

Case T-174/95

Svenska Journalistförbundet

v

Council of the European Union

(Access to information — Council Decision 93/731/EC — Refusal
of an application for access to Council documents — Action for annulment —
Admissibility — Title VI of the Treaty on European Union —
Scope of the exception concerning the protection of public security —
Confidentiality of the Council's proceedings — Statement of reasons —
Publication of the defence on the Internet — Abuse of procedure)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 17 June 1998 II - 2293

Summary of the Judgment

1. *Procedure — Time-limits — Community rules — Need for strict application — Extension on account of distance of time-limits for Sweden*
(*Rules of Procedure of the Court of Justice, Annex II, Art. 1*)
2. *Actions for annulment — Interest in bringing proceedings — Applicant challenging a decision refusing to grant it access to an institution's documents*
(*EC Treaty, Art. 173, fourth para.; Council Decision 93/731*)

3. *Procedure — Intervention — Objection as to admissibility not raised by the defendant — Inadmissibility — Absolute bar to proceeding — Examination by the Court of its own motion (EC Statute of the Court of Justice, Arts 37, third para., and 46; Rules of Procedure of the Court of First Instance, Art. 113)*
4. *Actions for annulment — Jurisdiction of the Community judicature — Decision refusing to grant public access to documents covered by Title VI of the Treaty on European Union (EC Treaty, Art. 173, fourth para.; Treaty on European Union, Arts K to K.9 and L; Council Decision 93/731)*
5. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision refusing public access to an institution's documents (EC Treaty, Art. 190; Council Decision 93/731, Art. 4)*
6. *Procedure — Procedure before the Court of First Instance — Protection for parties against misuse of pleadings and evidence — General principle in the due administration of justice — Scope (Rules of Procedure of the Court of First Instance, Art. 116(2); Instructions to the Registrar of the Court of First Instance, Art. 5(3))*

1. The Community rules governing procedural time-limits must be strictly observed both in the interest of legal certainty and in order to avoid any discrimination or arbitrary treatment in the administration of justice. Accordingly, while Article 1 of Annex II to the Rules of Procedure of the Court of Justice provided for a 10-day extension on account of distance for certain designated countries, of which Sweden was not one, the extension on account of distance applicable to that Member State could only be the two weeks applicable to all other European countries and territories.

2. A person who is refused access by the Council to a Council document has, by

virtue of that very fact, established an interest in the annulment of the decision refusing him such access.

The objective of Decision 93/731 on public access to Council documents is to give effect to the principle of the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration. It does not require that members of the public must put forward reasons for seeking access to requested documents. The fact that the requested documents were already in the public domain is irrelevant in this connection.

3. Under the final paragraph of Article 37 of the EC Statute of the Court of Justice, applicable to the Court of First Instance by virtue of Article 46 thereof, an application to intervene is to be limited to supporting the form of order sought by one of the parties. An intervener is not therefore entitled to raise an objection as to admissibility that was not raised in its written pleadings and the Court is not therefore obliged to consider the submissions it has made in that regard.

However, under Article 113 of the Rules of Procedure, the Court of First Instance may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with a case, including any raised by interveners.

4. The Court of First Instance has jurisdiction to entertain an action for the annulment of a Council decision refusing the applicant access to documents, even if those documents were adopted on the basis of the provisions of Title VI of the Treaty on European Union concerning cooperation in the fields of justice and home affairs.

First, Articles 1(2) and 2(2) of Decision 93/731 on public access to Council documents expressly provide that the Decision is to apply to all Council documents; it

therefore applies irrespective of the contents of the documents requested. Secondly, since, pursuant to Article K.8(1) of the EU Treaty, measures adopted pursuant to Article 151(3) of the EC Treaty, which is the legal basis for Decision 93/731, are applicable to measures within the scope of Title VI of the EU Treaty, in the absence of any provision to the contrary, Decision 93/731 applies to documents relating to Title VI and the fact that the Court has, by virtue of Article L of the EU Treaty, no jurisdiction to review the legality of measures adopted under Title VI does not curtail its jurisdiction in the matter of public access to those measures.

5. The duty, pursuant to Article 190 of the Treaty, to state reasons in individual decisions has the double purpose of permitting, on the one hand, interested parties to know the reasons for the adoption of the measure so that they can protect their own interests and, on the other hand, enabling the Community court to exercise its jurisdiction to review the validity of the decision. In the case of a Council decision refusing to grant public access to documents, the statement of reasons must therefore contain — at least for each category of documents concerned — the particular reasons for which the Council considers that disclosure of the requested documents comes within the scope of one of the exceptions provided for in Article 4(1) and (2) of Decision 93/731 relating, first, to the protection of the public interest, and secondly, to the confidentiality of the Council's proceedings.

A decision refusing the applicant access to a number of Council documents that indicates only that disclosure of the documents in question would prejudice the protection of the public interest (public security) and that the documents relate to proceedings of the Council, including the views expressed by members of the Council, and for that reason fall within the scope of the duty of confidentiality, does not satisfy the above requirements and must therefore be annulled.

First, in the absence of any explanation as to why the disclosure of those documents would in fact be liable to prejudice a particular aspect of public security, it is not possible for the applicant to know the reasons for the adoption of the measures and therefore to defend its interests. It follows that it is also impossible for the Court to assess why the documents to which access was refused fall within the exception based upon the protection of the public interest (public security) and not within the exception based upon the protection of the confidentiality of the Council's proceedings. Secondly, as regards the latter exception, the terms of the decision do not permit the applicant or, therefore, the Court to check whether the Council has complied with its duty,

under Article 4(2) of Decision 93/731, to make a comparative analysis which seeks to balance, on the one hand, the interest of the citizens seeking the information and, on the other hand, the confidentiality of the proceedings of the Council.

6. The rules which govern procedure in cases before the Court of First Instance, including the third subparagraph of Article 5(3) of the Instructions to the Registrar and Article 116(2) of the Rules of Procedure, under which parties are entitled to protection against the misuse of pleadings and evidence, reflect a general principle in the due administration of justice according to which parties have the right to defend their interests free from all external influences and particularly from influences on the part of members of the public.

It follows that a party who is granted access to the procedural documents of other parties is entitled to use those documents only for the purpose of pursuing his own case and for no other purpose, including that of inciting criticism on the part of the public in relation to arguments raised by other parties in the case.