

Judgment of the Court of Justice, 'Les Verts', Case 294/83 (23 April 1986)

Caption: It emerges from the 'Les Verts' judgment that the action for annulment may lie against measures adopted by the European Parliament intended to have legal effects vis-à-vis third parties. This interpretation of Article 173 of the EEC Treaty (Article 230 of the EC Treaty) derives from the statement that 'the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty'.

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Case 294/83 Parti écologiste ‘Les Verts’ v European Parliament

(Action for annulment - Information campaign for the elections to the European Parliament)

Summary

1. *Procedure - Continuance of proceedings*

2. *Action for annulment - Article 173 of the EEC Treaty - Measures against which actions may be brought - Measures of the Parliament intended to have legal effects vis-à-vis third parties (EEC Treaty, Arts 164 and 173)*

3. *Action for annulment - Court of Auditors' review of the legality of expenditure - Scope (EEC Treaty, Arts 173 and 206a)*

4. *Action for annulment - Natural or legal persons - Measures of direct and individual concern to them - Political groupings not represented in the Parliament but able to take part in the European elections - Measures adopted by the Parliament for the purpose of allocating appropriations intended to finance the pre-election information campaign (EEC Treaty, Art. 173, second paragraph)*

5. *European Parliament - Powers - Creation of a scheme providing for reimbursement of expenses incurred in connection with the campaign for the European elections - Encroachment upon the powers of the Member States – Unlawful (Act concerning the election of the representatives of the Assembly by direct universal suffrage of 20 September 1976, Article 7 (2))*

1. Where an association, the applicant in proceedings before the Court, merges into a new association which is itself a legal person and transmits to it, among its rights and obligations, the benefit of the action that it has brought and where the new association manifests an intention to continue the action, that action may not be declared inadmissible on the ground that the new association does not have the capacity to continue the proceedings.

2. An interpretation of Article 173 of the Treaty which excluded measures adopted by the European Parliament from those which could be contested by means of an action for annulment would lead to a result contrary both to the spirit of the Treaty as expressed in Article 164 and to its scheme, which is to make a direct action available against all measures adopted by the institutions which are intended to have legal effects. Measures adopted by the European Parliament in the context of the EEC Treaty could encroach on the powers of the Member States or of the other institutions, or exceed the limits which have been set to the Parliament's powers, without its being possible to refer them for review by the Court. It must therefore be concluded that an action for annulment may lie against measures adopted by the European Parliament intended to have legal effects vis-à-vis third parties.

Such is the case in regard to the measures adopted by the European Parliament for the purpose of allocating the appropriations entered in its budget to cover the preparations for the election of its members by direct universal suffrage, since those measures have legal effects vis-à-vis both political groupings already represented in the Parliament at the time of their adoption and those not so represented but able to take part in those elections.

3. The Court of Auditors' review under Article 206a of the Treaty relates to the legality of expenditure with reference to the budget and the secondary provision on which the expenditure is based (commonly called 'the basic measure'). Its review is thus distinct from that exercised by the Court of Justice, which concerns the legality of the basic measure.

4. A political grouping which, unlike its rivals, is not represented in the European Parliament but which is able to put up candidates in the direct elections to the Parliament must, in order to avoid inequality in the protection afforded by the Court to groupings competing in the same elections, be regarded as being both directly and individually concerned, within the meaning of the second paragraph of Article 173 of the Treaty, by measures adopted by the Parliament for the purpose of allocating appropriations entered in its budget for the financing of the information campaign preceding those elections, notwithstanding the fact that it could not be identified when the measures concerned were adopted.

5. A scheme set up by the European Parliament for financing the information campaign preceding the European elections which cannot be distinguished from a scheme providing for flat-rate reimbursement of election campaign expenses infringes Article 7 (2) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage and is therefore unlawful, since it encroaches upon powers which, by virtue of that provision, are retained by the Member States.

[...]

JUDGMENT OF THE COURT

23 April 1986*

In Case 294/83

Parti écologiste 'Les Verts', a non-profit-making association, whose headquarters are in Paris, represented by Étienne Tête, special delegate, and Christian Lallement, of the Lyon Bar, with an address for service in Luxembourg at the Chambers of E. Wirion, 1 place du Théâtre,

applicant,

v

European Parliament, represented by Mr Pasetti-Bombardella, Jurisconsult, Roland Bieber, Legal Adviser, Johannes Schoo, Principal Administrator, Jean-Paul Jacqué, Professor at the Faculty of Law and Political Science of the University of Strasbourg, and Jürgen Schwarz, Professor at the University of Hamburg, acting Agents, and by Mr Lyon-Caen, avocat, with an address for service in Luxembourg at its seat, plateau du Kirchberg, BP 1601,

defendant,

APPLICATION for a declaration that two decisions of the Bureau of the European Parliament, the first dated 12 and 13 October 1982 and the second dated 29 October 1983, concerning the allocation of Item 3708 of the budget are void,

THE COURT,

composed of: T. Koopmans, President of Chamber, acting as President, U. Everling, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, O. Due, Y. Galmot, C. Kakouris and T. F. O'Higgins, Judges,

Advocate General: G. F. Mancini

Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 4 December 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 28 December 1983, 'Les Verts - Parti écologiste', a non-profit-making association whose headquarters are in Paris and whose formation was declared to the préfecture de police on 3 March 1980, brought an action under the second paragraph of Article 173 of the EEC Treaty requesting the Court to declare void the decision of the Bureau of the European Parliament dated 12 October 1982 concerning the allocation of the appropriations entered under Item 3708 of the General Budget of the European Communities and the decision of the enlarged Bureau of the European Parliament dated 29 October 1983 adopting rules governing the use of the appropriations for reimbursement of expenditure incurred by the political groupings having taken part in the 1984 European elections.

2 Item 3708 was entered in the general budget of the European Communities for the 1982, 1983 and 1984 financial years, in the section dealing with the European Parliament, under Title 3, concerning expenditure resulting from special functions carried out by the institution (Official Journal 1982, L 31, p. 114, Official Journal 1983, L 19, p. 112, and Official journal 1984, L 12, p. 132). That item provides for a contribution to

the costs of preparations for the next European elections. The remarks concerning the item in the budgets for 1982 and 1983 are identical. It is stated that 'this appropriation is to cover a contribution to the cost of preparations for the information campaign leading up to the second direct elections in 1984' and that 'the Bureau of the European Parliament will lay down the conditions governing this expenditure'. The remark contained in the 1984 budget states that the contribution will be made 'pursuant to the Bureau decision of 12 October 1982'. In total 43 million ECU was allocated to this item.

3 On 12 October 1982, the Bureau, which is composed of the President and the 12 Vice-Presidents of the Parliament, adopted, upon a proposal from the chairmen of the political groups, a decision concerning the allocation of the appropriations entered under Item 3708 (hereinafter referred to as 'the 1982 Decision'). The Bureau sat on that occasion in the presence of the chairmen of the political groups and delegates of the non-attached members. One of the political groups, the Technical Coordination Group, objected to the principle of granting funds to the political groups for the election campaign.

4 That decision, which was not published, provided that the appropriations entered under Item 3708 of the budget of the European Parliament were to be divided each year between the political groups, the non-attached members and a reserve fund for 1984. The division was to be carried out in the following manner: (a) each of the seven groups was to receive a flat-rate allocation of 1 % of the total appropriations; (b) apart from this, each group was also to receive for each of its members 1/434 of the total appropriations remaining after deduction of the flat-rate allocations; (c) each of the non-attached members was also to receive 1/434 of the total appropriations remaining after deduction of the flat-rate allocations; (d) the total of the allocations to the political groups and the non-attached members under the rules set out in (b) and (c) was not to exceed 62% of the total appropriations entered under Item 3708; and (e) each year, an amount equivalent to 31 % of the total appropriations entered under Item 3708 was to be allocated to a reserve fund. It was provided that this reserve fund would be divided, in proportion to the number of votes obtained, among all political groupings obtaining, in the 1984 elections, more than 5% of the valid votes cast in the Member State in which the grouping put up candidates or more than 1 % of the valid votes cast in three or more Member States in which the grouping put up candidates (hereinafter referred to as 'the 1 % clause'). Finally, it was stated that precise details of the allocation of the reserve fund would be decided on at a later stage.

5 On 12 October 1982, the Bureau of the European Parliament, sitting in the same circumstances, also adopted rules governing the utilization by the political groups of the appropriations earmarked for the information campaign preceding the 1984 European elections (hereinafter referred to as 'the 1982 Rules on Utilization of Funds'). Those rules, which have not yet been published, follow the recommendations made by a working party composed of the chairmen of the political groups and chaired by the President of the European Parliament.

6 As regards the utilization of the funds, the rules were as follows. The funds allocated to the political groups were to be used solely to finance activities directly connected with the preparation and implementation of the information campaign for the 1984 elections. The total administrative expenditure (in particular, salaries for temporary staff, rental of office accommodation and major items of office equipment, and telecommunications costs and expenditure) was not to exceed 25 % of the funds allocated. The funds were not to be utilized to purchase immovable property or office furniture. The political groups were to deposit the funds allocated to them in separate bank accounts specifically opened for that purpose.

7 The chairmen of the political groups were to be responsible for ensuring that the funds were used for purposes compatible with the rules adopted. An account of the utilization of the funds was ultimately to be given to the other control bodies responsible for auditing the funds of the European Parliament.

8 As regards accounting records, the rules required that completely separate accounts be kept from those recording income and expenditure pertaining to the political groups' other activities. The political groups were to institute accounting systems meeting certain specified requirements. The systems had to make a distinction between three types of expenditure (administrative expenditure, expenditure on meetings and expenditure on publications and publicity), subdivided by project. Each year, starting from the date of the

first transfer of funds to the political groups, the groups were to publish a report on the utilization of the funds (payments, commitments, reserves) during that period. That report was to be forwarded to the President of the European Parliament and to the chairman of the Committee on Budgetary Control.

9 Under the heading 'Repayment of funds not utilized', it was stated that the funds allocated could be utilized until at the latest 40 days before the date of the elections to cover any payment commitments, provided that payment was actually made not later than 40 days after the date of the elections. Any monies disbursed contrary to those two conditions were to be repaid to the European Parliament within three months of the date of the elections. Where appropriate, the European Parliament could recover any monies owing to it by deducting that amount from the appropriations set aside for the political groups under Item 3706 (other political activities).

10 On 29 October 1983, the enlarged Bureau, which is composed of the Bureau and the chairmen of the political groups, adopted 'Rules governing the use of the appropriations for reimbursement of expenditure incurred by the political groupings having taken part in the 1984 European elections' (Official Journal C 293, p. 1) (hereinafter referred to as 'the 1983 Rules').

11 As had been announced in the 1982 Decision, those rules specified the basis on which the reserve fund of 31 % was to be allocated. The conditions concerning the minimum number of votes which political groupings had to obtain in order to gain a share of the funds are the same as those set out in the 1982 Decision. The 1983 Rules added that political groupings wishing to benefit from the 1 % clause had to submit a declaration of affiliation to the Secretary General of the European Parliament no later than 40 days before the elections. The rules also contained various provisions concerning the allocation of the funds. For parties, lists or alliances represented in the European Parliament, the funds were to be allocated to the political groups and non-attached members with effect from the first sitting owing the elections. For parties, lists or alliances not represented in the European Parliament, it was provided that:

- Requests for reimbursement were to be submitted to the Secretary General of the European Parliament within 90 days of the publication of the results of the election in the Member States in question, together with all appropriate documents;
- The period during which expenditure was to be considered as expenditure on the 1984 elections was to begin on 1 January 1983 and finish 40 days after the date of the 1984 elections;
- Requests were to be accompanied by statements of accounts proving that the amounts were disbursed for the elections to the European Parliament;
- The aforesaid criteria applicable to expenditure incurred by the political groups were also to apply to expenditure incurred by political groupings not represented in the European Parliament.

12 The applicant association puts forward seven submissions in support of its action:

- (1) lack of competence;
- (2) infringement of the Treaties, in particular, Article 138 of the EEC Treaty and Articles 7 (2) and 13 of the Act concerning the election of the representatives of the Assembly by direct universal suffrage;
- (3) breach of the general principle of the equality of all citizens before the law governing elections;
- (4) infringement of Article 85 *et seq.* of the EEC Treaty;
- (5) breach of the French Constitution, inasmuch as the principle of the equality of citizens before the law has not been respected;

(6) an objection of illegality and inapplicability, inasmuch as the vote cast by the French Minister in the Council of the European Communities during the deliberation on the budgets was unlawful, thus rendering unlawful the deliberation of the Council and the subsequent steps in the budgetary procedure; and

(7) misuse of powers, inasmuch as the Bureau of the European Parliament used the appropriations entered under Item 3708 in order to ensure the re-election of the members of the European Parliament elected in 1979.

Admissibility of the action

1. Capacity of 'Les Verts - Confédération écologiste - Parti écologiste' to pursue the proceedings

13 After the written procedure had been completed, it emerged that by an agreement of 29 March 1984 the applicant association, 'Les Verts - Parti écologiste', and another association called 'Les Verts - Confédération écologiste' decided dissolve themselves and to merge in order to form a new association called 'Les Verts - Confédération écologiste - Parti écologiste'. That association was registered at the préfecture de police in Paris on 20 June 1984 (JORF of 8.11.1984, NC, p. 10241, notice replacing and cancelling those contained in the JORF of 25.7.1984, NC 172, pp. 6604 and 6608). It was that new association which put up a list for 'Les Verts - Europe écologie' at the European elections of June 1984, having submitted on 28 April 1984 the declaration of affiliation referred to in Rule 4 of the 1983 Rules. It was also that association which, in a letter of 23 July 1984, submitted a request for reimbursement under those rules to the Secretary General of the European Parliament. As a result of that request it received a sum of 82 958 ECU, calculated by applying to the 680 080 votes obtained a funding factor per vote of 0.1206596.

14 In view of those new factors, the European Parliament contended first of all that the applicant association 'Les Verts - Parti écologiste' had, by virtue of its being dissolved, lost the capacity to pursue these proceedings and that the rule that it continued to have legal personality for the purposes of its winding-up could not apply to this action since the action had been transferred to the new association. While not denying that the new association, 'Les Verts - Confédération écologiste - Parti écologiste', could continue the proceedings instituted by the applicant association, the European Parliament argued that the proceedings had to be continued within a period laid down by the Court and that this had to be done clearly by the organs of the new association empowered to do so under the association's rules. Since it considered that the latter condition had not been fulfilled, the European Parliament contended that the Court should dismiss the application.

15 It should first be pointed out that it can be seen from the agreement of 29 March 1984 that the dissolution of the two associations, including the applicant association, took place subject to their being merged to form a new association. The dissolution and merger of the original associations and the formation of the new association were thus brought about by means of a single act; consequently there is both legal and temporal continuity between the applicant association and the new association and the latter has acquired the rights and obligations of the former.

16 Secondly, the merger agreement expressly states that legal proceedings which have been instituted, and in particular those instituted before the Court of justice, 'are to continue on the same terms' and 'under the same arrangements'.

17 Thirdly, the European Parliament itself referred during the oral procedure to a decision adopted by the national interregional committee of the new association on 16 and 17 February 1985. According to that decision, which was read out at the hearing by counsel for the new association, the committee, which is the

body empowered under the rules of the association to bring legal proceedings, expressly decided, in view of the dilatory attitude of the European Parliament, to continue the proceedings instituted by the association 'Les Verts - Parti écologiste'.

18 In those circumstances, there can be no doubt as to the intention of the new association to maintain and continue the action that was brought by one of the associations from which it was formed and that was expressly assigned to it, and the European Parliament's submissions to the contrary must be rejected.

19 Although the European Parliament has not put forward any plea of inadmissibility based on the conditions laid down in Article 173 of the Treaty, the Court must verify of its own motion whether those conditions have been fulfilled. In this case, it appears to be necessary to rule expressly on the following points: does the Court have jurisdiction to hear and determine an action for annulment brought under Article 173 of the Treaty against a measure adopted by the European Parliament? Are the 1982 Decisions and the 1983 Rules measures intended to produce legal effects *vis-à-vis* third parties? Are those measures of direct and individual concern to the applicant association within the meaning of the second paragraph of Article 173 of the Treaty?

2. The Court's jurisdiction to hear and determine an action for annulment brought under Article 173 of the Treaty against a measure adopted by the European Parliament

20 It must first be observed that the 1982 Decision and the 1983 Rules were adopted by organs of the European Parliament and must therefore be regarded as measures adopted by the European Parliament itself.

21 The applicant association considers that, in view of the provisions of Article 164 of the Treaty, the Court's power to review the legality of measures adopted by the institutions under Article 173 of the Treaty cannot be limited to measures adopted by the Council and the Commission without giving rise to a denial of justice.

22 The European Parliament also considers that, in accordance with its general function as custodian of the law, as laid down in Article 164 of the Treaty, the Court can review the legality of measures other than those adopted by the Council and the Commission. In its opinion, the list of potential defendants in Article 173 of the Treaty is not exhaustive. The European Parliament does not dispute that in areas such as the budget and questions relating to the organization of direct elections, where increased powers have been conferred upon it by amendment of the Treaties and where it may itself adopt legal measures, it is subject to judicial review by the Court. In the case of appropriations granted by way of a contribution to the information campaign for the second direct election, the European Parliament directly exercises its rights. It does not therefore wish to remove the measures which it adopts in this area from judicial review. However, it considers that, if Article 173 of the Treaty is to be interpreted broadly so as to render the measures adopted by it challengeable by way of an action for annulment, it should in turn have the capacity to bring such an action against measures adopted by the Council and the Commission.

23 It must first be emphasized in this regard that the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty. In particular, in Articles 173 and 184, on the one hand, and in Article 177, on the other, the Treaty established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions. Natural and legal persons are thus protected against the application to them of general measures which they cannot contest directly before the Court by reason of the special conditions of admissibility laid down in the second paragraph of Article 173 of the Treaty. Where the Community institutions are responsible for the administrative implementation of such measures, natural or legal persons may bring a direct action before the Court against implementing measures which are addressed to them or which are of direct and individual concern to them and, in support of such an action, plead the illegality of the general measure on which they are based. Where implementation is a matter for the national authorities, such persons may plead the invalidity of general measures before the

national courts and cause the latter to request the Court of Justice for a preliminary ruling.

24 It is true that, unlike Article 177 of the Treaty, which refers to acts of the institutions without further qualification, Article 173 refers only to acts of the Council and the Commission. However, the general scheme of the Treaty is to make a direct action available against 'all measures adopted by the institutions ... which are intended to have legal effects', as the Court has already had occasion to emphasize in its judgment of 31 March 1971 (Case 22/70 *Commission v Council* [1971] ECR 263). The European Parliament is not expressly mentioned among the institutions whose measures may be contested because, in its original version, the EEC Treaty merely granted it powers of consultation and political control rather than the power to adopt measures intended to have legal effects *vis-à-vis* third parties. Article 38 of the ECSC Treaty shows that where the Parliament was given *ab initio* the power to adopt binding measures, as was the case under the last sentence of the fourth paragraph of Article 95 of that Treaty, measures adopted by it were not in principle immune from actions for annulment

25 Whereas under the ECSC Treaty actions for annulment against measures adopted by the institutions are the subject of two separate provisions, they are governed under the EEC Treaty by Article 173 alone, which is therefore a provision of general application. An interpretation of Article 173 of the Treaty which excluded measures adopted by the European Parliament from those which could be contested would lead to a result contrary both to the spirit of the Treaty as expressed in Article 164 and to its system. Measures adopted by the European Parliament in the context of the EEC Treaty could encroach on the powers of the Member States or of the other institutions, or exceed the limits which have been set to the Parliament's powers, without its being possible to refer them for review by the Court. It must therefore be concluded that an action for annulment may lie against measures adopted by the European Parliament intended to have legal effects *vis-à-vis* third parties.

26 It is now necessary to consider whether the 1982 Decision and the 1983 Rules are measures intended to have legal effects *vis-à-vis* third parties.

3. The question whether the 1982 Decision and the 1983 Rules are measures intended to produce legal effects *vis-à-vis* third parties

27 The two contested measures both concern the allocation of the appropriations entered in the budget of the European Parliament to cover the cost of preparations for the 1984 European elections. They deal with the allocation of those appropriations to third parties for expenses relating to activities to take place outside the European Parliament. In that regard they govern the rights and obligations both of political groupings which were already represented in the European Parliament in 1979 and of those which were to take part in the 1984 elections. They determine the proportion of the appropriations to be received by each of the groupings, either on the basis of the number of seats obtained in 1979 or on the basis of the number of votes obtained in 1984. For that reason, the measures in question were designed to produce legal effects *vis-à-vis* third parties and may therefore be the subject of an action under Article 173 of the Treaty.

28 The argument that the Court of Auditors' power of review under Article 206a of the Treaty precludes any review by the Court of Justice must be rejected. The Court of Auditors only has power to examine the legality of expenditure with reference to the budget and the secondary provision on which the expenditure is based (commonly called 'the basic measure'). Its review is thus in any event distinct from that exercised by the Court of Justice, which concerns the legality of the basic measure. The measures contested in this case are in reality the equivalent of a basic measure, inasmuch as they provide in principle for the expenditure and lay down the detailed rules according to which the expenditure is to be effected.

4. The question whether the contested measures are of direct and individual concern to the applicant association within the meaning of the second paragraph of Article 173 of the Treaty

29 The applicant association emphasizes that it has legal personality and that the contested decisions,

entailing as they do a grant of aid to rival political groupings, is certainly of direct and individual concern to it.

30 The European Parliament considers that as the Court's case-law concerning that condition stands at present, the applicant association's action is inadmissible. However, it raises the question whether a wide interpretation of the first paragraph of Article 173 of the Treaty would not affect the interpretation to be given to the second paragraph of that article. It emphasizes in that regard that the applicant association is not an ordinary third party but, as a political party, occupies an intermediate position between the privileged applicants and private individuals. In its view, the special function of political parties must be taken into consideration at Community level. It considers that their special status justifies their being accorded a right of action under the second paragraph of Article 173 of the Treaty against measures which determine under what conditions and in what amount they are to receive, on the occasion of the direct elections, funds from the European Parliament for the purpose of making the latter more widely known. In its defence, the European Parliament concludes from that line of reasoning that political parties are directly and individually concerned by the 1983 Rules.

31 It must first be pointed out that the contested measures are of direct concern to the applicant association. They constitute a complete set of rules which are sufficient in themselves and which require no implementing provisions, since the calculation of the share of the appropriations to be granted to each of the political groupings concerned is automatic and leaves no room for any discretion.

32 It remains to be examined whether the applicant association is individually concerned by the contested measures.

33 That examination must be centred on the 1982 Decision. That decision approved the principle of granting the appropriations entered under Item 3708 to the political groupings; it then determined the share of those appropriations to be paid to the political groups in the Assembly elected in 1979 and to the non-attached members of that Assembly (69 %) and the share of the appropriations to be distributed among all the political groupings, whether or not represented in the Assembly elected in 1979, which took part in the 1984 elections (31 %); finally, it divided the 69 % between the political groups and the non-attached members. The 1983 Rules merely confirmed the 1982 Decision and completed it by setting out the formula for the division of the 31 % reserve fund. They must therefore be regarded as an integral part of the original decision.

34 The 1982 Decision concerns all the political groupings, even though the treatment they receive differs according to whether or not they were represented in the Assembly elected in 1979.

35 This action concerns a situation which has never before come before the Court. Because they had representatives in the institution, certain political groupings took part in the adoption of a decision which deals both with their own treatment and with that accorded to rival groupings which were not represented. In view of this and in view of the fact that the contested measure concerns the allocation of public funds for the purpose of preparing for elections and it is alleged that those funds were allocated unequally, it cannot be considered that only groupings which were represented and which were therefore identifiable at the date of the adoption of the contested measure are individually concerned by it.

36 Such an interpretation would give rise to inequality in the protection afforded by the Court to the various groupings competing in the same elections. Groupings not represented could not prevent the allocation of the appropriations at issue before the beginning of the election campaign because they would be unable to plead the illegality of the basic decision except in support of an action against the individual decisions refusing to reimburse sums greater than those provided for. It would therefore be impossible for them to bring an action for annulment before the Court prior to the elections or to obtain an order from the Court under Article 185 of the Treaty suspending application of the contested basic decision.

37 Consequently it must be concluded that the applicant association, which was in existence at the time when the 1982 Decision was adopted and which was able to present candidates at the 1984 elections, is

individually concerned by the contested measures.

38 In the light of all those considerations, it must be concluded that the application is admissible.

Substance of the case

39 In its first three submissions, the applicant association describes the scheme established by the European Parliament as a scheme for reimbursement of election campaign expenses.

40 In its first submission, the applicant association claims that the Treaty provides no legal basis for the adoption of such a scheme. In its second submission it asks the Court to declare that, in any event, such a matter is covered by the concept of a uniform electoral procedure referred to in Article 138 (3) of the Treaty and that it therefore remains within the powers of the national legislatures by virtue of the provisions of Article 7 (2) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage.

41 Finally, the applicant association's third submission criticizes the unequal opportunity afforded to the various political groupings inasmuch as those already represented in the Parliament elected in 1979 shared twice in the division of the appropriations entered under Item 3708. They shared first in the division of the 69 % which was reserved for the political groups and non-attached members of the Assembly elected in 1979 and shared again in the division of the 31 % reserve fund. They were thus placed at a considerable advantage compared to groupings which did not already have representatives in the Assembly elected in 1979.

42 The European Parliament replies to the first two submissions together. It considers that there is a contradiction between the two submissions: the matter either falls or does not fall within the powers of the Community but the applicant association cannot advance both of those propositions at the same time. The European Parliament emphasizes above all that the scheme was not set up to reimburse election campaign expenses but to make a contribution to an information campaign designed to make the Parliament more widely known among the electorate at the time of the elections, as can be clearly seen both from the remarks on Item 3708 and from the implementing rules. The participation of the European Parliament in such an information campaign follows from its power, acknowledged by the Court in its judgment of 10 February 1983 (Case 230/81 *Luxembourg v Parliament* [1983] ECR 255, at p. 287), to determine its own internal organization and to adopt 'appropriate measures to ensure the due functioning and conduct of its proceedings'. Since the scheme was not concerned with reimbursement of election campaign expenses, the first and second submissions are without foundation.

43 The European Parliament also contends that the third submission should be rejected because the equality of opportunity between the various political groupings has not been affected. The purpose of the rules is to permit an effective dissemination of information concerning the Parliament. The political parties represented in the Assembly elected in 1979 have already demonstrated that they have engaged in activities to promote European integration. Being larger groupings, they are more representative and are therefore in a position to disseminate a greater quantity of information. The Parliament maintains that it is therefore justifiable to make larger sums available to them for their information campaign. It considers that the division of the appropriations into 69 % for the prior financing of the information campaign and 31 % for the subsequent financing of all the political groupings which took part in the elections constitutes a decision which comes within its political discretion. The Parliament emphasized once again at the hearing that the Bureau and the enlarged Bureau decided on an allocation of the appropriations according to a formula which naturally took account of the size of the contribution which could be made by the various groupings in promoting the concept of political integration in public opinion in the Member States.

44 It should first of all be repeated that the European Parliament is entitled to adopt, by virtue of its power to determine its own internal organization given to it by the Treaties, appropriate measures to ensure the proper functioning and conduct of its proceedings, as was made clear in the aforesaid judgment of 10 February 1983. However, it must be pointed out that the financing scheme set up would not come within that power of

internal organization if it were to be found that it cannot be distinguished from a scheme providing for flat-rate reimbursement of election campaign expenses.

45 In order to consider whether or not the first three submissions are well-founded, it is therefore necessary to determine first of all the true nature of the financing scheme set up by the contested measures.

46 It should first be noted that the contested measures are, to say the least, ambiguous. The 1982 Decision merely states that it deals with the allocation of the appropriations entered under Item 3708, whereas the internal memorandum summarizing it speaks quite openly of financing the election campaign. With regard to the 1983 Rules, they do not state whether the expenses which they propose to reimburse must have been incurred in connection with the dissemination of information concerning the European Parliament itself or information concerning the positions which the political groupings have adopted or which they intend to adopt in the future.

47 It is true that the 1982 Rules on the utilization of funds provided that the funds allocated could only be used for activities connected with the information campaign for the 1984 elections. To ensure that that condition was met, they specified the kind of expenditure which could be covered, designated the persons responsible for ensuring that the funds were correctly utilized, required the keeping of separate accounts itemizing the different types of expenditure and required the submission of reports on the utilization of the funds. In this way, the European Parliament sought to guarantee that the funds made available to the political groups would be used mainly to cover expenditure on meetings and publications (brochures, advertisements in the press and posters).

48 It must be emphasized, however, that those rules are not sufficient to remove the ambiguity as to the nature of the information provided. In fact, the 1982 Rules did not, any more than the contested measures, lay down any condition linking the allocation of the funds to the nature of the information disseminated. The European Parliament considers that, by giving an account of their activities, candidates contributed to the information available on the way in which the parliamentary institution had carried out its task. It is clear that in an information campaign of that type, which the European Parliament describes as allowing the presentation of different views, information on the role of the European Parliament and party propaganda are inseparable. Moreover, the European Parliament admitted at the hearing that it was not possible for its members to separate strictly electoral statements from information.

49 Finally, it must be pointed out that the funds made available to the political groupings could be spent during the election campaign. That is clear first of all as regards the amounts paid out of the 31 % reserve fund, which was divided among the groupings which took part in the 1984 elections. The expenditure which could be reimbursed was that incurred in connection with the 1984 European elections during the period from 1 January 1983 to 40 days after the elections. It is, however, equally true of the 69 % of the appropriations divided each year between the political groups and the non-attached members of the Assembly elected in 1979. It can be seen from the 1982 Rules that one-third of the total amount allocated (minus the flat-rate portion) was not to be paid until after the 1984 elections had been held. Furthermore, the funds allocated from the 69 % of the total appropriations could be used to constitute reserve funds and to cover payment commitments until at the latest 40 days before the date of the elections, provided that payment was actually made not later than 40 days after the date of the elections.

50 Under those circumstances, it must be concluded that the financing scheme set up cannot be distinguished from a scheme providing for flat-rate reimbursement of election campaign expenses.

51 Secondly, it must be considered whether the adoption of the contested measures infringes Article 7 (2) of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage.

52 According to that provision, 'pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions'.

53 The concept of electoral procedure within the meaning of that provision includes *inter alia* the rules designed to ensure that the electoral procedure is properly conducted and that the various candidates are afforded equal opportunities during the election campaign. Rules setting up a scheme for the reimbursement of election campaign expenses belong to that category.

54 The reimbursement of election campaign expenses is not one of the matters covered by the Act of 1976. Consequently, as Community law stands at present, the setting up of a scheme for the reimbursement of election campaign expenses and the introduction of detailed arrangements for its implementation remain within the competence of the Member States.

55 The applicant association's submission alleging an infringement of Article 7 (2) of the Act of 1976 must therefore be upheld. For that reason, there is no need to rule on the other submissions.

Costs

56 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. The applicant has not asked that the defendant be ordered to pay the costs. Consequently, although the defendant has failed in its submissions, each party must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

(1) Declares that the decision of the Bureau of the European Parliament dated 12 October 1982 concerning the allocation of the appropriations entered under Item 3708 of the General Budget of the European Communities and the rules adopted by the enlarged Bureau on 29 October 1983 governing the use of the appropriations for reimbursement of expenditure incurred by the political groupings having taken part in the 1984 elections are void;

(2) Orders each party to bear its own costs.

Koopmans
Everling
Bahlmann
Joliet
Bosco
Due
Galmot
Kakouris
O'Higgins

Delivered in open court in Luxembourg on 23 April 1986.

P. Heim
Registrar

T. Koopmans
President of Chamber
acting as President

* Language of the Case: French.