup>

### Conclusion

Based on the elements provided in the petition, the Commission cannot pursue this case, as the matter falls outside its competence.

#### **4. Commission reply, (REV), received on 29 June 2016**

The Commission has re-assessed the complaint in the light of the additional information. It can only reiterate that it has not proved possible, even in the light of the new information, to establish any connection between the situation described by the petitioner and EU law.

#### Regarding question 1:

The petitioner states that the German authorities violated German law when they infringed the inviolability of his home by means of, for example, prosecutors and armed police without a court order and by withdrawing his children, who are Greek nationals, from Greek classes.

The treaties on which the European Union is founded<sup>2</sup> do not grant the European Commission any overall authority to intervene in the affairs of the Member States in matters of fundamental rights. It can only take action if matters specifically concerning EU law are involved. The Commission is therefore unable to verify whether the German authorities violated German law in this case.

In such cases, in which the inviolability of the home may have been infringed on account of the police searching a person's home without a court order, it is the responsibility of the Member States and their judiciary to guarantee that fundamental rights are safeguarded and protected according to their national law and the commitments they have made at international level to safeguard human rights. The petitioner should seek legal recourse in his country and to this end should contact the national authorities responsible, such as the ombudsman or the courts. Information on enforcing your rights in a Member State can be found in the 'Fundamental rights' section of the European Justice portal<sup>3</sup>. A useful contact in such situations might be the Petitions Committee of the German Bundestag, Platz der

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<sup>1</sup> <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#OPIC>.

<sup>2</sup> Treaty on European Union and Treaty on the Functioning of the European Union.

<sup>3</sup> [https://e-justice.europa.eu/content\\_fundamental\\_rights-176-en.do](https://e-justice.europa.eu/content_fundamental_rights-176-en.do)

Republik 1, 11011 Berlin, Deutschland<sup>1</sup>, or the Federal Anti-Discrimination Agency, Glinkastraße 24, 10117 Berlin, Deutschland<sup>2</sup>.

Any person who deems her or his fundamental rights or freedoms as guaranteed by the European Convention on Human Rights to have been violated may submit a complaint to the European Court of Human Rights (Europarat, 67075 Strasbourg Cedex, France<sup>3</sup>). This Court may only become involved after all domestic remedies have been exhausted.

Application of the Charter of Fundamental Rights of the European Union must be rejected in this case. The Charter of Fundamental Rights of the European Union is not applied in every case in which a violation of fundamental rights is alleged. According to Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing Union law. In addition, Article 6(1) of the Treaty on European Union states that '*The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.*' Further information on the Charter of Fundamental Rights and the conditions for its application can be found on the website of the European Commission's Directorate-General for Justice, Consumers and Gender Equality under the heading 'Fundamental rights'<sup>4</sup>.

The fact that the mother withdrew the children from Greek classes is a decision which lies with the guardian in each specific case. EU law is not applicable with regard to the decision to withdraw the children from Greek classes.

#### Regarding question 2:

The petitioner states that the violation of his rights is a European matter because German judges are denying him access to a regular appeal procedure.

Article 47 of the Charter of Fundamental Rights of the European Union guarantees everyone the right to an effective remedy and an independent and impartial tribunal. It states that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. In addition, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

The article is applied only in cases governed by the Charter of Fundamental Rights of the European Union, in other words, in cases in which rights or freedoms guaranteed by EU law have been violated. In the petitioner's case, no rights or freedoms guaranteed by EU law appear to have been violated. As was explained above, the provisions of the Charter apply to the Member States only when implementing EU law. The Charter is not applied in cases governed exclusively by German law.

This right to an effective remedy and an impartial tribunal is also safeguarded under Article 6 of the European Convention on Human Rights. As explained previously, any person who

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<sup>1</sup> <http://www.bundestag.de/petition>, <https://epetitionen.bundestag.de/>

<sup>2</sup> [http://www.antidiskriminierungsstelle.de/EN/Home/home\\_node.html](http://www.antidiskriminierungsstelle.de/EN/Home/home_node.html)

<sup>3</sup> <http://www.echr.coe.int>

<sup>4</sup> [http://ec.europa.eu/justice/fundamental-rights/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/index_en.htm)

deems her or his fundamental rights or freedoms as guaranteed by the European Convention on Human Rights to have been violated may submit a complaint to the European Court of Human Rights (Europarat, 67075 Strasbourg Cedex, France<sup>1</sup>). This Court may only become involved after all domestic remedies have been exhausted.

#### Regarding questions 3 and 4:

The petitioner complains that his children have obtained German passports for which only his German wife applied. He maintains that he is obliged, under EU law, to submit the application for Greek passports with the signatures of both parents.

It is not clear what provisions of EU law form the basis for this obligation. The EU law on the free movement of persons and EU citizenship contains no such requirement. Furthermore, Article 18 of the Treaty on the Functioning of the European Union (TFEU) forbids discrimination on the grounds of nationality only within the scope of the Treaties and is therefore not applicable in cases which are national matters.

#### Regarding question 5:

The petitioner complains that he no longer has access to his son as a result of the Higher Regional Court and the Higher Administrative Court of Bremen finding that he would be putting the children's wellbeing at risk, as he speaks to them in Greek and has been complaining about their sexual abuse for years.

The only instrument of EU law which might be invoked here is the Brussels IIa Regulation,<sup>2</sup> which determines, among other things, the Member State in which cross-border conflicts about custody and access rights shall be decided on. Since the petitioner's sons live in Germany, it is the German courts which have jurisdiction, under Article 8 of the Regulation. The petitioner does not, however, complain about German courts wrongly assuming jurisdiction; it is the content of the decision with which he disagrees. Substantive family law is, however, governed exclusively by national law, and its application is not subject to a review by the Commission. Here again, the only course of action is to approach the European Court of Human Rights (ECHR) in Strasbourg, which can be contacted once the national judicial remedies in a given Member State have been exhausted. According to the case law of the ECHR, this includes complaints about infringement of the constitution lodged with the German Federal Constitutional Court.

#### Conclusion

There is no indication of a connection with the implementation of EU law in the matter to which the petitioner refers. For this reason, the European Commission is not in a position to follow up on this matter.

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<sup>1</sup> <http://www.echr.coe.int>

<sup>2</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).