



Reports of Cases

Case T-465/09

Ivan Jurašinović

v

Council of the European Union

(Access to documents — Regulation (EC) No 1049/2001 — Application for access to the reports of European Union observers present in Croatia from 1 to 31 August 1995 — Refusal of access — Risk of undermining the protection of international relations — Prior disclosure)

Summary — Judgment of the General Court (Second Chamber, Extended Composition), 3 October 2012

1. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Purpose — Exceptions to the right of access to documents — Strict interpretation and application*

(European Parliament and Council Regulation No 1049/2001, recitals 4 and 11, and Arts 1 and 4)

2. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the public interest — Judicial review — Scope — Limits*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a))

3. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the public interest — International relations — Refusal to disclose reports of European Union observers present in Croatia from 1 to 31 August 1995 — Lawfulness*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a))

4. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the public interest — Overriding public interest justifying the disclosure of documents — No effect*

(European Parliament and Council Regulation No 1049/2001, Art. 4)

5. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Special rules for classified documents — Document not classified — No effect on the right of the institution which has received an application for access to that document to refuse access on the basis of the exception relating to the protection of international relations in view of the sensitive content of the document in question*

(European Parliament and Council Regulation No 1049/2001, Arts 4 and 9)

6. *Actions for annulment — Pleas in law — Action brought against a Council decision refusing access to reports of European Union observers present in Croatia — Previous disclosure of those reports to a Union citizen in the course of a trial before the International Criminal Tribunal for the Former Yugoslavia — Plea unfounded*

(European Parliament and Council Regulation No 1049/2001)

1. See the text of the decision.

(see paras 22-25)

2. See the text of the decision.

(see paras 26-28)

3. The exception relating to the public interest as regards international relations, which is provided for in Article 4(1)(a) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents, justifies the Council's refusal to grant access to the reports of the European Union observers present in Croatia, in the area of Knin, from 1 to 31 August 1995. Disclosure of those reports would have undermined the objectives pursued by the European Union in the Western Balkans — namely contributing to peace, stability and lasting regional reconciliation in order, in particular, to strengthen the integration of the countries of that region with regard to the European Union — and would, therefore, have undermined international relations, since the European Community Monitoring Mission's comments or assessments concerning the political, military and security situation at a decisive stage of the conflict between Croatian and Federal Yugoslav forces would have been disclosed; disclosure of that information was liable to give rise to, or increase, resentment and tension among the different communities of the countries which had been parties to the conflicts in the former Yugoslavia or between the countries formed from Yugoslavia, thus weakening the confidence of the Western Balkan States in the process of integration.

(see paras 39-40)

4. See the text of the decision.

(see paras 47-49)

5. Article 9 of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents lays down specific rules for access to classified documents, particularly with regard to the persons responsible for handling applications for access and the need to obtain the prior consent of the originating authority. In addition, Article 9(4) of the regulation provides that a decision refusing access to a classified document must give the reasons for the decision in a manner which does not harm the interests protected in Article 4. However, it does not follow from those provisions that the non-classification of a document prevents an institution from refusing access by reason of the putting at risk of the protection of the public interest as regards international relations, on the ground that the document contains sensitive information.

(see para. 51)

6. In an action for annulment brought against a Council decision refusing access to the reports of European Union observers present in Croatia, the Court cannot accept a plea alleging prior disclosure of those reports, based on the fact that they were previously made available to a citizen of the Union, through his lawyers, in the course of a trial before the International Criminal Tribunal for the Former Yugoslavia, where there is nothing to suggest that the Council passed those reports to the citizen

concerned as the result of an application for access to documents presented by him on the basis of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

(see paras 55, 63-64)