

Decision in case 670/2019/PL on the European Investment Bank's refusal to disclose an expert report on whether Svans are indigenous people

Decision

Case 670/2019/PL - Opened on 06/05/2019 - Decision on 15/07/2020 - Institution concerned European Investment Bank (Solution achieved) |

The case concerned the European Investment Bank's (EIB) refusal to grant public access to an expert report on whether Svans, an ethnic minority that live in the Svaneti region of Georgia, are indigenous people.

The Ombudsman found that the report largely contained information of a historical, geographical or anthropological nature. The Ombudsman therefore made a proposal for a solution asking the EIB to disclose at least this objective information in the report.

The EIB accepted the Ombudsman's proposal for a solution and granted the complainant partial access to those parts of the document that contain objective information.

The Ombudsman welcomed the EIB's positive response to her proposal for a solution and closed the inquiry.

Background to the complaint

1. The European Investment Bank (EIB) agreed [1] , in 2018, to co-finance a project to construct hydropower installations in the Svaneti region of Georgia. In the evaluation of the project, the EIB and the co-financiers had to consider whether the local community affected, the Svans, should receive special protection as 'indigenous people' [2] . The EIB concluded that the Svans were not to be regarded as such.

2. The complainant is a network of NGOs that monitor public finance institutions. In February 2018, it asked for public access [3] to an expert report (what the complainant called 'an expertise') the Bank had obtained to inform its decision on the matter.

3. In reply to this 'initial request', the EIB gave the complainant its own appraisal on the matter making reference to its own research.



4. Dissatisfied with this reply, the complainant lodged a complaint with the EIB Complaints Mechanism to obtain disclosure of the expert report.

5. In November 2018, the EIB refused to disclose the document. It based its refusal on the need to protect the EIB's decision-making process [4] , international relations [5] , and the privacy and integrity [6] of the author of the study.

6. Dissatisfied with the EIB's refusal to grant full public access, the complainant turned to the Ombudsman in April 2019.

The Ombudsman's proposal for a solution

7. After assessing the documents the EIB had on the matter, the Ombudsman considered that the request referred to a draft report from a Georgian anthropologist. This report contains mostly information of a historical, geographical or anthropological nature. It also includes maps of the Svaneti region. She considered that disclosing this information was not likely to harm the EIB's decision-making process, international relations or the privacy and integrity of the author of the report.

8. The Ombudsman made the following proposal for a solution:

The European Investment Bank should disclose at least the objective data in the draft report from the Georgian anthropologist, such as data of historical, geographical or anthropological nature, and maps. [7]

9. The EIB accepted the Ombudsman's proposal for a solution and granted the complainant partial access to the report from the Georgian anthropologist. It provided the Ombudsman with a redacted version of the report which the Ombudsman forwarded to the complainant.

10. In its reply to the Ombudsman's proposal and the EIB's response, the complainant expressed disappointment with the decision not to disclose the remaining parts of the requested document.

The Ombudsman's assessment after the proposal for a solution

11. The Ombudsman welcomes the EIB's positive reply to her proposal for a solution. The EIB has disclosed all the information in the report that can be considered objective, in line with her proposal.

12. As regards the parts of the document that were not disclosed, the Ombudsman notes that the redacted information reflects the opinions of the author of the report. The EIB refused to



disclose this information considering it would undermine the protection of the public interest as regards international relations and the EIB's decision-making process.

13. As regards international relations, the EU courts have recognised that the EU institutions enjoy a wide discretion when determining whether the protection of the public interest, could be undermined by the disclosure of documents. [8]

14. In the course of the inquiry, the EIB provided more information on the international context. In view of these explanations and having assessed the report, the Ombudsman appreciates that the issue at hand may be politically sensitive. She has therefore concluded that it was reasonable for the EIB not to disclose the remaining information in the report, as it would be likely to undermine international relations with third countries.

15. As the interest protected by this exception cannot be overridden by another public interest, the EIB did not have to rely on the disclosure undermining its decision-making processes.

16. The EIB also redacted the author's name based on the need to protect personal data. EU data protection rules require that a person seeking access to 'personal data' must demonstrate a specific need that is met by obtaining such access. [9]

17. The Ombudsman notes that the complainant had not put forward, in the request to the EIB, a specific need to justify obtaining access to this personal data. Therefore, the EIB was justified in redacting this information.

Conclusion

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

The Ombudsman welcomes the European Investment Bank's decision to accept her proposal for a solution and to grant the complainant partial access to the requested document, in line with her proposal for a solution.

The complainant and the European Investment Bank will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 15/07/2020



[1] The EIB approved the loan to the Nenskra Hydropower Plant in February 2018. At the time of the Ombudsman's Proposal for Solution, it had not signed the loan agreement.

[2] European Investment Bank Environmental and Social Standards, Standard 7 on rights and interests of vulnerable groups. Available at:
https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf [Link].

[3] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN> [Link].

[4] Article 5.6 of the EIB Transparency Policy available at:
https://www.eib.org/attachments/strategies/eib_group_transparency_policy_en.pdf [Link]

[5] Article 5.4.a of the EIB Transparency Policy.

[6] Article 5.4.b of the EIB Transparency Policy.

[7] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's proposal for a solution available at: <https://www.ombudsman.europa.eu/en/solution/en/130258> [Link]

[8] See, for example, judgment of the General court of 11 July 2018, ClientEarth v Commission, T-644/116:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=203913&pageIndex=0&doclang=EN&mo> [Link].

[9] Article 9(1)(b) of Regulation 2018/1725 on the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN> [Link].