ORDER OF THE COURT (Full Court)
11 November 2003 *

In Case C-488/01 P,

Jean-Claude Martinez, a member of the European Parliament, residing in Montpellier (France), represented by F. Wagner and V. de Poulpiquet de Brescanvel, avocats,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) in Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and Others* v *Parliament* [2001] ECR II-2823, seeking to have that judgment set aside,

the other parties to the proceedings being:

European Parliament, represented by G. Garzón Clariana, J. Schoo and H. Krück, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

Charles de Gaulle, a member of the European Parliament, residing in Paris (France),

applicant at first instance,

THE COURT (Full Court)

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans (Rapporteur), C. Gulmann, J.N. Cunha Rodrigues and A. Rosas, Presidents of Chambers, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 11 December 2001 Mr Martinez brought an appeal under Article 225 EC and Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 2 October 2001 in Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and Others* v

Parliament [2001] ECR II-2823 ('the contested judgment') by which the Court of First Instance had dismissed the action brought by him for annulment of the European Parliament's decision of 14 September 1999 on the interpretation of Rule 29(1) of the European Parliament's Rules of Procedure and dissolving with retroactive effect the 'Groupe technique des députés indépendants (TDI) — Groupe mixte' ('the contested decision').

2 By a separate document lodged at the Court Registry on the same date, Mr Martinez also applied, under Article 242 EC, for suspension of the effects of the contested judgment. However, that application was dismissed by order of the President of the Court of Justice of 21 February 2002 in Joined Cases C-486/01 P-R and C-488/01 P-R *Front national and Martinez* v *Parliament* [2002] ECR I-1843, on the ground, in particular, that such a suspension would not be capable of preventing the serious and irreparable damage invoked by the applicant.

Legal background

3 The Rules of Procedure of the European Parliament, as in force at the material time (OJ 1999 L 202, p. 1, hereinafter 'the Rules of Procedure'), provided as follows in Rule 29, entitled 'Formation of political groups':

'1. Members may form themselves into groups according to their political affinities.

2. A political group must comprise Members from more than one Member State. The minimum number of Members required to form a political group shall be twenty-three if they come from two Member States, eighteen if they come from three Member States and fourteen if they come from four or more Member States.

3. A Member may not belong to more than one group.

4. The President shall be notified in a statement when a political group is set up. This statement shall specify the name of the group, its members and its bureau.

...'

4 Rule 30 of the Rules of Procedure, relating to non-attached members, provided:

'1. Members who do not belong to a political group shall be provided with a secretariat. The detailed arrangements shall be laid down by the Bureau on a proposal from the Secretary-General.

2. The Bureau shall also determine the status and parliamentary rights of such Members.'

5 Rule 180, on the application of the Rules of Procedure, provides:

'1. Should doubt arise over the application or interpretation of these Rules of Procedure, the President may, without prejudice to any previous decisions in this field, refer the matter to the committee responsible for examination.

Where a point of order is raised under Rule 142, the President may also refer the matter to the committee responsible.

2. The committee shall decide whether it is necessary to propose an amendment to the Rules of Procedure. In this case it shall proceed in accordance with Rule 181.

3. Should the committee decide that an interpretation of the existing Rules is sufficient, it shall forward its interpretation to the President who shall inform Parliament.

4. Should a political group or at least thirty-two Members contest the committee's interpretation, the matter shall be put to the vote in Parliament. Adoption of the text shall be by simple majority provided that at least one third of Parliament's component Members are present. In the event of rejection, the matter shall be referred back to the committee.

5. Uncontested interpretations and interpretations adopted by Parliament shall be appended in italic print as explanatory notes to the appropriate Rule or Rules, together with decisions on the application of the Rules of Procedure.

6. These explanatory notes shall constitute precedents for the future application and interpretation of the Rules concerned.

...'

Facts

6 According to the contested judgment, following the notification of 19 July 1999 to the President of the Parliament of the formation of a new political group entitled 'Groupe technique des députés indépendants (TDI)— Groupe Mixte' (hereinafter 'the TDI Group'), the declared purpose of which was to ensure that all Members were able to exercise their parliamentary mandates in full, the Presidents of the other political groups raised objections concerning the formation of that group by reason of the lack of political affinities between the persons making it up. Consequently, the Parliament's Committee on Constitutional Affairs (hereinafter 'the Committee on Constitutional Affairs') was called on, pursuant to Rule 180(1), to give an interpretation of Rule 29(1).

7 The President of that committee gave the requested interpretation to the President of the Parliament by letter of 28 July 1999. That letter stated in particular as follows:

'During its meeting on 27 and 28 July 1999 the Committee on Constitutional Affairs examined the request for an interpretation of Rule 29(1) of the Rules of Procedure referred to it by the Conference of Presidents at its meeting of 21 July 1999.

Following a detailed exchange of views and by 15 votes in favour and two against, with one abstention, the Committee on Constitutional Affairs interpreted Rule 29(1) of the Rules of Procedure as follows:

The constitution of the [TDI Group] is not in conformity with Rule 29(1) of the Rules of Procedure.

In fact, the constitution of this group, specifically Annex 2 to the letter of constitution addressed to the President of the European Parliament, excludes any political affiliation. It permits the various signatory members total political [independence] within the group.

I propose that the following wording be inserted by way of an interpretative note to Rule 29(1):

"The formation of a group which openly rejects any political character and all political affiliation between its Members is not acceptable within the meaning of this Rule."

...'

8 The content of that letter was communicated to the Parliament by its President at the plenary session of the Parliament on 13 September 1999. The TDI Group had, under Rule 180(4) of the Rules of Procedure, contested the interpretative note proposed by the Committee on Constitutional Affairs and at the plenary session of 14 September 1999 that interpretative note was put to a vote of the Parliament.

9 Considering that in those circumstances the vote adversely affected them, by application lodged at the Registry of the Court of First Instance on 5 October 1999 Mr Martinez and Mr De Gaulle brought an action for the annulment of the contested act.

10 By a separate document, Mr Martinez and Mr de Gaulle also instituted proceedings under Article 242 EC for suspension of the operation of the contested act. By order of 25 November 1999 in Case T-222/99 R *Martinez and de Gaulle* v *Parliament* [1999] ECR II-3397, the President of the Court of First Instance granted that application, reserving the costs.

The contested judgment

11 In the contested judgment the Court of First Instance declared the action brought by Mr Martinez and Mr de Gaulle admissible but dismissed it as unfounded.

Admissibility

12 As regards, first, the admissibility of that action, the Court of First Instance rejected on the grounds set out below the objections of inadmissibility put forward by the Parliament to the effect that, first, the contested measure is not amenable to judicial review by the Community judicature and, second, that the said act was not of direct and individual concern to the applicants within the meaning of the fourth paragraph of Article 230 EC.

13 As regards the objection of inadmissibility put forward by the Parliament to the effect that the contested act is not amenable to review, the Court of First Instance held, in paragraphs 59 to 62 of the contested judgment, that an act of that kind — in so far as it affects the conditions under which the parliamentary functions of the Members concerned are exercised — cannot be deemed merely to be an act confined to the internal organisation of the work of the Parliament and must therefore be open to review by the Community judicature under the first paragraph of Article 230 EC.

14 In response to the Parliament's objection raising doubts as to whether the conditions of admissibility laid down in the fourth paragraph of Article 230 EC were fulfilled, the Court of First Instance held in paragraphs 65 to 72 of the contested judgment that the contested act was of direct and individual concern to the applicants.

15 As regards the first of those conditions, the Court of First Instance held more specifically, in paragraph 65 of the contested judgment, as follows:

'As to whether the act of 14 September 1999 is of direct concern to the applicants, the Court finds, in the light of the analysis at paragraphs 59 and 60 above, that, without the need for any supplementary measure, it prevents Messrs Martinez and De Gaulle... from forming themselves by means of the TDI Group into a political group within the meaning of Rule 29, something which directly impinges on the performance by them of their functions. The abovementioned act must therefore be regarded as directly affecting those applicants.'

16 As regards the second of those conditions, the Court of First Instance stated in paragraph 72 of the contested judgment that the contested act was of direct and individual concern to the applicants by reason of a factual situation which differentiated their situation from that of any other person.

17 Consequently, the Court of First Instance rejected the objection of inadmissibility raised by the Parliament and held, in paragraph 75 of the contested judgment, that the action for annulment brought by Mr Martinez and Mr De Gaulle should be declared admissible.

Substance

18 As regards, second, the substance of the action, the applicants' arguments were considered by the Court of First Instance to constitute six pleas in law.

19 As regards the first plea, alleging that the contested act was based on a misreading of Rule 29(1) of the Rules of Procedure, the Court of First Instance held in paragraph 81 of the contested judgment that '[s]uch a provision in a rule dealing with the "formation of political groups" must necessarily be construed as meaning that Members who choose to form a group within the Parliament may do so only on the basis of political affinities. The applicants' argument as to the optional nature of the criterion of political affinities referred to in that provision is therefore negated by the very terms of Rule 29(1), in conjunction with the heading of that Rule.'

20 In paragraphs 85 and 92 of the contested judgment the Court of First Instance also stated that the attitude adopted by the Parliament in the past regarding statements of formation of political groups and the fact that the Parliament did not react to a lack of consistent conduct on the part of the members of the same political group in voting at plenary sessions cannot be viewed as evidencing the optional nature of the requirement as to political affinity laid down in Rule 29(1) of the Rules of Procedure. The Parliament's attitude regarding statements of formation of other political groups simply reflected 'an assessment as to observance of the requirement of political affinities differing from that in the present case' whereas the fact that members of one and the same political group may vote differently must be regarded 'not as indicating a lack of political affinity amongst themselves but as illustrating the principle of a parliamentarian's independence' as embodied in Article 4(1) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage (OJ 1976 L 278, p. 5) and Rule 2 of the Rules of Procedure.

21 As regards the second plea alleging breach of the principle of equal treatment and infringement of the Rules of Procedure, and also the lack of a legal basis for the contested act, in that the Parliament wrongly checked whether the TDI Group met the requirements of Rule 29(1) of the Rules of Procedure and considered that the members of that group did not share political affinities, the Court of First Instance observed first, in paragraph 101 of the contested judgment, that, as was clear from Rule 180 of the Rules of Procedure, 'the Parliament has competence to ensure, if need be by referring a matter to the Committee on Constitutional Affairs, that its Rules of Procedure are being correctly applied and interpreted. In that respect it has competence specifically to monitor, as it did in the present case, compliance with the requirement of political affinity laid down in Rule 29(1) by a group declaring its formation to the President of the Parliament under Rule 29(4). To deny the Parliament that monitoring power would be tantamount to compelling it to deprive Rule 29(1) of all effectiveness.'

22 With regard, next, to the question of the extent of the discretionary power enjoyed by the Parliament under that supervisory competence, the Court of First Instance observed in paragraph 102 of the contested judgment that neither Rule 29 nor any other provision of the Rules of Procedure defines the concept of political affinity. In paragraph 103 of the same judgment, it therefore considered that 'Members declaring that they are organising themselves into a group under this provision [Rule 29] are presumed to share political affinities, however minimal'. The Court of First Instance nevertheless held, in paragraph 104, that that presumption cannot be regarded as irrebuttable since the Parliament, by virtue of its supervisory competence, has 'the power to examine whether the requirement laid down in Rule 29(1) has been observed where... the Members declaring the formation of a group openly exclude any political affinity between themselves, in patent non-compliance with the abovementioned requirement'.

23 Turning, finally, to the merits of the Parliament's assessment concerning non-compliance by the TDI Group with the requirement of political affinity, the Court of First Instance — following a detailed analysis of the content of the statement of formation of that group and of a letter sent by the Members of La Lista Emma Bonino to the other Members on 13 September 1999 — concluded

in paragraph 120 of the contested judgment that 'the Parliament was right to take the view that the statement of formation of the TDI Group evinced a total and manifest absence of political affinities between the members of that group. In taking that view, the Parliament did not, contrary to the applicants' assertions, arrogate to itself the right to pass judgment on the political affinities of the members of that group. It did no more than find, on the basis of the abovementioned statement, that those members were openly denying any such affinity, thus themselves rebutting the presumption in favour of political affinities... That being the case, short of depriving Rule 29(1) of any effect, the Parliament could not but find that the TDI Group had failed to comply with that provision.'

24 As regards the third plea, alleging breach of the principle of equal treatment with regard to the Members of the TDI Group, the Court of First Instance, after declaring admissible the objection of illegality put forward in respect of Rules 29(1) and 30 of the Rules of Procedure, rejected it as unfounded.

25 The Court of First Instance observed in particular, in paragraph 149 of the contested judgment, that those provisions 'constitute measures of internal organisation which are warranted by the special characteristics of the Parliament, the constraints under which it operates and the responsibilities and objectives assigned to it by the [EC] Treaty'. It added in paragraph 152 of the same judgment that the distinction between two categories of Members drawn by Rules 29(1) and 30 of the Rules of Procedure is justified by the fact that the Members in a political group, unlike those who sit as non-attached Members under the conditions laid down by the Bureau of the Parliament, satisfy a requirement under the Rules of Procedure dictated by the pursuit of legitimate objectives. The Court referred more particularly in that connection to the need for efficient organisation of the work and procedures of the institution in order to allow the joint expression of political wills and the emergence of compromises, the importance of the Parliament's responsibilities in performing the tasks conferred on the Community by the Treaty and in the procedure for adopting the Community acts necessary for the performance of those tasks, and also the need to transcend local political particularities and promote the European integration sought by that Treaty.

26 In paragraphs 155 and 165 of the contested judgment the Court of First Instance went on to state that the differences in treatment between non-attached Members and Members in a political group stem not from the contested act or the combined provisions of Rules 29(1) and 30 of the Rules of Procedure, but from a series of other internal provisions of the Parliament, listed in paragraph 156 of the same judgment, against which no objection of illegality had been put forward.

27 As regards the argument that the contested act involves unjustified discrimination, in so far as it prohibited the formation of the TDI Group, whereas, in the present legislative period and earlier periods, the formation of a series of other technical groups was allowed, the Court of First Instance held, in paragraph 171 of the contested judgment, that, since the Parliament had correctly determined that the TDI Group was non-existent for non-compliance of its statement of formation with Rule 29(1) on the ground that the members of that group had openly excluded any political affinity amongst themselves and denied that the group was in any way political, the applicants could not in any event successfully invoke the Parliament's different assessment of earlier statements of formation of political groups. It made it clear in paragraph 172 of the same judgment that the applicants had not challenged the Parliament's argument that, unlike the Members who declared the formation of the TDI Group, those who declared the formation of those different groups in no case openly rejected the notion of shared political affinity.

28 In response to the arguments concerning the principle of the protection of legitimate expectations, the Court of First Instance considered, in paragraph 184 of the contested judgment, that the absence of opposition by the Parliament to statements concerning the formation of groups not having the same characteristics as the TDI Group could not be regarded as a specific assurance giving rise in the minds of the Members who declared that they were forming that group to reasonable expectations as to its compliance with Rule 29(1). In paragraph 185 of the same judgment, the Court of First Instance observed in that connection that, as soon as the statement concerning formation of the TDI Group was made, its compliance with Rule 29(1) was contested and that there was no evidence in the file to suggest that, between the time when the legality of their group was called in question and the adoption of the contested act, they received a specific assurance from any organ of the Parliament which could have led them reasonably to entertain any legitimate expectations.

29 Finally, as regards the applicants' argument that the existence of political affinities between the members of certain political groups appeared doubtful in recent votes on sensitive political questions, whereas the members of the TDI Group displayed considerable political cohesion on that occasion, the Court of First Instance found, in paragraph 191 of the contested judgment, first, that the applicants had adduced no evidence to show that those groups openly abjured, as did the TDI Group, any political affinity and, second, that the fact that members of the same political group voted differently on specific questions could not be regarded, in that connection, as constituting evidence of that kind.

30 As regards the fourth plea in law, alleging breach of the principle of democracy, the Court of First Instance found in paragraph 200 of the contested judgment that 'whilst the principle of democracy is indeed a founding principle of the European Union... it does not preclude the Parliament from adopting measures of internal organisation, such as Rule 29(1) in conjunction with Rule 30, which enable it to perform as well as possible, and in keeping with its special characteristics, the institutional role and the objectives assigned to it by the Treaties...'. In that connection it stated that, whilst it is true that Members who are non-attached are deprived in exercising their functions of the benefit of a number of material, administrative, financial and parliamentary privileges which are accorded to the political groups, that situation stems not from the provisions of Rule 29(1) in conjunction with Rule 30, nor from the contested act, but from the Parliament's internal rules identified at paragraph 156 of the contested judgment, the legality of which had not been challenged by the applicants.

31 As regards the fifth plea in law, alleging breach of the principle of freedom of association, the Court of First Instance observed, in paragraph 232 of the contested judgment, that, even if that principle were intended to apply to the internal organisation of the Parliament, it is not absolute: restrictions may be imposed, for legitimate reasons, on the exercise of freedom of association, provided that those restrictions do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of that right. In this case the Court of First Instance considered, in paragraph 233 of the same judgment, that the principle of freedom of association does not

preclude the Parliament in the context of its power of internal organisation from making formation of a group of Members of the Parliament subject to a requirement of political affinity dictated by the pursuit of legitimate objectives or from prohibiting, as in the contested act, the formation of a group which, like the TDI Group, is in patent breach of that requirement.

32 Finally, as regards the sixth and final plea in law, alleging failure to respect Parliamentary traditions common to the Member States, the Court of First Instance considered in paragraph 240 of the contested judgment that, even if the case-law to the effect that, in ensuring that fundamental rights are safeguarded, the Community judicature is obliged to draw inspiration from the constitutional traditions common to the Member States applies by analogy to the parliamentary traditions common to the latter, the contested act banning the formation of groups whose members abjure, as in the present case, any political affinity cannot be adjudged contrary to a parliamentary tradition common to the Member States. In that connection, it stated in paragraphs 241 and 242 of the same judgment that the information provided by the applicants in their pleadings indicated no more than that the formation of technical or mixed groups is permitted by some national parliaments but it does not on the other hand exclude the possibility that the national parliaments which, like the Parliament, make formation of a group within the parliament subject to a requirement of political affinity amongst its members might interpret a statement concerning the formation of a group similar to the TDI Group in the same way as the Parliament did in the contested act. According to the Court of First Instance, that information likewise did not warrant the conclusion that formation of a group such as the TDI Group, whose members expressly state that it is entirely unpolitical, would be possible in the majority of national parliaments.

33 Consequently, the Court of First Instance dismissed the action for annulment.

The appeal

34 In his appeal, Mr Martinez in essence asks the Court of Justice to annul the contested judgment, to grant the form of order sought at first instance or to refer the case back to the Court of First Instance and to order the Parliament to pay the costs at both instances.

35 Mr Martinez puts forward six pleas in law in support of his appeal. He alleges, first, that the contested act is based on a misreading of Rule 29(1) of the Rules of Procedure; second that there is no legal basis for the examination undertaken by the Parliament as to whether the statement of formation of the TDI Group was in conformity with that rule, and that the principle of equal treatment and of the provisions of the Rules of Procedure were infringed; third, breach of the principle of equal treatment as regards the members of the TDI Group; fourth, breach of the principle of democracy; fifth, breach of the principle of freedom of association and, last, failure to respect the parliamentary traditions common to the Member States.

36 The Parliament contends that the appeal should be dismissed as inadmissible in part and unfounded in part, and that Mr Martinez should be ordered to pay the costs.

37 As a preliminary point, it must be borne in mind that, under Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may, at any time, dismiss it by reasoned order, without opening the oral procedure.

The first plea in law

38 By his first plea, Mr Martinez claims that the contested act is based on a misreading of Rule 29(1) of the Rules of Procedure. He submits that the concept of 'political affinity' mentioned in that provision must be construed as authorising re-grouping of Members beyond national frontiers and favours the formation of ideological solidarity or solidarity of other kinds rather than national affiliations. In this case, the solidarity sought is the will of the members of the TDI Group to enjoy the same rights and advantages as those granted to the members of the other political groups. According to Mr Martinez — who observes, in that connection, that in the present Parliament there is another strongly technical group to which no exception has been taken, namely the 'Group for a Europe of Democracies and Diversities' — the Parliament misused its powers by disallowing the formation of the TDI Group and the Court of First Instance misapplied that provision of the Rules of Procedure.

39 It must be borne in mind, in that connection, that 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 (see Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 43). 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, in particular, Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 17).

40 However, it is clear from the first paragraph of Article 225 EC, from the first paragraph of Article 58 of the Statute of the Court of Justice and from Article 112(1)(c) of the Rules of Procedure of the Court 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-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 34; Case C-248/99 P *France* v *Monsanto and Commission* [2002] ECR I-1, paragraph 68, and *Interporc* v *Commission*, cited above, paragraph 15).

41 In this case, Mr Martinez did not indicate in his first plea the reasons for which he considered that the Court of First Instance had erred in law by rejecting, in paragraphs 108 to 119 and 81 to 89 of the contested judgment, the arguments which he had put forward at first instance; he merely reproduced those arguments.

42 The first plea must therefore be rejected as manifestly inadmissible.

Second plea

43 In his second plea, Mr Martinez contests in essence the legality of the review carried out by the Parliament as to whether the statement of formation of the TDI Group conformed with Rule 29(1) of the Rules of Procedure and the results of that review.

44 In the first part of this plea, Mr Martinez alleges that the Court of First Instance misinterpreted Rule 180 by holding, in the first sentence of paragraph 101 of the contested judgment, that the Parliament has competence to ensure that its Rules of Procedure are being correctly applied and interpreted. According to the appellant, Rule 180 merely allows the Parliament to bring matters before the Committee on Constitutional Affairs for an opinion but does not in any circumstances confer on the Parliament the power to review the correct application and interpretation of the Rules of Procedure.

45 It must be observed, first, that it is clear from the very terms of Rule 180(1) of the Rules of Procedure that the President of the Parliament may, in the event of doubt as to the application or interpretation of the Rules of Procedure or in the event of a reference to the Rules under Article 142 thereof, to refer the matter for

examination by the competent committee, and that wording supports the view that the Parliament is empowered to ensure the correct application and interpretation of the provisions of its Rules of Procedure.

46 It must be pointed out, second, that paragraphs 2 to 5 of Rule 180 confer on the committee responsible the power to propose an amendment to the Rules of Procedure (paragraph 2) or interpretations thereof, which are deemed adopted if uncontested or, where contested by a political group or by at least 32 members, may be adopted by the Parliament by a majority of the votes cast, provided that at least one third of its Members are present (paragraphs 3 to 5).

47 It is clear from a reading of those provisions, in conjunction with Rule 180(6), under which such interpretations constitute precedents for the future application and interpretation of the rules concerned, that the Parliament does indeed possess the power of review which Mr Martinez alleges it lacks.

48 It follows that the Court of First Instance did not err in law by holding, in paragraph 101 of the contested judgment, that the Parliament has competence, under the said Rule 180, to ensure, if need be by referring a matter to the Committee on Constitutional Affairs, that its Rules of Procedure are being correctly applied and interpreted.

49 The first part of the second plea must therefore be rejected as manifestly unfounded.

50 By the second part of his second plea, Mr Martinez alleges that the Court of First Instance committed a twofold error. First, in his view the Court was wrong to state, in paragraph 104 of the contested judgment, that the presumption that there must be political affinities among Members who declare that they have formed a group is a rebuttable presumption since the mere fact of adopting a common position and forming a group with a view to ensuring that every Member is fully able to exercise his parliamentary mandate specifically reflects the existence of political affinities within the meaning of Rule 29(1). Second, the Court of First Instance, in his view, was wrong to state in paragraph 122 of the same judgment that the fact that no matter initiated on behalf of the TDI Group was put forward by Members belonging to more than one component part of that group confirms the total absence of any political affinity between the components of the group. According to the appellant, different political components of the TDI Group took joint action on several occasions in order to submit a text.

51 As regards, first, the appellant's argument that the fact of adopting a common position and forming a group with a view to enabling all Members fully to exercise their parliamentary mandate reflects the existence of political affinities, it must be pointed out that, as is clear in particular from paragraphs 110 to 119 of the contested judgment, the presumption concerning the existence of political affinities was in this case overturned only as a result of the express exclusion, by the Members who declared that they were forming the TDI Group, of any political affinity between them, an exclusion which has not been refuted in the context of this appeal.

52 Accordingly, the Court of First Instance was right to hold in paragraph 120 of the said judgment that the Parliament did not arrogate to itself the right to pass judgment on the political affinities of the members of the TDI Group but merely found, on the basis of the statement of formation of that group, that its members were openly denying any such affinity, thus themselves rebutting the presumption in favour of political affinities.

53 As regards, second, the argument that different political component parts of the TDI Group joined together on several occasions in order to submit a text, thereby

confirming the existence of political affinities among those component parts, it must be borne in mind that, as is clear from Article 225 EC and Article 58 of the Statute of the Court of Justice, an appeal is limited to points of law. The Court of First Instance thus has exclusive jurisdiction to establish and assess the relevant facts and to assess the value which should be attached to the items of evidence produced to it, unless there has been distortion of such facts or evidence (see, to that effect, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 49 and 66; Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 194, and Joined Cases C-24/01 P and C-25/01 P *Glencore and Compagnie Continentale* v *Commission* [2002] ECR I-10119, paragraph 65).

54 In this case, Mr Martinez has adduced no evidence to show any distortion of the evidence produced to the Court of First Instance or any material inaccuracy of the latter's findings based on the documents in the file. The appellant confirms, on the contrary, in his appeal that the evidence relied on in support of his allegation that political affinities existed between the members of the TDI Group post-dated the contested act.

55 The second part of the second plea must therefore be rejected as being manifestly unfounded in part and manifestly inadmissible in part.

56 In view of the foregoing, the second plea must be rejected in its entirety.

The third plea

57 By his third plea, which comprises three parts, Mr Martinez alleges breach of the principle of equal treatment in relation to the members of the TDI Group.

58 In the first part of this plea, Mr Martinez submits that, in paragraph 165 of the contested judgment, the Court of First Instance appears to agree that there was discrimination between Members forming part of a political group and non-attached Members, but merely indicates that such differences of treatment stem not from the contested act but from provisions of the Rules of Procedure other than Rule 29(1) or from provisions of an administrative nature whose legality was not called in question before it. Even though the objection of illegality was not directed against those provisions, the Court of First Instance should, in his view, have drawn the relevant legal inferences from such discrimination, which it could not in any event uphold.

59 In that regard, it need merely be held that, contrary to Mr Martinez's contention, the Court of First Instance certainly did not uphold the differences of treatment as between Members of political groups and non-attached Members: on the contrary, it called on the Parliament, in paragraph 157 of the contested judgment, to examine whether the differences in treatment as between those two categories of Members were all necessary and justified in the light of the legitimate objectives pursued by that institution and, if need be, to remedy any inequalities inherent in the Parliament's internal organisational provisions which did not satisfy that requirement of necessity and might consequently be held to be discriminatory in a review of legality requested of the Community judicature in relation to acts of the Parliament adopted pursuant to those provisions.

60 On numerous occasions, and particularly in paragraphs 155, 165 and 210 of the contested judgment, the Court of First Instance made it clear, however, that those differences of treatment, which are not disputed by the Parliament, stem not from the contested act or from the combined provisions of Rules 29(1) and 30 but from a series of other internal provisions of the Parliament, identified in paragraph 156 of the same judgment, the legality of which was not called in question by the applicant before the Court of First Instance.

61 Accordingly, since Mr Martinez does not deny that he did not allege before the Court of First Instance that those provisions were illegal, he cannot criticise that Court for not drawing any legal inferences from the differences in treatment which he alleges.

62 This first part of the third plea must therefore be rejected as manifestly unfounded.

63 By the second part of his third plea, Mr Martinez alleges, first, that he is the subject of discriminatory treatment in that, when other political groups have been formed, no prior examination has ever been made of their statement of formation presented in due form by the requisite number of Members and, second, that in those circumstances the TDI Group had a legitimate expectation based on the Parliament's consistent interpretation of Rule 29(1) of its Rules of Procedure.

64 It need merely be pointed out that, in this part of his third plea, Mr Martinez has not indicated the reasons for which he considers that the Court of First Instance

erred in law by rejecting, in paragraphs 183 to 186 of the contested judgment, the arguments which he put forward at first instance, but has merely reproduced those arguments.

65 By virtue of the case-law cited in paragraph 40 of this order, the second part of the third plea in law must therefore be rejected as manifestly inadmissible.

66 By the third part of his third plea, Mr Martinez alleges that the Court of First Instance wrongly rejected evidence showing consistent voting by the members of the TDI Group, on the ground that it concerned events post-dating the contested act, even though that evidence was capable of enlightening the Court as to the real political affinities existing between the members of the TDI Group.

67 It must be pointed out that this criticism is based on a manifestly incorrect reading of the contested judgment.

68 First, by holding in paragraph 189 of the contested judgment that the correctness of the Parliament's assessment of the non-compliance of the statement of formation of the TDI Group with Rule 29(1) could not be invalidated by the fact that in recent sessions the members of that group had adhered to similar voting patterns, the Court of First Instance referred expressly to paragraphs 123 and 124 of the same judgment, in which it pointed out, among other things, that concordant voting patterns observed within the TDI Group may disguise wide

discrepancies in the individual political motives informing the votes of each individual member and cannot therefore be regarded as evidence of the existence of political affinities between the members of that group.

69 Second, in paragraph 191 of the contested judgment, the Court of First Instance also stated that, for the reasons set out in paragraph 91 of the judgment, the fact that members of the same political group vote differently on specific questions cannot be regarded as constituting evidence such as to demonstrate the express negation of any political affinity among those members. Indeed, in paragraph 91 the Court of First Instance held that the fact that the members of one and the same political group may vote differently must be regarded not as indicating a lack of political affinity among those members but as illustrating the principle of a parliamentarian's independence.

70 It follows that the Court of First Instance's rejection of evidence to show consistent voting by members of the TDI Group was not based on the mere fact that those votes post-dated the contested act.

71 Accordingly, the third part of the third plea must be rejected as manifestly unfounded and the third plea must be rejected in its entirety.

The fourth plea

72 In his fourth plea, Mr Martinez alleges breach of the principle of democracy. According to the appellant, that principle means that the conditions for the exercise of a parliamentary mandate must not be affected by the fact that the

person concerned is not a member of a political group and in that connection it is immaterial that the differences of treatment as between non-attached Members and Members of a political group stem not from the contested act but from provisions of the Rules of Procedure against which no objection of illegality has been put forward.

73 In that regard, it must be observed that the Court of First Instance held, in paragraph 200 of the contested judgment, that the principle of democracy does not preclude the Parliament from adopting measures of internal organisation, such as the combined provisions of Rules 29(1) and 30, which enable it to perform as well as possible and in keeping with its special characteristics the institutional role and the objectives assigned to it by the Treaties. The Court of First Instance referred to paragraphs 144 to 149 of its judgment which give the reasons for that conclusion.

74 However, the appellant has not put forward any argument capable of showing that the reasoning of the Court of First Instance in that regard was vitiated by any error of law.

75 Furthermore, as regards the Court of First Instance's finding that the differences in treatment between non-attached Members and Members of a political group did not stem from the contested act but from internal provisions of the Parliament which had not been the subject of any objection of illegality, it must be pointed out that Mr Martinez cannot criticise the Court of First Instance for failing to draw the legal inferences in respect of such differences in treatment since, as indicated in paragraph 61 of this order, he does not deny that he did not challenge the legality of those provisions.

76 Even if it is conceded that he wishes to challenge the legality of those provisions in this appeal, it must be pointed out that, according to settled case-law, to allow a

party to put forward for the first time before the Court of Justice a plea in law which he has not raised before the Court of First Instance would mean allowing that party to bring before the Court, whose jurisdiction in appeals is limited, a wider case than that heard by the Court of First Instance. In an appeal, the Court's jurisdiction is confined to examining the assessment by the Court of First Instance of the pleas argued before it (see, in particular, *Commission* v *Brazzelli Lualdi and Others*, cited above, paragraph 59; Case C-7/95 P *John Deere* v *Commission* [1998] ECR I-3111, paragraph 62, and *Glencore and Compagnie Continentale* v *Commission*, cited above, paragraph 62).

77 It follows that the fourth plea must be rejected as manifestly unfounded and, to the extent to which the applicant seeks to put forward a new plea in law before the Court of Justice, as manifestly inadmissible.

The fifth plea

78 By his fifth plea, Mr Martinez alleges breach of the principle of freedom of association by the Court of First Instance, which, he considers, gave no reason for which the restriction of freedom of association, based on the requirement of political affinity between the members of a group, constitutes a legitimate measure.

79 In that connection, it need merely be pointed out that the Court of First Instance explicitly referred, in paragraph 233 of the contested judgment, to paragraphs 145 to 149 of that judgment, which set out in detail the reasons for which the formation within the Parliament of political groups based on political affinities is in conformity with legitimate objectives.

80 Accordingly, the fifth plea in law must be rejected as manifestly unfounded.

The sixth plea

81 By his sixth plea, finally, Mr Martinez criticises the Court of First Instance for failing to respect the parliamentary traditions common to the Member States. He submits, more particularly, that the Court of First Instance was wrong to consider that the examples based on comparative law put forward by the applicant in support of his application were not significant.

82 It must be pointed out that, although in paragraph 241 of the contested judgment the Court of First Instance stated that the information provided by the applicant showed that the formation of technical or mixed groups was permitted by some national parliaments, it added in the following paragraph of that judgment that it could not, on the other hand, be concluded that national parliaments which, like the European Parliament, make the formation of a group within the parliament subject to a requirement of political affinity, might not interpret a statement concerning the formation of a group such as the TDI in the same way as the Parliament did in the contested act. According to the Court of First Instance, that information likewise did not warrant the conclusion that formation of a group such as the TDI Group, whose members expressly stated that it was entirely unpolitical, is possible in the majority of national parliaments.

83 In this case, it need merely be pointed out that it is clear both from the actual wording of the sixth plea in law and from a reading of the passage of the contested judgment which is criticised in it that the appellant is seeking in this instance to challenge the assessment of evidence undertaken by the Court of First Instance. However, as pointed out in paragraph 53 of this order, such an assessment cannot be requested of the Court of Justice in an appeal, except in the event of distortion of the evidence.

84 Since no such distortion has been alleged by the appellant, the sixth plea in law must be rejected as manifestly inadmissible.

85 Since the pleas in law put forward by Mr Martinez in support of his appeal are manifestly inadmissible in part and manifestly unfounded in part, the appeal must be dismissed in its entirety.

Costs

86 Under Article 69(2) of the Rules of Procedure, which is applicable to the appeal procedure by virtue of Article 118 of those rules, 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 Parliament has applied for costs and Mr Martinez has been unsuccessful, he must be ordered to pay the costs of these proceedings. In addition to his own costs, Mr Martinez should also bear the costs incurred by the Parliament in connection with the application for the adoption of interim measures in Case C-488/01 P-R.

On those grounds,

THE COURT (Full Court)

hereby orders:

1. **The appeal is dismissed.**

2. **Mr Martinez is ordered to pay the costs of the present proceedings.**

3. **Mr Martinez is also ordered to pay the Parliament's costs in connection with the application for interim measures in Case C-488/01 P-R.**

Luxembourg, 11 November 2003.

R. Grass — Registrar

V. Skouris — President