

CJEU: Petitions Committees in German State Parliaments Subject to GDPR & Referring Court is Independent

Thomas Wahl

On 9 July 2020, the [CJEU ruled](#) on the reference for a preliminary ruling of the Administrative Court of Wiesbaden in Case [C-272/19](#). The reason for the referral was the question of whether a parliamentary petitions committee is subject to the General Data Protection Regulation (GDPR). The referral was noteworthy above all because the referring judge doubted his own independence and asked the CJEU whether he is at all a “court/tribunal” entitled to make a referral within the meaning of Art. 267 TFEU. (see [eucrim 3/2019](#), p. 105).

Facts of the case

In the case at issue, the President of the Parliament of *Land* Hessen rejected the application of a citizen (who had submitted a petition) for access to the personal data concerning him. The reason given was that the petition procedure is a function of parliament, and that the Parliament is not subject to the GDPR. The referring judge believed, however, that such a right might be derived from the GDPR if the committee is categorised as a data controller.

CJEU's reply to the data protection question

Regarding the actual *data protection question*, the CJEU replies that, insofar as the Petitions Committee of the Parliament of a Federal State of a Member State determines, alone or with others, the purposes and means of the processing of personal data, this committee must be categorised as a “controller” within the meaning of Art. 4(7) GDPR. Consequently, Art. 15 GDPR – the data subject’s right of access to information – is also applicable in this instance. The CJEU specifically found that the activities of the petitions committee do not constitute any activity excluding the scope of the GDPR as set out in its Art. 2(2).

The CJEU's answer to the independence question

The doubts expressed by the Administrative Court of Wiesbaden concerning its *own status as a “court or tribunal”* are examined in relation to the admissibility of the request for a preliminary ruling. The doubts are mainly based on the Minister of Justice’s role in the appointment, promotion, and appraisal of judges and the integration of organisation/management of justice within the executive branch in Germany. The judges in Luxembourg stress that they take account of a number of factors when they assess whether the referring body is a “court/tribunal” within the meaning of Art. 267 TFEU. The factors that the referring court draws attention to in support of its doubts are not sufficient grounds to allow the conclusion that that court is not independent. In particular, the mere fact that the legislative or executive are involved in the appointment

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process of judges does not imply a relationship of subordination, as long as the judges are not subject to any pressure and do not receive any instruction during the performance of their duties in office. For this reason, the CJEU dispel the doubts of the referring judge's own independence.

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