



## Reports of Cases

**Joined Cases C-514/11 P and C-605/11 P**

**Liga para a Protecção da Natureza (LPN)**

**and**

**Republic of Finland**

**v**

**European Commission**

(Appeal — Access to the documents of the institutions — Regulation (EC) No 1049/2001 — Third indent of Article 4(2) — Exception concerning the protection of the purpose of inspections, investigations and audits — Environmental information — Regulation (EC) No 1367/2006 — Article 6(1) — Documents relating to the pre-litigation stage of infringement procedures — Refusal of access — Obligation to examine specifically and individually the documents referred to in the request for access — Overriding public interest)

Summary — Judgment of the Court (Fifth Chamber), 14 November 2013

1. *European Union Institutions — Right of public access to documents — Regulation No 1049/2001 — Requirement that the institution should examine the documents specifically and individually — Scope*

*(European Parliament and Council Regulation No 1049/2001, Art. 4(2))*

2. *European Union Institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the purpose of inspections, investigations and audits — Application to documents relating to the pre-litigation stage of infringement procedures — General presumption of application of the exception from the right of access to all documents in the administrative file — Lawfulness — Limits*

*(Art. 226 EC; European Parliament and Council Regulations No 1049/2001, Art. 4(2), third indent, and No 1367/2006, Art. 6(1))*

3. *European Union Institutions — Right of public access to documents — Request for access to environmental information — Application of Regulation No 1367/2006 as a *lex specialis* in relation to Regulation No 1049/2001 — Effect — Exceptions to the right of access to documents — Scope — Application to documents relating to an infringement procedure — Not included*

*(Art. 226 EC; European Parliament and Council Regulation No 1367/2006, Art. 6(1))*

4. *European Union Institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Overriding public interest justifying disclosure of the documents — Distinction drawn from the principle of openness*

*(European Parliament and Council Regulation No 1049/2001, Art. 4(2) and (3))*

5. *Appeals — Grounds — Plea directed against the decision of the General Court on costs — Inadmissible where all other pleas dismissed*

*(Statute of the Court of Justice, Art. 58, second para.)*

6. *Appeals — Grounds — Ground seeking the rectification of the operative part of the judgment of the General Court — Lack of jurisdiction of the Court — Inadmissibility*

*(Rules of Procedure of the Court of Justice, Art. 113(1); Rules of Procedure of the General Court, Art. 84)*

1. See the text of the decision.

(see paras 44, 45)

2. With regard to a request for access to all the documents in the administrative file relating to the pre-litigation stage of an infringement procedure under Article 226 EC, first of all, infringement procedures are regarded, in the first sentence of Article 6(1) of Regulation No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, as a type of procedure which, as such, has characteristics precluding full transparency being granted in that field and which therefore has a special position within the system of access to documents. EU law, in particular Article 226 EC, with regard to infringement proceedings, does not provide for the right for an individual to consult the file, even if the procedure has been brought about by that individual's complaint. Furthermore, a complainant in the context of an infringement procedure does not have the right to require the Commission to take a specific position and to bring an action against its refusal to take action against a Member State.

Moreover, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under EU law and, on the other, to avail itself of its right to defend itself against the objections formulated by the Commission. The disclosure of the documents concerning an infringement procedure during its pre-litigation stage would, in addition, be likely to change the nature and progress of that procedure, given that, in those circumstances, it could prove even more difficult to begin a process of negotiation and to reach an agreement between the Commission and the Member State concerned putting an end to the infringement alleged, in order to enable EU law to be respected and to avoid legal proceedings.

Finally, the documents relating to the pre-litigation stage of an infringement procedure constitute a single category of documents for the purposes of applying the abovementioned general presumption.

Accordingly, it can be presumed that the disclosure such documents risks altering the nature of that procedure and changing the way it proceeds and, accordingly, that disclosure would in principle undermine the protection of the purpose of investigations, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents. Nevertheless, that general presumption does not exclude the possibility of demonstrating that a given document disclosure of which has been requested is not covered by that presumption, or that there is an overriding public interest justifying the disclosure of the document concerned by virtue of Article 4(2) of Regulation No 1049/2001.

(see paras 55, 59, 60, 62-66)

3. The manner in which the two sentences of Article 6(1) of Regulation No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies and their scheme indicate clearly the express intention of the legislature to remove infringement procedures from the scope of Article 6(1) of Regulation No 1367/2006 as a whole.

(see para. 84)

4. See the text of the decision.

(see paras 92, 93)

5. See the text of the decision.

(see para. 100)

6. In the context of an appeal, a request by an appellant seeking not to have the judgment under appeal set aside, even in part, that is to say the operative part thereof, but merely the amendment of one of the grounds of that judgment which will not affect its content or the outcome of the dispute at first instance must be rejected as inadmissible.

Moreover, in so far as a judgment of the General Court contains clerical mistakes or obvious inaccuracies, it is for the General Court alone to correct them, in accordance with paragraph 84 of its Rules of Procedure.

(see paras 105-107)