

Reference for Preliminary Ruling on Data Protection and Judicial Independence

Thomas Wahl

The Administrative Court of Wiesbaden, Germany referred two questions for a preliminary ruling to the CJEU that deal with Regulation 2016/ 679 – the General Data Protection Regulation (GDPR) – and the independence of the judiciary in the federal state of Hesse. The reference by the administrative court of Wiesbaden is registered as [case C-272/19](#) at the CJEU. The full text of the reference (in German) is [available at OpenJur](#).

In the case at issue, the complainant sought information about his personal data, which is stored at the Petitions Committee of the Hesse Land Parliament. The president of the parliament rejected the claim, arguing that the petition process is a parliamentary task exempt from the rights of data subjects as established by the federal state's data protection law implementing the European data protection regulation.

The administrative court doubts that this exclusion is in conformity with the EU's GDPR. It believes that the Petitions Committee functions as a public authority, which is why a natural person has also the right to access to information in accordance with Art. 15 and Art. 4 No. 7 GDPR.

In addition, the administrative court poses a more fundamental question: is the court actually allowed to make references to the CJEU, because it may not be an independent and impartial tribunal as required by Art. 267 TFEU read in conjunction with Art. 47(2) of the Charter of Fundamental Rights of the European Union. In essence, the referring court argues that the German legal order only establishes the independence of judges, whereas the "court" as institution is "conducted" by the justice ministry of the federal state. The ministry manages personnel files, is responsible for recruiting the judges, and participates in lawsuits among applicants or judges.

Put in focus: The second question, on the independence of German judges, is surprising. However, it interrelates with the general debate in Germany as to the extent to which institutions of the judiciary are really independent in the sense of international and European standards. It relates to the recent CJEU judgment that declared German public prosecution services not having sufficient independence to issue European Arrest Warrants (see eucri 1/2019, pp. 31-33). If the CJEU follows the argumentation of the German court, it will have to make fundamental reflections on the admissibility of references for preliminary rulings by German courts.

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