



EP Committee on Legal Affairs (JURI) - Exchange of views on the Ombudsman's inquiry into case 1011/2015/TN

Speech - **City** Brussels - **Country** Belgium - **Date** 28/01/2016

EP Committee on Legal Affairs (JURI) Exchange of views on the Ombudsman's inquiry into case 1011/2015/TN Thursday 28 January 2016, 16.00-16.30

Dear Members,

Thank you for the invitation to speak with you here today. As I have said on many occasions, the relationship between the European Ombudsman and Parliament is a vital one and I therefore welcome this first opportunity to speak this to committee.

My mission is to serve European democracy by working with the institutions of the European Union to create a more effective, accountable, transparent and ethical administration.

All of these aspects of my mission are interlinked, and all relate to transparency. By being transparent, the EU administration can be accountable to the citizens that it serves and show the citizens that it is effective and ethical. Access to information about how the EU and its institutions work is vital for the citizens to trust the EU, and the EU needs the trust of its citizens especially at times when it faces both internal and external challenges.

It is in this context, and following your invitation, I will share with you today details about my inquiry so far into one particular case, and to listen to your thoughts and views on the issue.

The case in point was brought to me as a complaint from the Madrid based NGO Access Info Europe and the EU Public Interest Clinic, which is a partnership between the New York University School of Law and HEC Paris. It concerns a request for public access made to the Council about the work of the panel set up under Article 225 Treaty on the Functioning of the EU. As you know, this panel gives opinions on candidates' suitability to perform the duties of Judge or Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments or re-appointments.

The panel's Third Activity Report states that from 2010 to 2013, 22% of their opinions were negative. I should say at this point that to date every opinion, positive or negative, has been accepted by the Council, a point which underlines its importance and influence.

The panel of seven is chosen by the Council from among former members of the Court of



Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom is proposed by the European Parliament. The Council provides the secretariat for the panel.

The complainant in this case wished to obtain access to the opinions of the panel, but the Council refused to give access.

To give an insight into how the opinions are formulated and what they include, according to the panel's Third Activity Report, the opinions are drafted in the following way. They first detail the various stages of the examination. The opinions then set out the reasons supporting the panel's views, favourable or otherwise, in relation to the candidate's legal capabilities, professional experience, ability to perform the duties of a Judge with independence and impartiality, knowledge of languages and aptitude for working in an international environment.

The panel, according to its own report, believes the positions the panel takes on the suitability of candidates may not be disclosed to the public for reasons of data protection, maintaining the integrity of the process, and a number of other reasons, but from commentary in its First Activity Report, it did appear to accept that its records were covered under 1049.

However, the first issue I had to deal with in this complaint was that the Council did not consider that Regulation 1049/2001, the regulation on public access to documents was applicable to the panel opinions. It depicted the Panel essentially as a body unconnected to the Council and with a reporting role only to the Member States.

I found this position to be problematic for a number of reasons. Regulation 1049/2001 is there to give the fullest possible effect to the right of public access to documents. It also sets out clearly defined exceptions to the right of public access. These exceptions have to be interpreted narrowly. If Regulation 1049/2001 was not to apply, a request for access to the panel opinions could be dealt with essentially at the whim of the Council.

In my letter to the Council opening my inquiry into the case, I gave my view as to why Regulation 1049/2001 does of course apply to the panel opinions.

The Council informed me, just before Christmas, that it has now decided, following a new policy decision, that 1049 DOES apply to requests for access to documents which are held by its General Secretariat in relation to the performance of support tasks to various intergovernmental bodies or entities, such as the panel in question and so

I would like to take this opportunity to thank the Council for its constructive response to this aspect of my inquiry, which has led to this important step.

However, given that the Council's internal procedure for dealing with public access requests is not the same as the procedure for dealing with Ombudsman inquiries, the Council was not able to provide a response to the access request on the basis of Regulation 1049/2001 in the



context of my inquiry.

Therefore, in order for the request for access to be dealt with under Regulation 1049/2001, the complainants will have to make a new request for access to the Council, if they so wish. If public access is not granted following a new request, I will be in a position to scrutinise the detailed reasoning of the Council in this regard.

It should be noted however that the Council's response to the complainants' request, although it was not formally based on Regulation 1049/2001, does suggest that a new request for access might be refused, the Council citing on privacy concerns and a potential chilling effect on the Panel's willingness to be clear and candid in its opinions.

It is clear that the information contained in the panel opinions constitutes personal data for the purpose of applying Regulation 1049/2001 on access to documents and Regulation 45/2001 on the protection of personal data. There is a balancing test to be made, taking the general public interest into account, and the issue of making a distinction between the release of negative opinions and the release of positive ones may also come into play.

These are, of course, issues that I cannot yet take a position on, and will await the outcome of any future 1049 request and appeal.

I would be very interested to hear your views on this matter, which might be brought before me again if the complaints make a new application to the Council under Regulation 1049, which may come back to my office as a complaint.

Thanks you very much for your attention.