



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 December 2012

17399/12

**JUR 627
API 107
COWEB 206**

"I" ITEM NOTE

from: Council Legal Service
to: Permanent Representatives' Committee
Subject: **Cases T-465/09 (Jurašinović against the Council of the European Union) and
T-63/10 (Jurašinović against the Council of the European Union)**
- Judgments of the General Court

1. On 3 October 2012, the General Court rendered its judgments in cases T-465/09¹ and T-63/10.²

I. Case T-359/09

2. In case T-359/09, the General Court rejected an action pursuant to Article 230 of the EC Treaty for the annulment of:

- the decision of the General Secretariat of the Council of 17 June 2009 rejecting his application pursuant to Regulation (EC) No 1049/2001³ for access to documents on the monitoring activities of the European Union Monitoring Mission in the area of Knin in Croatia;

¹ Cf. information note from the Legal Service is set out in doc. 15276/09.

² Cf. information note from the Legal Service is set out in doc. 7439/10.

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- the Council's rejection of his confirmatory application seeking a review of the above decision of the General Secretariat of the Council.
3. The General Court upheld the Council's decision refusing public access to documents on the monitoring activities of the European Union Monitoring Mission in the area of Knin in Croatia (hereafter: "ECMM reports") on grounds of the protection of the public interest as regards the protection on international relations under the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001.
 4. In this respect, the General Court ruled that the particularly sensitive and essential nature of the interests protected under Article 4(1)(a) of Regulation (EC) No 1049/2001 in combination with its obligatory character required a margin of appreciation of the institution concerned.⁴ It thus confirmed the Council's considerations and rejected the arguments against the Council's conclusions.⁵

II. Case T-63/10

5. Case T-63/10 concerned a request for access to decisions concerning the transmission to the International Criminal Tribunal for the former Yugoslavia (ICTY) of documents communication of which had been requested in the framework of proceedings against Mr. *Ante Gotovina* and to the entire correspondence exchanged in this framework between the Council and the ICTY, including any annexes, and in particular the preliminary requests by the ICTY and by Mr. *Gotovina's* defence.
6. As in ruling T-359/09 the General Court rejected the applicant's action in so far as documents containing ECMM reports were concerned on grounds of the protection of the public interest as regards the protection on international relations under the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001.⁶

⁴ Paragraphs 26 to 28 of the ruling.

⁵ Paragraphs 40 to 64 of the ruling.

⁶ Paragraph 96 of the ruling.

7. With respect to other parts of correspondence between the SG/HR and the ICTY, including its annexes, the General Court confirmed that these documents could, in principle, benefit from protection under the exception of the protection of the public interest as regards the protection of Court proceedings under the second indent of Article 4(2) of Regulation 1049/2001.⁷ However, the General Court pointed out that the documents in question merely concerned aspects of organisation of the proceedings against Mr. *Gotovina*. It rejected the Council's argument that it had no discretion in view of the position of the ICTY that the documents in question were not accessible under ICTY own transparency rules.⁸
8. Given the factual findings of the General Court in this Case, such as the lack of clarity of the ICTY's position, the absence of any exercise of discretion on behalf of the Council and the nature of the documents concerned, which cannot be contested in an appeal, an appeal raising arguments on points of law would have little chances of success. In addition, it is noted that the General Court has confirmed the protection of the essential part of the documents requested by the applicant, i.e. the ECMM reports.
9. The Council's Legal Service therefore recommends to the Permanent Representatives Committee that judgment T-63/10 of the General Court should not be appealed.

⁷ Paragraphs 52 to 65 of the ruling.

⁸ Paragraphs 80 to 90 of the ruling.