



6.5.2019

NOTICE TO MEMBERS

Subject: Petition No 0715/2018 by M.K. (German), bearing one other signature, on alleged Swiss non-compliance with the Schengen Agreement (personal case)

1. Summary of petition

In the petitioner's view, the Swiss legal authorities did not comply with the prohibition on double jeopardy and the related international principle of criminal law, non bis in idem, under Article 54 of the Schengen Agreement.

2. Admissibility

Declared admissible on 23 November 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 6 May 2019

The Agreement associating the Swiss Confederation with the implementation, application and development of the Schengen acquis of 26 October 2004 ('the Agreement') provides that Article 54 of the Convention Implementing the Schengen Agreement ('CISA') in combination with declarations submitted by Switzerland in line with Article 55 (1) and (2) CISA, as well as Article 56 are implemented and applied by Switzerland. There is however a doubt whether Article 54 CISA would prevent Switzerland from executing the sentence of 2012 in the case presented by the petitioner.

It is a matter for the Mixed Committee, set up by the Agreement and made up of representatives of the Swiss Government, members of the Council of the European Union and the Commission, to examine the application of the Agreement.

Although Switzerland is associated with the implementation, application and development of the Schengen acquis (including Article 54 CISA), the Commission has no power to initiate proceedings against Switzerland. The Court of Justice of the European Union has no

jurisdiction either. Article 8 of the Agreement provides that the Mixed Committee shall monitor the development of the relevant case law of the Court of Justice of the European Union and the development of the relevant case law of the competent Swiss courts with a view to ensuring the most uniform application and interpretation of the provisions of the Schengen acquis implemented and applied. The agreement does not relate to individual cases.

The Commission has explained this situation already in a letter dated 23 February 2017 and addressed to the spouse of the petitioner.

Conclusion

The Commission has no competence to intervene in this case.