

Rozhodnutie o odmietnutí Európskej služby pre vonkajšiu činnosť (ESVČ) sprístupniť verejnosti dokument týkajúci sa pozastavenia činnosti politických strán na Ukrajine (vec 952/2022/MIG)

Rozhodnutie

Prípad 952/2022/MIG - Otvorené dňa 11/05/2022 - Rozhodnutie z dňa 18/08/2022 -

Dotknutý orgán Európska služba pre vonkajšiu činnosť (Nezistil sa žiadny nesprávny úradný postup) |

Vec sa týkala žiadosti o prístup verejnosti k dokumentom týkajúcim sa nedávneho pozastavenia činnosti jedenástich politických strán na Ukrajine. Európska služba pre vonkajšiu činnosť (ESVČ) určila dva dokumenty, ktoré spadajú do rozsahu žiadosti sťažovateľa. Udelila prístup k častiam jedného dokumentu a odmietla udeliť prístup k ďalšiemu dokumentu. Pritom sa odvolala na výnimky podľa právnych predpisov EÚ o prístupe verejnosti k dokumentom, pričom tvrdila, že zverejnenie dokumentu by mohlo poškodiť verejný záujem, pokiaľ ide o obranu a vojenské záležitosti, ako aj o medzinárodné vzťahy. Sťažovateľ tvrdil, že existuje prevažujúci verejný záujem na zverejnení.

Výšetrovací tím ombudsmanky preskúmal dokument a získal od ESVČ doplnkové, dôverné vysvetlenia. Na základe uvedeného a so zreteľom na vysokú mieru voľnej úvahy, ktorú inštitúcie EÚ majú v prípadoch, v ktorých tieto inštitúcie dospejú k záveru, že môže ísť o ohrozenie verejnej bezpečnosti a medzinárodných vzťahov, ombudsmanka zistila, že rozhodnutie ESVČ odmietnuť prístup nebolo preukázateľne neoprávnené. Okrem toho vzhľadom na skutočnosť, že verejnému záujmu nemôže byť nadradený iný verejný záujem, ktorý sa považuje za dôležitejší, ombudsmanka zistila, že i napriek tomu, že sťažnosť upozornila na dôležitý problém, argumenty neboli dostatočné na odôvodnenie zverejnenia. Ombudsmanka dospela k záveru, že ESVČ oprávnene odmietla prístup verejnosti k požadovanému dokumentu. Ombudsmanka preto nezistila nesprávny úradný postup a vec uzavrela.

Background to the complaint

1. In March 2022, the complainant made a request [1] for public access to the EEAS, seeking access to any documents concerning the suspension of 11 political parties by the Ukrainian government.



2. The EEAS identified two documents as falling within the scope of the complainant's access request: " *Ares (2022)2030230 UKRAINE – FLASH REPORT- RUSSIA's WAR on UKRAINE – Day 25* " and " *Ares (2022)2230611 UKRAINE – 1 month of war from Kyiv perspective .* "
3. The EEAS disclosed parts of the first document and refused to give access to the second document, relying on the need to protect defence and military matters and international relations.
4. In April 2022, the complainant requested a review of the EEAS's decision regarding the second document (by making a 'confirmatory application'). The EEAS then confirmed its refusal to grant public access to the requested document.
5. Dissatisfied with this decision, the complainant turned to the Ombudsman in May 2022.

The inquiry

6. The Ombudsman opened an inquiry and her inquiry team inspected the document at issue. The inquiry team also met with the EEAS representatives to obtain additional information on the reasons for the refusal to grant public access.

Arguments presented

7. In his confirmatory application, the complainant stated that the EEAS should at least give access to parts of the document, given that the information at issue concerns a restriction of fundamental rights and in light of possible EU accession negotiations with Ukraine.
8. Concerning the scope of the complainant's access request, the EEAS representatives clarified that they considered only one paragraph of the five-page document to be falling within the complainant's request.
9. In its initial decision on the access request, the EEAS stated that the document at issue *"contains information and assessments on the military situation and negotiations, and also information and recommendations on EU positions and actions. Its public disclosing would lead to a breach of trust between the EU institutions and its Member States, as well as harm bilateral relations with third countries. It is therefore essential to protect this information and analysis, and any data that might indicate, even indirectly, how intelligence and diplomatic services compile such information."* The EEAS concluded that disclosure would undermine the public interest as regards defence and military matters and as regards international relations. [2]
10. During the meeting with the inquiry team, the EEAS representatives added that the two exceptions invoked are interlinked. It also provided additional, confidential explanations as to how disclosure could undermine these public interests.



The Ombudsman's assessment

11. The EU institutions enjoy a wide margin of discretion when determining whether disclosing a document would undermine the protection of defence and military matters and the protection of international relations. [3]

12. As such, the Ombudsman's inquiry aimed to assess if there was a manifest error in the EEAS's assessment on which it based its decision to refuse access to the document at issue.

13. To that end, the Ombudsman inquiry team inspected the document and obtained additional confidential explanations from the EEAS representatives. The EEAS had not been able to share the information contained in these explanations with the complainant, as this would have undermined the very interests the EEAS is aiming to protect by withholding the information at issue. Based on this, the Ombudsman finds that it was not manifestly wrong for the EEAS to consider that disclosing the information at issue could undermine defence and military matters and the EU's international relations.

14. The public interests protected under Article 4(1)(a) of Regulation 1049/2001 cannot be superseded by another public interest that is deemed more important. This means that, if an institution considers that any of these interests could be undermined by disclosure, they must refuse to give access. Thus, the complainant's arguments could not be taken into account in that context.

15. In light of the above, the Ombudsman finds that the EEAS was justified in refusing to grant public access to (the relevant parts of) the document at issue.

16. Given the sensitive nature of the information contained in the document at issue, the Ombudsman also considers that the EEAS provided the complainant with sufficient reasons for its decision to refuse access.

Conclusion

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

There was no maladministration by the European External Action Service in refusing to give public access to the document at issue.

The complainant and the EEAS will be informed of this decision .

Emily O'Reilly European Ombudsman



Strasbourg, 18/08/2022

[1] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049> [Prepojenie].

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

[3] See, for example, judgment of the General Court of 11 July 2018, *ClientEarth v Commission*, T-644/16:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=203913&pageIndex=0&doclang=EN&mode=lst&dir>
[Prepojenie].