

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

Caption: Excerpt from the 'Les Verts' judgment concerning the admissibility of action for annulment. The Court accepts that action for annulment may be brought against measures of the European Parliament intended to have legal effects vis-à-vis third parties.

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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)*

[...]

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)*

[...]

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.

[...]

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.

[...]

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,

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

[...]

Decision

[...]

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.

[...]

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.

[...]

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.