Court of Justice of the European Communities: Right of Access to Information Upheld

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The European Court of Justice (ECJ) has upheld the judgment of the Court of First Instance annulling the Council of the European Union's decision to deny Ms Heidi Hautala access to a report on arms exports.

The Council had refused Ms Hautala's request to access the report (which was produced under the Common Foreign and Security Policy) in 1997 on the grounds that the disclosure of the sensitive information contained therein "could be harmful for" the EU's relations with non-member states. According to Article 4 of Council Decision 93/731/EC on public access to Council documents, "[A]ccess to a Council document shall not be granted where its disclosure could undermine", inter alia, the protection of the public interest as regards public security and international relations. The report to which Ms Hautala was denied access concerned the consistent implementation of agreed common criteria for arms exports, and indeed, it aimed to enhance consistency in the implementation of those criteria.

The Court of First Instance reasoned that while Decision 93/731 does not explicitly require the Council to consider whether partial access to documents may be granted, such a possibility is not expressly prohibited either. The Court held a fortiori that the spirit of the Decision as a whole, i.e., the principle of the right to information and the principle of proportionality "must be borne in mind for the purpose of interpreting Article 4 of that decision." It went on to state that the Council is obliged to examine whether partial access should be granted to information not covered by the established exceptions to the general principle.

The ECJ, in upholding the Court of First Instance's annulment of the Council's decision to refuse access to the contested report, held the objectives of Decision 93/731 as being (i) "to ensure the internal operation of the Council in conformity with the interests of good administration" and (ii) "to provide the public with the widest possible access to documents held by the Council, so that any exception to that right of access must be interpreted and applied strictly." It continued by stating that the Council's interpretative approach "would have the effect of frustrating, without the slightest justification, the public's right of access to the items of information contained in a document which are not covered by one of the exceptions listed in Article 4(1) of Decision 93/731. The effectiveness of that right would thereby be substantially reduced."

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Case C-353/99 P, Council of the European Union v. Heidi Hautala, Judgment of the European Court of Justice of 6 December 2001

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