JUDGMENT OF THE COURT (Sixth Chamber)

22 January 2004 *

In Case C-353/01 P,

Olli Mattila, represented by Z. Sundström, asianajaja, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 12 July 2001 in Case T-204/99 *Mattila* v *Council and Commission* [2001] ECR II-2265, seeking to have that judgment set aside,

the other parties to the proceedings being:

Council of the European Union, represented by J. Aussant and M. Bauer, acting as Agents, with an address for service in Luxembourg,

and

* Language of the case: English.

Commission of the European Communities, represented by C. Docksey and U. Wölker, acting as Agents, with an address for service in Luxembourg,

defendants at first instance,

THE COURT (Sixth Chamber),

composed of: C. Gulmann, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues (Rapporteur), J.-P. Puissochet, R. Schintgen and F. Macken, Judges,

Advocate General: P. Léger,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 26 February 2003, at which Mr Mattila was represented by Z. Sundström and M. Kauppi, asianajaja, the Council by J. Aussant and the Commission by X. Lewis, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 September 2001, Mr Mattila brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 12 July 2001 in Case T-204/99 *Mattila* v *Council and Commission* [2001] ECR II-2265 ('the contested judgment'), by which it dismissed his application seeking principally the annulment of the decisions of the Commission of the European Communities and the Council of the European Union of 5 and 12 July 1999 respectively, refusing to grant him access to certain documents ('the contested decisions').

Legal background

2 The contested judgment stated:

'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, hereinafter "the Code of Conduct") aimed at establishing the principles governing access to the documents they hold.

2 The Code of Conduct lays down the following general principle:

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

3 It defines "document" as meaning "any written text, whatever its medium, which contains existing data and is held by the Council or the Commission".

4 The circumstances which may be relied on by an institution to justify refusing an application for access to documents are set out in the Code of Conduct in the following terms:

"The institutions will refuse access to any document where disclosure could undermine:

— the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),

...

They may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings."

5 The Code of Conduct further provides:

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

6 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).

7 Article 4 of Decision 93/731 lists the circumstances which may be relied on by the Council in order to justify its refusing an application for access to documents. They are the same as those set out in the Code of Conduct.

8 The Commission, for its part, in order to put its commitment into effect, adopted Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58), Article 1 of which formally adopts the Code of Conduct, the text of which is set out in an annex to the decision.'

Facts of the dispute

3 The facts of the dispute were summarised in the contested judgment as follows:

'9 On 8 March 1999, the applicant, through his legal adviser, wrote to the Commission's Directorate-General for External Relations: Relations with the New Independent States, Common Foreign and Security Policy, External Service, requesting access to the following documents:

— "EU-Russia Joint Committee Agenda, dated 17 February 1997, Doc. Séance No 32 (Working Party on Eastern Europe and Central Asia);

— Russia, Preparation of the First Cooperation Council under the Agreement on Partnership and Cooperation, 8 December 1997, dated 14 November 1997 (IA.C.2/SG/jhp D(97));

— First Cooperation Council EU-Russian Federation (Brussels, 27 January 1998), draft annotated agenda dated 9 January 1998;

— Annex to the minutes of the meeting of the EU-Russia Cooperation Committee, dated 7 April 1998, Doc. Séance No 23/98 (Working Party on Eastern Europe and Central Asia);

— Annotated agenda of the meeting of the EU-Russia Cooperation Committee, dated 20 April 1998, Doc. Séance No 35/98 (Working Party on Eastern Europe and Central Asia)."

10 By letter of the same date, received on 12 March 1999, the applicant addressed a request to the Council for access to the following documents:

— "Outcome of Proceedings of the Working Party on Eastern Europe and Central Asia on 23 September 1997, dated 24 September 1997, No 10859/97;

— EU-USA background note, Doc. Séance No 27/98. (Document from the EU III section);

— First EU-Ukraine Cooperation Council, Brussels, 8-9 June 1998, annotated draft agenda dated 15 May 1998. Doc. Séance No 40/98 (Working Party on Eastern Europe and Central Asia);

— COREU: COEST/CODIA Report on the meeting between the Troika of the Working Party on Eastern Europe and Central Asia and the United States on 10 February 1998 CFSP/SEC/0203/98;

— COREU: COEST Caspian Energy: Draft EU – US statement of 11 May 1998 CFSP/PRES/1239/98;

— COREU: COCEN COEST: Russia – Latvia: Meeting with Mr Primakov on 8 May 1998 CFSP/PRES/LON/1244/98."

11 Since some of the documents requested had been drawn up jointly by the two institutions, informal contacts took place between the Council and Commission with a view to coordinating the replies to be given to those requests.

12 By letter of 19 April 1999, the Council informed the applicant of its decision to grant access to document 10859/97, the first document mentioned in the applicant's list for the attention of the Council. As regards the other documents to which access had been sought, the Council rejected the applicant's request, stating that "each of these documents concerns negotiations with certain third countries. Disclosure of these texts could be detrimental to the EU position in these negotiations or possibly to any future negotiations between the EU and these or other third countries". The Council also stated that the documents in question could not be made available by virtue of Article 4(1) of Decision 93/731.

13 By letter of the same date the Commission refused to grant access to the documents sought by the applicant. It invoked the public interest exception in the Code of Conduct and referred to the need to keep discussions between the European Union and non-member countries confidential.

14 By letters of 30 April 1999 the applicant, through his legal adviser, made confirmatory applications to the two institutions pursuant to Article 7(1) of Decision 93/731 and Article 2(2) of Decision 94/90, in order to obtain access to the documents which had been denied him.

15 By letter of 5 July 1999 addressed to the applicant's legal adviser, the Commission refused the applicant's confirmatory application. The Secretary-

General stated, first of all, that the fourth document mentioned (Annex to the minutes of the meeting of the EU-Russia Cooperation Committee, of 7 April 1998, Doc. Séance No 23/98 (Working Party on Eastern Europe and Central Asia)) could not be identified. He then went on:

"Having examined your request for the other documents, I have to confirm that I cannot make these documents available to you, as they are covered by the mandatory exception of the protection of the public interest, in particular international relations. This exception is expressly foreseen in the Code of Conduct concerning public access to Commission and Council documents adopted by the Commission on [8] February 1994.

Each of the documents requested contains detailed information on the position the European Union intends to take in its relations with Russia. Disclosure of these documents can thus undermine the position of the EU in current and future negotiations with this third country and [they] therefore cannot be made available to you.

These documents have been prepared by the Commission services for the use of the respective Council bodies. As the Council has refused access to similar documents for the same reasons as stated above, the Commission is not in a position, for that reason as well, to give you access to the documents."

16 The General Secretariat of the Council prepared a draft reply which was first considered by the "Working Party on Information" of the Permanent Representative's Committee (Coreper) at its meeting on 23 June 1999. All the delegations approved the General Secretariat's draft response, refusing to disclose the documents on the basis of Article 4(1) of Decision 93/731. The draft reply then appeared as an "I-item" on the agenda for the 30 June 1999 meeting of Coreper II, which consists of the permanent representative

ambassadors of the Member States to the European Union, and then as an "A-item" on the Council's agenda; it was approved by the Council on 12 July 1999. The General Secretariat notified the applicant of the negative response by letter of 14 July 1999. That letter reads as follows:

"The Council carefully considered the abovementioned documents and came to the following conclusions:

1. DS 27/98: EU-USA background note on Ukraine, drafted by the services of the European Commission for examination by the Working Party on Eastern Europe and Central Asia. The document describes in a very precise manner the EU position and priority objectives for the negotiations to be conducted with the United States vis-à-vis Ukraine. Disclosure of this strategy could be harmful to the EU interests in these negotiations as well as in other similar negotiations with third countries.

Furthermore, disclosure of the comments and considerations as they are contained in the document could have a negative effect on the EU relations with Ukraine.

For these reasons, the Council, in agreement with the European Commission, decided that the document cannot be released by virtue of Article 4(1) of... Decision [93/731] (international relations).

2. DS 40/98: annotated draft agenda for the first Cooperation Council EU-Ukraine (8/9 June 1998) put to the Working Party on Eastern Europe and Central Asia by the services of the European Commission.

The document contains extensive comments, including EU positions and objectives, on each of the items on the agenda. Disclosure of these comments could be harmful to the EU's position in future Cooperation Council meetings as well as to its relations with Ukraine in general.

The Council therefore decided, in agreement with the European Commission, that the document cannot be released by virtue of Article 4(1) of... Decision [93/731] (international relations).

3. COREU CFSP/SEC/0203/98: confidential report of the meeting between the Troika of the Eastern Europe/Central Asia Working Group and the United States (Washington, 10 February 1998).

The document contains extensive comments revealed by the US delegation at the Troika meeting, which took place in a confidential framework. It also contains EU and US assessments of third countries' situations and policies, disclosure of which could jeopardise the EU negotiating position with these countries.

The Council therefore decided that the document cannot be made available by virtue of Article 4(1) of... Decision [93/731] (international relations).

4. COREU CFSP/PRES/1239/98: COEST Caspian Energy: Draft EU/US statement. This confidential document was established in preparation of the EU negotiating position with the United States on the subject of Caspian energy. Disclosure of the information contained in the document could be harmful to the EU interests in these still ongoing negotiations as well as in other similar negotiations to be conducted in the future.

The Council therefore decided that the document cannot be made available by virtue of Article 4(1) of... Decision [93/731] (international relations).

5. COREU CFSP/PRES/LON/1244/98: COEST: Russia/Latvia: meeting with Mr Primakov (8 May 1998). This document contains comments revealed by Mr Primakov in the confidential framework of a bilateral meeting between Foreign Ministers.

The document furthermore contains EU and Russian assessments of third countries' situations and policies, as well as of negotiations taking place with the third countries in question. Disclosure of these assessments could jeopardise the EU and Russian relations as well as the negotiating positions with these countries.

The Council therefore decided that the document cannot be made available by virtue of Article 4(1) of... Decision [93/731] (international relations).'"

The contested judgment

4 On 23 September 1999 Mr Mattila brought an action before the Court of First Instance seeking principally the annulment of the contested decisions.

5 By the contested judgment the Court of First Instance dismissed, first, as manifestly inadmissible, the sixth, seventh and eighth pleas relating to breach of the 'principle of independent review', misuse of powers and breach of the duty of cooperation and, second, as unfounded, the five other pleas relied on by Mr Mattila alleging manifest error of assessment in interpreting the exception concerning the protection of international relations and breach of the principle of proportionality, in that partial access to the documents in question had not been granted or even considered (first and second pleas); breach of the principle that an application for access to documents must be considered with regard to each individual document and failure in the duty to state reasons (third and fourth pleas); and failure to take account of his private interest in having access to the documents (fifth plea). The Court of First Instance also dismissed Mr Mattila's application for the production of documents.

6 In answer to the second plea, the Court of First Instance held inter alia:

'68 It is clear from the judgment in *Hautala* v *Council* that the principle of proportionality permits the Council and the Commission, in particular cases

where the volume of the document or the passages to be removed would give rise to an unreasonable amount of administrative work, to balance the public's interest in gaining access to those fragmentary parts against the burden of work so caused (paragraph 86 of the judgment). The Council and the Commission could thus, in those particular cases, safeguard the interests of good administration.

69 Similarly, whilst, in accordance with *Hautala* v *Council*, the Council and the Commission are required to consider whether access ought to be granted to information not covered by the exceptions, the principle of sound administration requires that the duty to grant partial access should not result in an administrative burden which is disproportionate to the applicant's interest in obtaining that information. In light of this, it is clear that the Council and the Commission are in any event entitled to refuse partial access in cases where examination of the documents in question shows that partial access would be meaningless because the parts of the documents that could be disclosed would be of no use to the applicant.

70 During the course of these proceedings, the Council and the Commission have asserted that partial access was not possible in this case, because the parts of the documents to which access could have been granted contained so little information as to be of no use to the applicant. At the hearing, the Council submitted that the documents in question cannot generally be taken individually, and that their component parts are not easily removable.

71 The defendant institutions do not therefore dispute that they failed to consider the possibility of granting partial access to the documents in question. Nevertheless, having taken account of the explanations they have proffered and in view of the nature of the documents in question, it seems that, had they done so, they would not in any event have agreed to partial access. Given the particular circumstances of the present case, the fact that

the defendant institutions failed to consider the question of granting partial access had no effect on the outcome of their examination (see, to that effect, Case T-75/95 *Günzler Aluminium* v *Commission* [1996] ECR II-497, paragraph 55, and Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, paragraph 199).

72 In this connection, it is appropriate to stress the fact already mentioned that the documents at issue were prepared in the context of negotiations and contain information on the European Union's position as regards its relations with Russia and Ukraine and on negotiations to be held with the United States on the subject of Ukraine. The fact that the documents are sensitive is corroborated by the applicant's statement at the hearing to the effect that the Supreme Court of Finland condemned him for having communicated to Russia certain other documents whose content was almost identical to that of the documents to which access was denied him by the defendant institutions.

73 Secondly, the Council's assertion that the documents in question cannot easily be taken separately and that their component parts are not easily removable is uncontested. It must be observed in this connection that the applicant has no basis for alleging that document COREU CFSP/PRES/1239/98 contains, inter alia, a draft of an EU/United States statement which, precisely because of its public nature, ought to have been divulged. The fact that that document contains information which was the subject of a public statement does not mean that the Council was under an obligation to divulge the draft of that statement which, by definition, was purely a preparatory document intended for internal use only. As the Council emphasised during the hearing, there are, generally speaking, differences between the draft of a statement and the final text that may point up differences of opinion which must remain confidential. Furthermore, the public's right to be informed is adequately protected by its right of access to the final version of the statement.

74 It follows that the defendant institutions did not infringe the principle of proportionality by failing to grant partial access to the documents at issue.'

The appeal

7 Mr Mattila states that he repeats in his appeal all the pleas raised before the Court of First Instance and that he had requested the latter to:

— annul the decisions of the Council and the Commission which the present application concerns;

— invite the Council and the Commission to reconsider their position and give him access to the requested documents listed in the application letters;

— give access, at least partial access, to such documents after cancelling or editing the sections which may justifiably qualify as liable to prejudice the international relations of the European Community;

— order jointly the Council and the Commission to pay the costs.

8 The Council contends that the Court should:

— dismiss the appeal as inadmissible in so far as the Court is asked to invite the Council and the Commission to reconsider their position and give the appellant access to the requested documents listed in the application letters and to give access, at least partial access, to such documents after cancelling or editing the sections which may justifiably qualify as liable to prejudice the international relations of the European Community;

— dismiss the rest of the appeal as unfounded;

— order the appellant to pay the costs of these proceedings.

9 The Commission contends that the Court should:

— declare the appeal wholly inadmissible, and

— order the appellant to pay the costs of these proceedings,

or in the alternative,

— declare the appeal inadmissible in part in so far as the Court has been requested to issue directions to the institutions and to re-examine the ruling on the admissibility of the pleas alleging breach of duty of independent review, misuse of power, and failure to comply with the duty to cooperate, and

— dismiss the remainder of the appeal, and

— order the appellant to pay the costs of these proceedings.

Admissibility of the appeal

Arguments of the parties

10 The Council asserts that the appeal is manifestly inadmissible in so far as Mr Mattila requests the Court to call on the Council and the Commission to grant him at least partial access to the documents at issue (points 2 and 3 of the appellant's form of order). Neither the Court of First Instance nor the Court of Justice is entitled, when exercising its power of judicial review, to issue directions to the institutions or to assume the role assigned to them, including in relation to access to documents.

11 The Council adds that it is for the Court to assess whether the appeal otherwise meets the requirements of the case-law, according to which an appeal cannot be directed merely at re-examination of the application submitted to the Court of First Instance. Mr Mattila essentially confines himself to repeating the arguments

previously submitted to the Court of First Instance, which were addressed in the contested judgment. The only new legal argument relied on by Mr Mattila, based on the Opinion of Advocate General Léger in Case C-353/99 P *Council* v *Hautala* [2001] ECR I-9565, concerns the question of partial access to the documents.

12 The Commission considers that the appeal is manifestly inadmissible. In disregard of the requirements of the case-law, the appeal essentially repeats the arguments already submitted to and addressed by the Court of First Instance, and thus consists essentially of a request for re-examination of the original application. Contrary to Mr Mattila's arguments, the issue of proportionality and partial access was fully argued by the parties and considered by the Court of First Instance on the basis of its reasoning in Case T-14/98 *Hautala* v *Council* [1999] ECR II-2489, which has been since confirmed by the Court of Justice in *Council* v *Hautala*.

13 Alternatively, the Commission submits, like the Council, that the second and third heads of claim are clearly inadmissible.

Findings of the Court

14 As regards the argument relating to the partial inadmissibility of the form of order, it is clear from paragraph 7 of the present judgment that by his appeal Mr Mattila asks the Court, first, to annul the contested decisions, second, to invite the Council and the Commission to reconsider their position and give him access to the requested documents as listed in his letters of 8 March 1999, third, to grant

him at least partial access to the documents after cancelling or editing the sections which may justifiably qualify as liable to prejudice the international relations of the European Community and, fourth, to order the Council and the Commission jointly to pay the costs.

15 As the Court of First Instance held in paragraph 26 of the contested judgment, the Community judicature is not entitled, when exercising judicial review of legality on the basis of Article 230 EC, to issue directions (see in particular, in respect of an appeal, Case C-5/93 P *DSM* v *Commission* [1999] ECR I-4695, paragraph 36).

16 In those circumstances, the appeal is inadmissible in so far as by its second and third pleas the Court is requested to invite the Council and Commission to reconsider their position and grant the appellant access to the documents at issue, or to grant him at least partial access to the documents after cancelling or editing the sections which may justifiably qualify as liable to prejudice the international relations of the European Community.

17 As regards the argument of the inadmissibility of the various grounds of appeal, it will be dealt with during the consideration of each of those grounds, which are based on, first, manifest error of assessment in interpreting the exception concerning the protection of international relations; second, breach of the principle of proportionality, in that partial access to the documents in question was not granted or even considered; third, breach of the principle that applications for access to documents must be examined separately with regard to each document; fourth, breach of the obligation to state reasons, in so far as the Court of First Instance held that the defendants had provided sufficient, though brief, reasons for rejecting the request for access to documents; fifth, breach of the principles of objectivity and equality in assessing the appellant's interest in having access to the documents; sixth, disregard of the obligation of independent review; seventh, misuse of powers and, eighth, failure to comply with the duty of cooperation.

Second ground of appeal alleging breach of the principle of proportionality, in that partial access to the documents at issue was not granted or even considered

Arguments of the parties

18 By the second ground of appeal, which should be considered first, Mr Mattila essentially complains that the Court of First Instance misapplied Decisions 93/731 and 94/90.

19 By the first part of this ground of appeal Mr Mattila submits that, as is apparent from paragraph 71 of the contested judgment, neither the Council nor the Commission considered the possibility of granting him partial access to the documents in question. The Court of First Instance wrongly refused to annul the contested decisions on this ground, relying, in paragraph 71 of the contested judgment, on the argument that taking account of the explanations proffered by the institutions during the course of the proceedings, and in view of the nature of the documents in question, even if they had carried out such an assessment they would not have been able to grant partial access.

20 Under the second part of this ground of appeal, Mr Mattila asserts that it is for the person requesting access to decide whether the information in a document has any relevance for him and not for the Court of First Instance to decide this solely on the basis of the assertions of the institution in whose possession the document is. The Court of First Instance therefore wrongly accepted that a refusal to grant partial access can be based on, inter alia, the fact that the parts of the documents concerned contain so little information as to be of no use to the appellant (paragraphs 69 to 71 of the contested judgment).

21 The Council observes that Advocate General Léger's Opinion in *Council* v *Hautala* is not directly applicable in the present case in so far as it concerned the general question of partial access to documents, whereas in this case the Court of First Instance considered solely whether the fact that in this case the institutions concerned did not consider the possibility of partial access had an effect on the decision to refuse access altogether. In the light of the information before the Court of First Instance on the content of the documents at issue, it cannot be criticised on this point. The Council points out, in that regard, that the Court of First Instance was not in a position to order the production of the contested documents and had to rely on the description of the structure and content of the documents provided by the parties, since the amendment to Article 67 of the Rules of Procedure of the Court of First Instance (OJ 2000 L 322, p. 4) on that issue only entered into force on 1 February 2001, while the hearing before the Court took place on 21 November 2000.

22 The contested judgment does not call in question the judgment in *Council* v *Hautala*, according to which the Council is bound to consider partial access. In accordance with the case-law, the Court of First Instance merely considered whether the error of law that it found had an effect on the outcome of the examination carried out by the institution concerned. The Court of First Instance therefore rightly held that there was no such effect and that the contested decision should accordingly be upheld.

23 Moreover, the Council points out that while, as a general rule, it is for an applicant to assess whether the passages communicated are of use to him, there may be objective factors which show that partial communication of a document clearly could not provide him with any information that he does not already possess. Such is the position in the present case, and indeed Mr Mattila admitted it to a certain extent. It would be absurd and contrary to the principles of sound administration and proportionality to disclose edited versions of the documents consisting almost entirely of blank pages.

24 According to the Commission, the Court of First Instance clearly considered and applied the principle of proportionality to the particular circumstances of this case. It specifically accepted Mr Mattila's argument that the institutions ought to have considered whether to grant him at least partial access to the documents at issue (paragraph 66 of the contested judgment). It dismissed the Council's argument that *Hautala* v *Council* should not be taken into consideration and it confirmed and applied the analysis in that case both as regards the principle of proportionality and as regards the safeguarding of the interests of good administration.

Findings of the Court

— Admissibility of the second ground of appeal

25 According to settled case-law, it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, in particular, Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 15).

26 Where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements to state reasons under those provisions (see, inter alia, *Interporc* v *Commission*, cited above, paragraph 16).

27 However, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the Court of First Instance, an appeal would be deprived of part of its purpose (see, inter alia, *Interporc* v *Commission*, paragraph 17).

28 As it is clear from paragraphs 18 to 20 of the present judgment, the second ground of appeal satisfies the requirement to state reasons set out above.

Merits of the second ground of appeal

29 As regards the first part of the second ground of appeal, the Court of First Instance held, in paragraph 71 of the contested judgment, that the Council and the Commission had not considered the possibility of granting partial access to the documents at issue.

30 It is clear from the case-law of the Court that those institutions are obliged, under Decisions 93/731 and 94/90 respectively, and in accordance with the principle of proportionality, to examine whether partial access should be granted to the information not covered by the exceptions, in the absence of which a decision refusing access to a document must be annulled as being vitiated by an error of law (in connection with Decision 93/731, see *Council* v *Hautala*, paragraphs 21 to 31).

31 The Court of First Instance wrongly held, in paragraph 71 of the contested judgment, that such an error of law does not result in the annulment of the contested decisions, on the ground that in the light of the explanations proffered by the Council and the Commission in the course of proceedings before the Court, and in view of the nature of the documents at issue, that error had no effect on the outcome of their examination.

32 As the Advocate General explained in paragraphs 59 and 62 of his Opinion, permitting the Council and the Commission to communicate to the appellant the reasons for the refusal to grant partial access to a document for the first time before the Community courts would render redundant the procedural guarantees expressly laid down in Decisions 93/731 and 94/90 and seriously affect the appellant's rights which require that, except in exceptional cases, any decisions adversely affecting a person must state the reasons on which it is based, in order to provide the person concerned with details sufficient to allow him to ascertain whether the decision is well founded or whether it is vitiated by an error which will allow its legality to be contested (see, in particular, Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22).

33 On that ground alone, Mr Mattila's submission that the contested judgment is vitiated by an error of law is well founded.

34 Accordingly, the contested judgment must be annulled in so far as it dismisses Mr Mattila's form of order seeking annulment of the contested decisions, without it being necessary to consider the second part of the second ground of appeal and the other grounds put forward by Mr Mattila in support of his appeal.

— Consequences of the annulment of the contested judgment

35 Under the first paragraph of Article 61 of the Statute of the Court of Justice, if an appeal is well founded, the Court of Justice must set aside the decision of the Court of First Instance. It may then itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance.

36 In the present case, since the state of the proceedings is such as to permit final judgment to be given in the matter, it is appropriate for the Court to give final judgment on the dispute.

37 As it is clear from paragraphs 30 to 32 above, the contested decisions are vitiated by an error of law in that they were adopted without consideration by the Council or the Commission of the possibility of partial access to the documents concerned.

38 In those circumstances the decisions of the Commission and the Council of 5 and 12 July 1999 respectively, refusing the applicant access to certain documents, must be annulled.

Costs

39 Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the

Court is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, applicable to appeals by virtue of Article 118, 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 and the Commission have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the appellant.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 12 July 2001 in Case T-204/99 *Mattila* v *Council and Commission* in so far as it rejects Mr Mattila's form of order seeking annulment of the decisions of the Commission of the European Communities and the Council of the European Union of 5 and 12 July 1999 respectively refusing the appellant access to certain documents;

2. Annuls those decisions;

3. **Dismisses the remainder of the appeal;**

4. **Orders the Council and the Commission to pay the costs relating to both sets of proceedings.**

Gulmann Cunha Rodrigues Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 22 January 2004.

R. Grass

Registrar

V. Skouris

President