

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

7 February 2002 *

In Case T-211/00,

Aldo Kuijer, residing in Utrecht (Netherlands), represented by O.W. Brouwer and T. Janssens, lawyers, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by M. Bauer and M. Bishop, acting as Agents,

defendant,

APPLICATION for annulment of the Council's decision notified to the applicant by letter of 7 June 2000 refusing him access to certain documents from the Centre for Information, Discussion and Exchange on Asylum ('CIREA') which were

* Language of the case: English.

requested under Council Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ 1993 L 340, p. 43),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges,
Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 12 July 2001,

gives the following

Judgment

Legal Background

1 On 6 December 1993 the Council and the Commission approved a Code of Conduct concerning public access to Council and Commission Documents

(OJ 1993 L 340, p. 41), designed to establish the principles governing access to the documents held by them. The Code of Conduct contains *inter alia* the following principle:

‘The public will have the widest possible access to documents held by the Commission and the Council.’

2 It also provides:

‘The Commission and the Council will severally take steps to implement these principles before 1 January 1994.’

3 In order to put that commitment into effect, the Council adopted Decision 93/731/EC of 20 December 1993 on public access to Council documents (OJ 1993 L 340, p. 43).

4 Article 1(1) of Decision 93/731 provides that

‘[t]he public shall have access to Council documents under the conditions laid down in this Decision.’

5 Article 4 states:

'1. Access 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),

- the protection of the individual and of privacy,

- the protection of commercial and industrial secrecy,

- the protection of the Community's financial interests,

- the protection of confidentiality as requested by the natural or legal person who supplied any of the information contained in the document or as required by the legislation of the Member State which supplied any of that information.

2. Access to a Council document may be refused in order to protect the confidentiality of the Council's proceedings.'

6 Article 5 of the Decision provides:

‘The Secretary-General shall reply on behalf of the Council to applications for access to Council documents, except in the cases referred to in Article 7(3), in which the reply shall come from the Council.’

7 Article 7(1) and (3) provide:

‘1. The applicant shall be informed in writing within a month by the relevant departments of the General Secretariat either that his application has been approved or that the intention is to reject it. In the latter case, the applicant shall also be informed of the reasons for this intention and that he has one month to make a confirmatory application for that position to be reconsidered, failing which he will be deemed to have withdrawn his original application.

...

3. Any decision to reject a confirmatory application, which shall be taken within a month of submission of such application, shall state the grounds on which it is based...’

- 8 The second paragraph of Article 1 of the Treaty on European Union, as amended by the Treaty of Amsterdam, provides:

‘This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.’

Facts

- 9 The applicant is a university lecturer and researcher in asylum and immigration matters. By letter of 3 July 1998 addressed to the General Secretary of the Council, he requested access to certain documents related to the activities of the Centre for Information, Discussion and Exchange on Asylum (‘CIREA’). The request related to certain reports drawn up by or with CIREA and reports of any joint missions or reports on missions carried out by Member States in third countries and sent to CIREA. The applicant also requested the list drawn up by or with CIREA, of the contact persons in the Member States involved with asylum cases (‘the list of contact persons’) and any subsequent changes to that list.
- 10 The Secretary-General replied to the applicant by letter of 28 July 1998, stating that CIREA reports had been prepared between 1994 and 1998 on the situation of asylum-seekers returning to their own country for the following countries: Albania, Angola, Sri Lanka, Bulgaria, Turkey, China, Zaire, Nigeria and Vietnam. He nevertheless rejected the application for access to those documents and to the list of contact persons, relying on Article 4(1) of Decision 93/731. He explained that disclosure of the list might ‘put the security and private life of

individuals at risk by giving rise to harassment and personal threats'. With regard to reports drawn up for CIREA, the Secretary-General informed the applicant that such documents did not exist.

- 11 By letter of 25 August 1998, the applicant made a confirmatory application pursuant to Article 7(1) of Decision 93/731. In respect of CIREA reports, he stated that he was surprised that the 'Council also intends to keep confidential e.g. the reports on countries like Nigeria, Iran and Iraq, while it can hardly be argued that relations between the Union and those countries are cordial'. With regard to reports drawn up for CIREA, the applicant set out his specific reasons for believing that the Secretary-General's reply to the effect that such documents did not exist was wrong. He also challenged the part of the decision concerning the list of contact persons.

- 12 By letter of 28 September 1998, the Secretary-General sent to the applicant the Council's decision rejecting his confirmatory application. The letter was couched in the following terms:

'After careful consideration, the Council has decided to confirm [the decision of the Secretary-General] as set out in the letter of 28 July 1998 in respect of the requests [concerning CIREA reports and the list of contact persons]. After examination of each of the following documents, the Council has decided not to disclose them for the following reasons:

- (a) [number of document]: Accompanying note by the Council's General Secretariat to CIREA: report of the Heads of Missions of the Twelve on the situation of [country] asylum-seekers returning to [same country]. This report contains very sensitive information about the political, economical and social situation in [the country concerned], which was provided by the

Heads of the European Union Member State Missions in that country. The Council is of the opinion that disclosure of this information might damage the relations between the European Union and [country]. The Council has therefore decided that access to this document has to be denied on the basis of Article 4(1) of the Decision [93/731] (international relations).

...

- (b) List of CIREA contact persons who deal with applications for asylum: the General Secretariat has not been able to find a specific Council document with [such] a list.

The Council will furthermore try to trace (from as far back as 1994) documents in which the reports [drawn up for CIREA] can be found... The applicant will be informed of the result of these investigations in due course.'

- 13 On 14 October 1998, the applicant was informed that, following investigations by the competent service of the General Secretariat, it had been decided that he could be granted access to 10 reports prepared by the Danish authorities on fact-finding missions in third countries. He was informed that, with regard to four other reports drawn up for CIREA by the authorities of other Member States (listed in the letter), access was denied for the following reason, repeated for each document:

'The General Secretariat is of the opinion that disclosure of the very detailed, sensitive information of this report may endanger European Union relations with [the country concerned], as well as the bilateral relations of [the Member State

whose authorities carried out the mission] with this country. Access to this document is therefore denied on the basis of Article 4(1) of the Decision [93/731] (international relations).’

- 14 On 4 December 1998, the applicant brought an action for annulment of the Council’s decision of 28 September 1998 refusing him access to the documents mentioned.
- 15 By letter of 18 May 1999, the General Secretariat sent the applicant a fresh reply from the Council in response to the confirmatory application of 25 August 1998. In that reply the Council indicated that a list of contact persons did exist and appeared in document 5971/2/98 CIREA 18. In consequence, it admitted that the decision rejecting the confirmatory application, which was notified by letter of 28 September 1998, was wrong on that point.
- 16 The Council nevertheless refused to authorise access to that document pursuant to Article 4(1) of Decision 93/731. It stated in its reply: ‘The document [in question] contains a list of contact persons designated by each Member State between whom information on asylum seekers may be exchanged. It gives information on the countries of origin for which they are responsible and indicates their office address and their direct telephone and fax number.’ The Council went on to assert that it was for the Member States to decide if and to what extent that type of information could be made publicly available. It indicated that a number of Member States opposed such a course in order to safeguard the operational efficiency of their public service. Were the Council to release such information, which had been provided to it for the specific purpose of establishing an internal network of contact persons to facilitate cooperation and coordination on asylum matters, the Member States would be reticent about providing such information in the future. In those circumstances, disclosure of that document could undermine the public interest in the functioning of the

exchange of information and coordination between Member States in the field of asylum and immigration.

- 17 By judgment of 6 April 2000 (Case T-188/98 *Kuijer v Council* [2000] ECR II-1959, 'the *Kuijer* judgment') the Court of First Instance annulled the decision of 28 September 1998, as amended by the decision of 18 May 1999. The Court found, first, that the decision did not satisfy the requirement to state reasons under Article 190 of the EC Treaty (now Article 253 EC) and, second, that, in refusing to grant access to passages in the documents requested that were not covered by the public interest exception laid down in Article 4(1) of Decision 93/731, the Council had applied that exception in a disproportionate manner.
- 18 Following the *Kuijer* judgment, the Council adopted a further decision on 5 June 2000 ('the contested decision'). The Council explained that the reports referred to in the application for access had certain features in common which made it necessary to treat them in the same way for the purposes of Decision 93/731; that they contained very detailed information on the general political situation and the protection of human rights in third countries, which could be construed as criticism of those countries; that the reports were potentially damaging to the European Union's relations with those countries and that assessment of the possible consequences of their disclosure for those relations was a matter falling within its political responsibilities; that in the present case there was a real risk that disclosing the reports would be prejudicial to relations with third countries and could jeopardise any improvement in the situation of asylum seekers from those countries and create problems with other states in a similar situation to the countries in question. The Council then went on to review briefly the contents of each of the documents at issue and concluded that, with the exception of the list of contact persons, which was forwarded to the applicant by letter of 9 October 2000, without the names and telephone and fax numbers of those persons, none of them could be disclosed to him. The documents were covered by the exception in Article 4(1) of Decision 93/731, since disclosing them could undermine the European Union's relations with the country concerned and, in certain cases, endanger the people who had provided some of the information they contained.

Procedure and forms of order sought by the parties

- 19 By application lodged at the Registry of the Court of First Instance on 11 August 2000, the applicant brought the present action.
- 20 The applicant waived his right to lodge a reply and the written procedure closed on 5 January 2001. Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure.
- 21 By order of 20 March 2001, in accordance with Article 65(b), Article 66(1) and the third paragraph of Article 67(3) of the Rules of Procedure of the Court of First Instance, the Court called on the defendant to produce the documents at issue but ruled that those documents would not be communicated to the applicant in the course of these proceedings. That request was complied with.
- 22 The parties presented oral argument and gave replies to the Court's questions at the hearing on 12 July 2001.
- 23 The applicant claims that the Court should:

— annul the contested decision;

- require the Council to produce all the documents at issue;

- order the Council to pay the costs, including costs incurred by any interveners.

24 The Council contends that the Court should:

- dismiss the application;

- order the applicant to pay the costs.

Law

25 The applicant is seeking annulment of the contested decision in so far as it refuses his request for access to certain CIREA documents. The following documents are requested:

- (a) joint Common Foreign and Security Policy (CFSP) reports, analyses or evaluations drawn up by or with CIREA between 1994 and 1998, dealing

with the situation in third countries or regions from which a large number of asylum seekers originate or in which they reside;

(b) all reports concerning joint missions or reports sent to CIREA by one or more Member States concerning missions carried out in third countries by that Member State or those Member States;

(c) the list of contact persons without their telephone or fax numbers and any subsequent changes to the list.

26 The applicant puts forward three pleas in law in support of his application. By the first plea he alleges infringement of Decision 93/731, in particular of Article 4(1) thereof, and of the principle of proportionality. The second plea concerns infringement of the obligation to state reasons. By the third plea he alleges infringement of a fundamental principle of Community law, according to which European citizens must be given the widest and most complete access possible to the documents of the Union.

27 It is appropriate to consider the plea alleging breach of Decision 93/731, in particular Article 4(1) thereof, and of the principle of proportionality.

Arguments of the parties

The reports at issue

- 28 The applicant disputes that the reports at issue have certain common features which enable them to be treated in the same way for the purposes of Decision 93/731 and invokes in that regard paragraphs 39 and 40 of the *Kuijer* judgment.
- 29 In his view, those reports contain factual information rather than criticism of the third countries concerned relating to sensitive issues such as their general political situation and the protection of human rights.
- 30 Thus, there is no risk that disclosure of the reports concerned would prejudice the European Union's relations with those countries. The applicant submits in that regard, first, that relations between the Union and a number of those countries are already difficult, or even non-existent, as a result of action taken by the Union in the field of human rights. Second, the political situation in a number of the countries in question has changed significantly since the reports were drawn up. Third, the Council has not explained the nature of the alleged risk. Fourth, the Council has failed to indicate, for each of the documents concerned, how disclosure would entail a specific and real risk of prejudicing political relations with the third country concerned.
- 31 Finally, the applicant argues that the contested decision infringes the principle of proportionality and that the Council incorrectly assesses the danger that

disclosure of the reports at issue would represent for international relations, in particular, the Council has not examined the possibility of granting partial access to those reports.

- 32 The Council denies that it has infringed either Article 4(1) of Decision 93/731 or the principle of proportionality.
- 33 First, as a preliminary point, the Council states that, as it indicated in the third paragraph of the contested decision, the reports on the third countries concerned in this case have common features which make it necessary to treat them in the same way for the purposes of Decision 93/731.
- 34 The Council disagrees on that point with the Court's assessment of the facts in the *Kuijer* judgment. It considers that the Court misassessed the facts in the case as regards the possibility of granting access to the passages in the reports requested that might not be covered by the exception.
- 35 It also disagrees with the Court's argument based on the examination of the 10 reports drawn up for CIREA by the Danish authorities (paragraphs 40 to 42 and 57 of the judgment). It explains that, in paragraph 57 of the *Kuijer* judgment, the Court apparently infers from the 10 Danish reports drawn up for CIREA, to which access was granted and a large part of which consists of descriptions and findings of fact which clearly do not fall under the exception, that the reports which had not been released had a very similar content and that it would therefore have been possible to blank out the sensitive passages. The Council submits that this reasoning is illogical and argues that the documents released did not contain anything which would have justified their being withheld in whole or in part. If documents of a similar type and nature are not released in whole or in part, it is because there are essential differences and, consequently, the documents do not have the same impact on international relations.

- 36 In that regard, the Council observes that, as the Court of First Instance itself acknowledged in paragraph 37 of the *Kuijer* judgment, it must consider each document on the basis of its actual content. The fact that, out of a group of documents sharing certain common features, some were released and others were not demonstrates precisely that the Council complied with that obligation.
- 37 Furthermore, it argues that a Member State's assessment of the harm which could be caused by the release of a document which it has written itself is not necessarily the same as in the case of a joint report. The Council submits that, in the case of a joint report, a compromise may well have to be found between the differing views of its 15 members.
- 38 Finally, it points out that all the reports in question were drawn up in the context of the political relations of the European Union and of various Member States with third countries. The joint reports were all approved by the Political Committee, as part of the tasks conferred upon it by Article 25 of the Treaty on European Union, within the framework of Title V thereof.
- 39 Second, the Council, taking as its basis paragraph 71 of the judgment in Case T-14/98 *Hautala v Council* [1999] ECR II-2489 ('the *Hautala* judgment'), submits that the contested decision was reached after it had carried out a thorough assessment of the possible consequences that disclosure of the reports concerned could have for the international relations of the European Union, which are among the political responsibilities conferred on the Council by Title V of the Treaty on European Union, and for the smooth operation of the Union's asylum policy.
- 40 Third, the Council argues that, on the basis of the criteria for judicial review laid down by the Court of First Instance in paragraph 72 of the *Hautala* judgment,

there is no reason to fault the assessment which led it to conclude that all the reports in question were covered by the exception referred to in Article 4(1) of Decision 93/731 relating to the protection of the public interest.

- 41 It asserts that all the reports at issue contain very detailed factual information about the situation prevailing in certain third countries, in particular so far as human rights are concerned. On that point, the reports are thus very similar to the document at issue in *Hautala*. Furthermore, like that document, the reports at issue here were produced for internal use only and not with a view to being made public. The Council acknowledges that that fact, in itself, is not a proper reason for refusing access to a document but it states that documents drawn up for internal use are more freely drafted and therefore contain statements which might create tension with some third countries.
- 42 In the case giving rise to the *Hautala* judgment, those circumstances were sufficient for the Court of First Instance to confirm that there was no reason to fault the Council's assessment (*Hautala*, paragraph 74). However, the contested decision contains a much more detailed statement of reasons than the decision at issue in that case.
- 43 The Council also observes that the arguments which the applicant puts forward in paragraphs 21 to 42 of his application concern, in substance, the factors by reference to which the Council assessed the possible consequences of the release of the reports in question, in particular the level of protection of the public interest to be safeguarded or the severity of the damage which could be caused by releasing the documents in question and the likelihood that such damage would actually occur. Since the relevance of those factors is not disputed, the Council concludes that the contested decision is not defective on grounds of misuse of powers or indeed manifest error of assessment.

- 44 As to the applicant's argument that it follows from the case-law that disclosure of a document may be refused only if the Council provides evidence that disclosure is in fact likely to cause actual harm to relations with third countries, the Council contends that particularly in the area of international relations, it would be excessive to require the Council to produce 'hard evidence' of the likelihood that actual harm would in fact be caused. Such evidence would be available only if documents similar to the ones at issue had actually been previously released by the Council and their release had in fact caused actual harm to the European Union's relations with third countries.
- 45 At the hearing, the Council also disputed the relevance of the passage of time in deciding whether or not a document may be released. It argued that disclosure of a document which no longer reflects the current situation in the country in question could create problems with that country, since it might take the view that this gives an inaccurate picture of its current situation.
- 46 Further, the Council stated that public access to the reports in question might have an impact on the very existence of that type of report. Since the language in which they are drafted is clear and forthright, their release might endanger the persons who provided the information.
- 47 Finally, the Council contests the claim that it failed to consider the possibility of granting partial access to the documents at issue. It submits that the partial release of the list of contact persons is proof to the contrary and that the contested decision is consistent with the findings in the *Kuijer* judgment.

The list of contact persons

- 48 The applicant observes that, in contending that it is for the Member States to decide whether the names of national officials are to be made publicly available, the Council appears to be seeking to evade its obligations of transparency and openness. He also disputes the Council's submission that, if such details were disclosed, the Member States would not provide information of that kind in the future. In any event, coordination between Member States and between Member States and the Council or the exchange of information between administrations cannot automatically take precedence over openness and transparency, which are of fundamental interest for citizens.
- 49 The Council contends that it partially acceded to the request made by the applicant, who had confirmed that he did not wish to have access to the telephone and fax numbers of the persons on the list of contact persons. As to those persons' names, is quite apparent from the context of the contested decision that the arguments put forward in the decision notified to the applicant on 18 May 1999 have not ceased to be valid.
- 50 The Council states that it was not convinced by the applicant's arguments in the proceedings resulting in the *Kuijer* judgment, reiterated at paragraph 77 of his application in this action. The Council explains that it has decided to maintain its position on that point and to refuse to grant access to certain parts of the document on the ground that their disclosure could undermine the public interest represented by the functioning of the exchange of information and the coordination between Member States in the field of asylum matters, which the Council has a duty to protect under Article 4(1) of Decision 93/731 (order of the President of the Court of First Instance in Case T-610/97 R *Carlsen and Others v Council* [1998] ECR II-485, paragraph 48).

- 51 At the hearing, in response to a question put by the Court, the Council explained that it dismissed the possibility of granting access to the persons' names and to other information already made available to the public by certain Member States, on the ground that different stances taken by the latter in that regard could be seen as evidence of a degree of dissension between its members.

Findings of the Court

- 52 It is first necessary to point out that the principle of transparency is intended to secure a more significant role for citizens in the decision-making process and to ensure that the administration acts with greater propriety, efficiency and responsibility vis-à-vis the citizens in a democratic system. It helps to strengthen the principle of democracy and respect for fundamental rights (see, to that effect, Case T-309/97 *Bavarian Lager v Commission* [1999] ECR II-3217, paragraph 36).
- 53 Moreover, when the Council decides whether the public interest may be undermined by releasing a document, it exercises a discretion which is among the political responsibilities conferred on it by provisions of the Treaties. In those circumstances, review by the Court of First Instance must be limited to verifying whether the procedural rules have been complied with, the decision at issue is properly reasoned and the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.

- 54 Next, it is appropriate to set out the conditions in which the public may be denied access to a document.
- 55 First, the legal rule is that the public is to have access to the documents of the institutions and the power to refuse access is the exception. A decision denying access is valid only if it is based on one of the exceptions provided for in Article 4 of Decision 93/731. According to settled case-law, these exceptions must be construed and applied restrictively so as not to defeat the general principle enshrined in that decision (see Case T-174/95 *Svenska Journalistförbundet v Council* [1998] ECR II-2289, paragraph 110, and, in relation to the analogous provisions of Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58), Case T-105/95 *WWF UK v Commission* [1997] ECR II-313, paragraph 56).
- 56 Second, it is apparent from the case-law that the Council is obliged to consider in respect of each document requested whether, in the light of the information available to it, disclosure is in fact likely to undermine one of the public interests protected by the exceptions provided for in Article 4(1) of Decision 93/731 (*Svenska Journalistförbundet v Council*, paragraph 112). If those exceptions are to apply, the risk of the public interest being undermined must therefore be reasonably foreseeable and not purely hypothetical.
- 57 Third, Article 4(1) of Decision 93/731 must be interpreted in the light of the principle of the right to information and the principle of proportionality. Consequently, the Council must consider whether it is appropriate to grant partial access, confined to material which is not covered by the exceptions. In exceptional cases, a derogation from the obligation to grant partial access might

be permissible where the administrative burden of blanking out the parts that may not be disclosed proves to be particularly heavy, thereby exceeding the limits of what may reasonably be required.

- 58 In the present case, the Court must therefore consider whether the contested decision was adopted in accordance with the principles set out above.
- 59 In the contested decision, the Council found that the reports at issue, first, had certain common features, which justified treating them in the same way for the purposes of applying Decision 93/731. The Council went on to refuse access to the reports at issue on the ground that, since their contents could be construed as criticism of the third countries in question, in particular as regards their political situation and the situation concerning human rights, their disclosure could be prejudicial to the European Union's relations with those countries.
- 60 Although it is the case that some documents, such as reports containing sensitive military information, may have sufficient features in common for their disclosure to be refused, that is not the case of the documents at issue. In such circumstances, the mere fact that certain documents contain information or negative statements about the political situation, or the protection of human rights, in a third country does not necessarily mean that access to them may be denied on the basis that there is a risk that the public interest may be undermined. That fact, in itself and in the abstract, is not a sufficient basis for refusing a request for access.

- 61 Rather, refusal of access to the reports in question must be founded on an analysis of factors specific to the contents or the context of each report, from which it can be concluded that, because of certain specific circumstances, disclosure of such a document would pose a danger to a particular public interest.
- 62 As regards their contents, the reports at issue do not concern directly or primarily the relations of the European Union with the countries concerned. They contain an analysis of the political situation and of the position as regards the protection of human rights in general in each of those countries and also refer to the ratification of international treaties concerning human rights. They also contain more specific information on the protection of human rights, the possibility of internal migration to escape persecution, the return of nationals to their country of origin and the economic and social situation.
- 63 The information frequently relates to facts which have already been made public, for example how the political, economic or social situation has developed in the country concerned. Likewise, the details relating to the protection of human rights are frequently at one with facts that are common knowledge and their exposition does not entail any politically sensitive appraisal on the part of the Council.
- 64 Thus, neither the nature nor the content of the reports is consonant with the reasons put forward by the Council in the contested decision to substantiate its refusal of the application for access.

- 65 Furthermore, as regards the context of the reports, the Court must point out that certain factors may remove any risk of negative repercussions which disclosure of the reports might entail for the European Union's relations with the countries concerned.
- 66 Thus, for example, a document may contain an analysis of the situation as it was in a country at a given time and that country may have undergone significant political changes. It may also prove to be the case that the European Union itself, through its institutions, in particular the Council and its presidency, has already officially criticised the internal situation of the countries concerned. Furthermore, the relations of the European Union with those countries may be such that they cannot be damaged by disclosure of any criticism made by the Union of the internal situation of the countries or their respect for human rights. Finally, the observations in the reports may be positive for the country concerned.
- 67 One or more of these various situations may be seen in several of the reports at issue, in particular, by way of example, the reports concerning the former Zaire (documents 4987/95 and 12917/1/95 REV 1) and Sri Lanka (document 4623/95).
- 68 Moreover, the argument which the Council has based on paragraphs 73 and 74 of the *Hautala* judgment is not relevant. In that case, the Court found that there was no reason to fault the assessment made by the Council, which had refused to grant access to a report of a Council working party on conventional arms exports, containing, in particular, exchanges of views between the Member States on the issue of respect for human rights in the country of final destination of the arms. The Court confined itself to stating that the Council's refusal to consider whether partial access should be granted was in breach of Article 4(1) of Decision

93/731, interpreted in the light of the principle of the right to information and the principle of proportionality.

- 69 Unlike in the *Hautala* case, where the report at issue was different from those in the present case, the Court has, in this instance, ordered production of the reports at issue and has been able to ascertain that disclosure of a large part of their contents clearly cannot be regarded as likely to give rise to tension with the third countries concerned.
- 70 In those circumstances, the Council therefore committed a manifest error of assessment in maintaining that the reasons on which it relied in order to refuse access to the reports at issue apply to the documents in their entirety.
- 71 However, the Court acknowledges that public interest grounds may justify preserving the confidentiality of certain passages of several of the reports at issue, where, for example, the people who have provided the information are cited, a refusal to disclose those passages being, to that extent, legitimate. Nevertheless, in such cases, in accordance with the case-law cited above, the Council must grant partial access to the documents in question. Granting partial access, confined to the passages not covered by the exception in Article 4(1) of Decision 93/731, would have enabled the Council to protect the public interest, which it pleaded in support of its refusal to grant access to the entirety of each of the reports at issue, without undermining the principle of transparency and while observing the principle of proportionality.
- 72 It is not for the Court to act in the place of the Council and point out the passages in respect of which it amounted to a manifest error of assessment to refuse the application for access on the grounds relied on in the contested decision. However, the Council must, when giving effect to this judgment, take account of the Court's observations in that regard.

- 73 Furthermore, as regards the list of contact persons, it must be found that the Council refused to consider the possibility of granting access to information, in particular the names of those persons, which had been made available to the public by certain Member States. It based its view on the fact that partial access would reveal that the Member States had assessed the situation in different ways and would publicise what might seem to be a lack of agreement between its members. However, it did not establish to what extent such a consideration might fall within the ambit of the exceptions provided for in Article 4 of Decision 93/731.
- 74 The Council thus erred in law when it refused the applicant's request regarding the information on the list of contact persons to which access is permitted in certain Member States. In refusing him access to that information, the contested decision was in breach of the principle of proportionality.
- 75 It follows from the foregoing that the contested decision must be annulled and it is not necessary to rule on the merits of the other pleas put forward by the applicant.

Costs

- 76 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must, having regard to the form of order sought by the applicant, be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Annuls the Council's decision of 5 June 2000 refusing the applicant access to certain reports drawn up by the Centre for Information, Discussion and Exchange on Asylum, to certain reports of joint missions or reports of missions undertaken by Member States sent to the Centre, and to information contained in the list of persons responsible in the Member States for asylum applications to which access is permitted in certain Member States, with the exception of those persons' telephone and fax numbers;**
2. **Orders the Council to pay the applicant's costs and to bear its own costs.**

Mengozzi

Tiili

Moura Ramos

Delivered in open court in Luxembourg on 7 February 2002.

H. Jung

Registrar

P. Mengozzi

President