Ombudsman
Eorpach

Cinneadh maidir le diúltú Pharlaimint na hEorpa rochtain phoiblí a thabhairt ar dhoiciméid a bhaineann leis an nGrúpa Cairdis AE-na Síne (cás 1542/2021/SF)

Cinneadh
Cás 1542/2021/SF - **Tosaithe an** 06/09/2021 - **Cinneadh an** 28/01/2022 - **Institiúid ábhartha** Parlaimint na hEorpa (Ní bhfuarthas drochriarachán) |

Bhain an cás le hiarratas ar rochtain ar cheithre dhoiciméad a bhaineann leis an 'Grúpa Cairdis AE-na Síne', grúpáil neamhoifigiúil Feisirí Eorpacha.

D'iarr Uachtarán Pharlaimint na hEorpa ar Choiste Comhairleach na Parlaiminte um Iompar Feisirí a mheas cé acu ar chomhlíon nó nár chomhlíon cathaoirleach an Ghrúpa a oibleagáid aon tacaíocht a fuarthas i ndáil le gníomhaíocht an Ghrúpa a dhearbhú. Bhí na ceithre dhoiciméad mar chuid den nós imeachta a bhí os comhair an Choiste sin.

Dhiúltaigh an Pharlaimint rochtain ar na ceithre dhoiciméad, agus í ag tagairt go bunúsach do rúndacht an nós imeachta os comhair an Choiste Chomhairligh.

Scrúdaigh foireann fiosrúcháin an Ombudsman na ceithre dhoiciméad agus bhuail siad le foireann ábhartha na Parlaiminte chun tuilleadh faisnéise a fháil faoina gcinneadh rochtain a dhiúltú. Chinn an tOmbudsman go raibh cinneadh na Parlaiminte rochtain a dhiúltú réasúnta, i bhfianaise an chásdlí ábhartha.

Dá nochtfaí doiciméad go poiblí, mar na cinn atá i gceist sa chás seo, bheadh an baol ann go mbainfí an fhaisnéis riachtanach den Choiste Comhairleach i gcomhthéacs a chuid imscrúduithe. Ina theannta sin, dá nochtfaí doiciméad sa chás seo is beag faisnéis shubstainteach bhreise nó gan aon fhaisnéis shubstainteach ar bith a chuirfí ar fáil faoin ábhar. Dá réir sin, dhún an tOmbudsman an fiosrúchán gan aon drochriarachán a fháil.

Background to the complaint

1. Members of the European Parliament (MEPs) may form unofficial groupings in order to exchange views informally on specific issues. These groupings are not official Parliament bodies and do not represent Parliament. [1] The groupings must report to the Parliament any support received from outside the Parliament. [2] One such unofficial grouping was the

‘EU-China Friendship Group’ (Friendship Group).

2. In October 2019, the Friendship Group held an event on Parliament’s premises in Strasbourg, where “champagne and canapés” were served.

3. In November 2020, a newspaper article stated that China’s mission to the EU paid for “drinks and snacks” at the event in 2019. [3]

4. In January 2021, the President of the Parliament asked the Parliament’s Advisory Committee on the Conduct of Members [4] to assess whether the chair of the Friendship Group had failed to comply with his obligations under Parliament’s Code of Conduct. [5]

5. A few days later, the complainant made a request for public access [6] to all documents related to the Friendship Group.

6. In March 2021, Parliament replied to the request. It identified four documents as falling within the scope of the request, namely one email and two letters from the chair of the Friendship Group to the President as well as one letter from the President to the Advisory Committee, asking for its opinion on the matter with the email and the two letters in attachment. [7] According to Parliament, disclosure of the documents would undermine the purpose of investigations and seriously undermine its decision-making process [8] - the process of assessing whether the chair of the Friendship Group had complied with his obligations was akin to a *disciplinary* procedure, it said.

7. The complainant asked Parliament to review its decision not to disclose the documents (he made what is referred to as a ‘confirmatory application’).

8. In July 2021, following the Advisory Committee’s recommendation, the President announced his decision [9] to reprimand the chair for having failed to respect the requirement of reporting outside support, as set out in Parliament’s Code of Conduct.

9. In August 2021, Parliament replied to the complainant’s request for review and confirmed its initial position. It based its decision again on the need to protect its investigations and decision-making process, as well as the need to protect the privacy of individuals and their personal data. [10]

10. In September 2021, the complainant turned to the Ombudsman.

The inquiry

11. The Ombudsman opened an inquiry into Parliament’s refusal to grant public access to the requested documents.

12. In the course of the inquiry, the Ombudsman’s inquiry team met with the relevant staff of

Parliament to obtain further information on its decision to refuse access. The Ombudsman's inquiry team also inspected the documents at issue.

Arguments presented

13. Parliament's arguments are in essence:
- The disclosure of documents submitted for the purpose of Advisory Committee investigations would not only affect the MEPs' trust in the confidentiality of such investigations but also the relationship of trust between the President and the MEPs.
- The Advisory Committee is a peer body and its inquiries are of a sensitive nature. Its meetings are confidential and are not open to the public. [11] The purpose of Advisory Committee investigations is to provide the President with operative recommendations where possible violations of the Code of Conduct are concerned. The Advisory Committee must therefore be able to rely on the information it receives in the context of its investigations to be able to provide the President with an informed recommendation. This can be the case only where the trust and confidentiality of the investigation is maintained. MEPs must be allowed to make full use of their right of defence and share information internally in relation to any allegations made against them without fear that that information could be disclosed later on. Disclosure, even after the decision in question has been taken, would significantly reduce MEPs' willingness to participate in future investigations and deprive the Advisory Committee and the President of necessary information, thereby seriously undermining Parliament's decision-making process. In this context, Parliament considered that it was irrelevant that some information may or may not have already been disclosed. MEPs are free to decide themselves whether they want to disclose information they share with the Advisory Committee.
- Given the severity of the allegations that are brought before the Advisory Committee, its recommendations must be free from outside pressure or undue political influence. The President must also have a margin of manoeuver and a space to think. While Advisory Committee recommendations are not binding, disclosure even after the decision has been taken would pressure the President into following the Advisory Committee's recommendations. Moreover, disclosure of the documents would risk undermining the President's decision and damage Parliament's reputation as well as that of the MEP in question.
- The disclosure of the documents would undermine the protection of the privacy and the integrity of the individual [12] , as they concern the conduct of an identified natural person, the chair of the Friendship Group. The complainant did not provide a specific purpose in the public interest that would be served by the disclosure of the documents.

14. The complainant's arguments are in essence:
- It is difficult to believe that the Advisory Committee could come to a different conclusion depending on whether the documents were published or not. It should be irrelevant for the decision-making process whether the documents could be misused by the press and some politicians . The political group to which the chair of the Friendship Group belongs already published parts of these documents and the public interest would benefit from full disclosure.
- The refusal to grant access even after the decision to reprimand the chair had been taken, suggests that the Advisory Committee's recommendation would not stand up to scrutiny.

Suggesting the President might feel pressured to follow the recommendation to avoid contradictions within Parliament, showed a lack of confidence in the President's ability to stand by his own decisions.
- There is no reason to assume that MEPs would be less willing to participate in investigations if documents related to their case would be published. MEPs agreed to a possible investigation by the Advisory Committee when they signed the Code of Conduct.
- There is no need to protect personal data, as Parliament itself had already mentioned the name of the MEP concerned in its decision on the request for review.
- Transparency in relation to the documents would increase the public's insight into the decision and mitigate any damage to the Advisory Committee's image. The Advisory Committee consists of five MEPs only, one of whom is a member of the same political group as the chair of the Friendship Group. This creates the risk that the public perceives the Advisory Committee as politically influenced and not independent， in particular as not all political groups are represented in the Advisory Committee.

The Ombudsman's assessment

15. This case relates to a public access to documents request and so the Ombudsman will not here take a position on general issues such as the composition of the Advisory Committee and whether its recommendations stand up to scrutiny.

16. The Ombudsman notes that ensuring adequate levels of transparency by other means may also be explored, for example making public the committee's opinion, rather than giving access to documents authored by MEPs in which the MEPs defend themselves against allegations levelled against them for not complying with the Code of Conduct.

17. In the case at hand, the documents were part of the procedure to ascertain whether the chair of the Friendship Group had complied with his obligations under Parliament's Code of Conduct - a procedure initiated upon a suspicion that a breach had occurred, and which can lead to sanctions. This procedure can be viewed as akin to a disciplinary procedure. Against that background, it was reasonable that Parliament held at the outset that the documents should not be disclosed.

18. It also follows from case law on Article 4(2) of Regulation 1049/2001, that documents are not disclosed, where their disclosure would compromise the willingness of persons involved in a procedure from cooperating in the future, thereby compromising the proper running of the procedure in question and the attainment of the objectives pursued. [13] The Ombudsman therefore agrees that in line with the case law, the prospect of public disclosure of documents, such as those at issue in this case, would risk depriving the Advisory Committee of necessary information in the context of its investigations. Given that Parliament relies in part on the cooperation of the MEPs subject to the inquiry, for the conduct of these inquiries, their readiness to be as forthcoming as possible is important.

19. The question is then whether there was an overriding public interest or necessity in the

public interest, which should prevail and thus lead to disclosure in this case. Having inspected the documents, the Ombudsman concludes the answer is in the negative. The disclosure of the documents would not bring anything of substance to the public's knowledge or for an informed debate to take place, as they contain little in substance, which is not already in the public domain.

Conclusion

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

There was no maladministration by the European Parliament.

The complainant and the European Parliament will be informed of this decision **.**

Rosita Hickey Director of Inquiries

Strasbourg, 28/01/2022

[1] More information on unofficial groupings is available at: https://www.europarl.europa.eu/delegations/en/about/introduction [Nasc]

[2] Article 35(4) of the Rules of Procedure of the European Parliament, available at: https://www.europarl.europa.eu/doceo/document/RULES-9-2021-09-13-RULE-035_EN.html [Nasc]; Article 4(2)(g) of the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest, available at: https://www.europarl.europa.eu/pdf/meps/201305_Code_of_conduct_EN.pdf [Nasc]

[3] See https://www.politico.eu/article/china-influence-european-parliament-friendship-group/ [Nasc]

[4] The Advisory Committee is composed of five members who are appointed by the President. The Advisory Committee assesses alleged breaches of the Code of Conduct of MEPs and advises the President on possible actions to be taken by means of recommendations. See https://www.europarl.europa.eu/pdf/meps/201305_Code_of_conduct_EN.pdf [Nasc]

[5] Article 4(2)(g) of the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest, available at: https://www.europarl.europa.eu/pdf/meps/201305_Code_of_conduct_EN.pdf [Nasc]

[6] Under Regulation 1049/2001 regarding public access to the European Parliament, Council

and Commission documents, available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001R1049 [Nasc]

[7] The President referred the matter to the Advisory Committee under Article 8 of the Code of Conduct, that is when there is reason to believe that there has been a breach of the Code, and the Advisory Committee shall make a recommendation to the President as to the decision to be taken.

[8] Article 4(2) third indent and Article 4(3) of Regulation 1049/2001, available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001R1049 [Nasc]

[9] See: https://www.europarl.europa.eu/doceo/document/PV-9-2021-07-08-ITM-002_EN.html [Nasc]

[10] Articles 4(2), 4(3), and 4(1) of Regulation 1049/2001, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN [Nasc]

[11] Article 4(3) of the Advisory Committee's Rules of Procedure provides that meetings are to be held *"in camera";* available at https://www.europarl.europa.eu/pdf/meps/Rules_of_Procedure_EN.pdf [Nasc]

[12] Article 4(1)(b) of Regulation 1049/2001.

[13] See *Strack v Commission* , T-221/08, para 157.