

Decision in case 1392/2019/FP on the European Commission's refusal to grant full access to a report on property rights in Albania

Decision

Case 1392/2019/FP - Opened on 24/07/2019 - Decision on 21/10/2019 - Institution concerned European Commission (No maladministration found) |

The case concerned the Commission's refusal to grant full public access to a EURALIUS report on the "protection of property in Albania". After consultation with EURALIUS on the access to document request, the Commission granted partial access and refused access to the remaining parts based on the need to protect international relations and the need to protect legal advice.

The Ombudsman found the Commission's position to be reasonable. The Ombudsman closed the inquiry with a finding of no maladministration.

Background to the complaint

1. This complaint concerns a request, addressed to the European Commission, for public access to a 'report on the protection of property in Albania', drafted in the context of the accession negotiations between Albania and the EU.
2. Albania was identified as a potential candidate for EU membership in June 2003 and was awarded candidate status in June 2014. In order to become an EU Member State, candidate countries need to bring their legal system into line with EU law.
3. In the above context, in 2005 the EURALIUS V [1] consortium was awarded a Commission grant to help improve the legal system in Albania.
4. The requested document is the EURALIUS' report on the protection of property in Albania. This report includes the analyses of the legal framework and the practice concerning property rights in Albania, in comparison with a number of other legal systems. The report also presents legal advice on possible reforms in the Albanian legal system. It is addressed to both the Commission and the Albanian authorities.
5. The complainant is a Greek lawyer active in the area of international human rights law.



6. On 17 January 2019, he submitted a request for public access to the Commission, requesting a “ *copy of the EURALIUS report on / assessment of the Albanian law on property, finalised in/around August 2018 .*”

7. On 1 March 2019, the Commission refused to grant access to the requested document, based on various exceptions, under EU rules on public access to documents. [2]

8. On 21 March 2019, the complainant submitted a request to the Commission to review its decision (a so-called “confirmatory application”), in which he reiterated his request for full access, or, alternatively, partial access to the document in question.

9. On 9 July 2019, the Commission sent its confirmatory decision to the complainant. Having consulted EURALIUS, the Commission decided to grant partial access to the requested document. The Commission confirmed that the redacted parts of the documents could not be disclosed based on the need to protect international relations [3] and the need to protect legal advice. [4]

10. Dissatisfied with the Commission’s decision, the complainant turned to the Ombudsman on 18 July 2019.

The inquiry

11. The Ombudsman opened an inquiry into the refusal of the Commission to grant full access to the requested document. In the course of the inquiry, the Ombudsman received from the Commission a copy of the requested document. The complainant provided the Ombudsman with additional arguments to support his complaint, which the Ombudsman took into account in making its assessment.

Arguments presented to the Ombudsman

12. The complainant argued that “ *the Commission’s reference to a prospective harm to the EU’s international relations is vague and wholly unsubstantiated* ”. According to him, the very limited partial access given to him is the same as a rejection as the heavily redacted report is largely meaningless.

13. The complainant also argued that a similar issue is also being reviewed by the Council of Europe’s Committee of Ministers, to which the Albanian Government have made numerous submissions. These submissions are publicly available. [5]

14. Regarding the **protection of international relations** , [6] the Commission explained that the requested report relates to legal advice on the justice reforms that Albania is undertaking as part of its accession process to the EU. In this context, the Commission stressed that it is



important that the dialogue between the EU, its technical assistance provider, and the Albanian authorities is conducted openly and frankly. Should the Commission provide public access to the redacted parts, it argued, the environment of mutual trust necessary for the implementation of extensive reforms would be negatively affected.

15. As regards the second exception invoked, [7] the Commission stated that the report relates to **legal advice** from the consortium (EURALIUS) to the Albanian authorities. According to the Commission, the document includes the analysis and legal opinions on matters of a sensitive nature that were being analysed and proposed to the Albanian authorities in the context of the reform of property law. The disclosure of the report, it argues, would have a serious impact, both on EURALIUS capacity to assist the Albanian authorities and the Commission in these matters, as well as on the Albanian authorities' interest in seeking frank and objective advice from EURALIUS.

16. The Commission informed the complainant that the document originates from a third party (EURALIUS) and that, in accordance with the applicable EU rules on public access to documents, [8] it had consulted EURALIUS in assessing whether any exception was applicable. The Commission said that EURALIUS agreed to the partial disclosure of the requested report, but objected to the release of the remaining redacted parts. The Commission had taken these views into account in reaching its decision.

17. Lastly, the Commission indicated that the disclosure, partly or fully, of similar documents in the past does not mean that also this particular document should be disclosed. The Commission set out that each request needs to be assessed on its own merits and based on the context at that specific time.

The Ombudsman's assessment

Protection of the public interest as regards international relations

18. Having inspected the content of the requested documents, the Ombudsman takes the view that the Commission was justified in partially refusing access to the documents based on the need to protect international relations of the EU. [9]

19. The document was drafted in the framework of the accession process of Albania to the EU. The Ombudsman recognises that, in this process, in order to ensure the effectiveness of the negotiation, **a certain level of discretion is necessary** to allow mutual trust between negotiators and the development of a free and effective discussion. This document contains sensitive information on the shortfalls in the Albanian justice system and advice on how to meet the EU standards in the field of property law. The Ombudsman agrees that releasing this information, which is the basis for a bilateral dialogue on this matter, could negatively affect the area of mutual trust and therefore damage the accession process.



20. As the international relations exception is mandatory, it cannot be overridden by any other public interest.

21. The Ombudsman's view is that the Commission was therefore justified in (partially) refusing public access to the requested documents.

Protection of legal advice

22. The Ombudsman notes that the Commission invoked this exception only in relation to the protection of *legal advice*.

23. The Ombudsman refers to the Court's setting of the broad scope of the term legal advice, namely '*advice relating to a legal issue, regardless of the way in which that advice is given*'. [10] Furthermore, the Court ruled that the wording does not establish that the provision concerns only advice provided or received internally by an institution'. [11] The Ombudsman therefore agrees that the information in the report qualifies as 'legal advice'.

24. The Ombudsman notes that the EURALIUS V report touches upon various existing issues concerning Albanian property law and includes suggestions on how to reform national law to adhere to the EU standards. The Ombudsman finds that there is a foreseeable risk that disclosing the redacted parts containing legal advice would put the Albanian authorities under external pressure when deciding on its final approach.

25. The Ombudsman therefore finds the Commission's arguments regarding the protection of legal advice to be reasonable.

26. The Ombudsman agrees that the previous disclosure of similar documents related to the reform of property law in Albania, does not lead to an assumption that the Commission should disclose this report as well. The Ombudsman agrees that an individual assessment of each request is required, based on the content of the document requested and the context at the time.

27. Lastly, the Ombudsman notes that the complainant did not put forward arguments for the existence of an overriding public interest. The Commission did not identify any and the Ombudsman finds that, in the light of the ongoing accession process, there is no overriding public interest in disclosure in this case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There was no maladministration by the European Commission.



The complainant and European Commission will be informed of this decision.

Fergal Ó Regan

Head of Inquiries - Unit 2 Strasbourg, 21/10/2019

[1] EURALIUS is an EU funded project implemented by a consortium. Its mission consists in supporting Albanian institutions to bring their justice system closer to EU standards.

[2] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001R1049> [Link]

[3] Article 4(1)(a), third indent, of Regulation 1049/2001.

[4] Article 4(2), second indent of Regulation 1049/2001.

[5] <https://www.venice.coe.int/webforms/events/?id=2814> [Link] .

[6] Article 4(1)(a), third indent, of Regulation 1049/2001.

[7] Article 4(2), second indent of Regulation (EC) No 1049/2001.

[8] Article 4(4) of Regulation 1049/2001.

[9] Article 4(1)(a), third indent, of Regulation 1049/2001.

[10] Judgment of the General Court of 15 September 2016 in case T-755/14, Herbert Smith Freehills v

Commission, EU:T:2016:482, paragraph 47.

[11] *Idem*.