

Case T-610/97 R

Hanne Norup Carlsen and Others

v

Council of the European Union

(Decision refusing access to certain documents — Opinion of the Legal Service —
Protection of the public interest — Application for interim measures —
Request that documents be released to a national court)

Order of the President of the Court of First Instance, 3 March 1998 II - 488

Summary of the Order

- 1. Acts of the institutions — Statement of reasons — Obligation — Scope — Decision rejecting an application for access to opinions of the legal services of Community institutions (EC Treaty, Art. 190)*
- 2. Council — Public's right of access to Council documents — Refusal to grant access to opinions prepared by the legal services of Community institutions — Breach of the Code of Conduct or of Decision 93/731 — None (Council Decision 93/731)*
- 3. Applications for interim measures — Provisional measures — Conditions for granting — Measures not to anticipate the decision on the substance — Application for access to documents, the rejection of which has been challenged by an action for annulment — Condition not satisfied (EC Treaty, Art. 186; Rules of Procedure of the Court of First Instance, Art. 107(4))*

1. The statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review.

In the case of a decision rejecting an application for access to Council documents on the basis of a statement that the documents are opinions on matters of law of the legal services of Community institutions, disclosure of which could be detrimental to the public interest both in 'the maintenance of legal certainty and the stability of Community law', and in 'the Council's being able to obtain independent legal advice', those reasons must be considered to be sufficient in the context of an application for interim measures. In particular, the absence of a reference, in the statement of reasons, to the specific effects of releasing documents having such a content does not, taken alone, render the statement of reasons inadequate.

2. On an initial examination in proceedings for interim relief, a refusal by the Council to grant access to the opinions of legal services of the Community institutions concerning particular draft legislation

does not appear to be in breach of the Code of Conduct concerning public access to Council and Commission documents or of Decision 93/731 on public access to Council documents, in so far as that refusal is based on the requirement of ensuring 'maintenance of legal certainty and stability of Community law' and also of ensuring that 'the Council [is] able to obtain independent legal advice'.

On the one hand, such documents are merely working instruments, disclosure of which would result in the discussions and exchange of views within the institutions on the legality and scope of the legal measure to be adopted being made public, which could give rise to uncertainty with regard to the legality of Community measures and have a negative effect on the stability of the Community legal order and the proper functioning of the institutions, which are matters of public interest for which it is unquestionably necessary to have due regard. On the other hand, although those interests are not expressly referred to in the list of exceptions provided for in the Code of Conduct and Decision 93/731, which state that '[a]ccess to a Council document shall not be granted where its disclosure could undermine ... the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations) ...', it is clear from the tenor of the provision that it is the protection of the public interest in general which may justify refusal to grant access to documents, and accordingly it would not be right to

limit the scope of the concept of the public interest by reducing it to the five cases set out in brackets, which represent only certain specific cases to which, clearly and unequivocally, only secondary importance is attached in relation to the general requirement that the public interest should be protected.

the main proceedings from being rendered illusory by being deprived of any practical effect.

3. The measures which may be ordered in interlocutory proceedings are, on the one hand, provisional, in the sense that they must in principle cease to produce their effects as soon as final judgment is given in the case and must not in any way anticipate the Court's decision on the substance; on the other hand, they are ancillary in the sense that they must only seek to safeguard, during the course of the procedure before the Court, the interests of one of the parties to the proceedings in order to prevent the judgment in

With regard to an application for interim measures asking that the Council should be directed to disclose to a national court and the parties to proceedings pending before that court certain documents of an internal nature, it follows, not only from the fact that disclosure of the documents in question would anticipate the judgment on the action for annulment, which is directed specifically against the decision rejecting the request for access to those documents, but also from the fact that disclosure would have effects which could not be definitively brought to an end when the judgment is delivered, that those measures cannot be described as provisional.