



21.5.2019

NOTICE TO MEMBERS

Subject: Petition No 0660/2018 by J. C. M. (Spanish), on behalf of FADES (Spanish Association of Host Families), on minors under guardianship

1. Summary of petition

The petitioner states that minors living under guardianship in Spain and whose parents are Romanian nationals, as a result of neglect from their biological families, live in a situation that restricts their rights as they do not have a defined nationality. As a result, their access to social assistance is restricted, especially for the most vulnerable children with disabilities. The petitioner asks the competent authorities to resolve the situation and help the host families concerned.

2. Admissibility

Declared admissible on 19 November 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 21 May 2019

The Commission's observations

The Court of Justice of the European Union has underlined in settled case-law that Member States remain competent as regards the acquisition and loss of their nationality but must, when exercising these powers, have due regard to EU law¹. The reduction of statelessness through the acquisition of citizenship of a Member State falls outside of EU competence. Under the Treaty on European Union and the Treaty on the Functioning of the European Union, the European Union has no powers to intervene on an issue which does not involve European law.

¹ Case C-135/08 Rottmann, ECLI:EU:C:2010:104; Case C-221/17 Tjebbes, ECLI:EU:C:2019:189.

As regards the reference to the United Nations Convention on the Rights of the Child, Article 7 foresees that every child has a right to a nationality. The European Union is not party to the United Nations Convention on the Rights of the Child, but all Member States (including Spain and Romania) are. It is for the Member State concerned to ensure the respect of its obligations regarding the protection of the rights of the child, including those resulting from international conventions and from national law.

Conclusion

Under the Treaty on European Union and the Treaty on the Functioning of the European Union, the European Union has no powers to intervene on an issue, which does not involve European law.

For the reasons set out above, it is not possible for the Commission to follow up on this issue. In such cases, it is for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations. When domestic remedies have been exhausted, the petitioner could consider an application to the European Court of Human Rights.