JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
10 April 2003 *

In Case T-353/00,

Jean-Marie Le Pen, residing at Saint-Cloud (France), represented by F. Wagner, lawyer,

applicant,

v

European Parliament, represented by H. Krück and C. Karamarcos, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

supported by

French Republic, represented by R. Abraham, G. de Bergues, D. Colas and L. Bernheim, acting as Agents, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of the decision in the form of a declaration of the President of the European Parliament of 23 October 2000 on the disqualification of the applicant from holding office as a Member of the European Parliament,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 June 2002

gives the following

Judgment

The law

Community law

1 Article 5 EU provides:

'The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.'

2 The first subparagraph of Article 189 EC, Article 20 CS and Article 107 EA provide that the European Parliament is to 'consist of representatives of the peoples of the States brought together in the Community'.

3 Article 190(4) EC, Article 21(3) CS and Article 108(3) EA provide that the European Parliament is to draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all the Member States, or in

accordance with principles common to all the Member States, and that the Council, acting unanimously, is to lay down provisions, which it is to recommend to the Member States for adoption.

4 Article 7(1) of the Act concerning the election of representatives to the European Parliament by direct universal suffrage, annexed to the Council Decision of 20 September 1976 (OJ 1976 L 278, p. 5; in its original version, 'the 1976 Act'), states that it is to be the responsibility of the Parliament to draw up a uniform electoral procedure. At the time of the facts in the present case, notwithstanding drafts prepared by the Parliament, no uniform system had been adopted.

5 Under Article 3(1) of the 1976 Act, the Members of the European Parliament 'shall be elected for a term of five years'.

6 Article 6(1) of the 1976 Act sets out the functions with which the office of Member of the European Parliament is to be incompatible, and provides, in paragraph 2, that each Member State 'may, in the circumstances provided for in Article 7(2), lay down rules at national level relating to incompatibility'.

7 Article 6(3) provides:

'[Members of the European Parliament] to whom paragraphs 1 and 2 become applicable in the course of the five-year period referred to in Article 3 shall be replaced in accordance with Article 12.'

8 Article 7(2) of the 1976 Act provides:

'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.'

9 Article 11 of the 1976 Act provides:

'Pending the entry into force of the uniform electoral procedure referred to in Article 7(1), [the Parliament] shall verify the credentials of representatives. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.'

10 Article 12 of the 1976 Act provides:

'(1) Pending the entry into force of the uniform electoral procedure referred to in Article 7(1) and subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 3 for the remainder of that period.

(2) Where a seat falls vacant pursuant to national provisions in force in a Member State, the latter shall inform [the Parliament], which shall take note of that fact.

In all other cases, [the Parliament] shall establish that there is a vacancy and inform the Member State thereof.'

11 Rule 7 of the Rules of Procedure of the European Parliament (OJ 1999 L 202, p. 1, 'the Rules of Procedure') is headed 'Verification of credentials'. Point 4 provides:

'The committee shall ensure that any information which may affect the performance of the duties of a Member of the European Parliament or the ranking of the substitutes is forwarded without delay to Parliament by the authorities of the Member States or of the Union, with an indication of the date of effect where an appointment is concerned.

Should the competent authorities of the Member States initiate a procedure which might lead to the disqualification of a Member from holding office, the President shall ask them to keep him regularly informed of the stage reached in the procedure. He shall refer the matter to the committee responsible. On a proposal from that committee, Parliament may adopt a position on the matter.'

12 Rule 8(6) of the Rules of Procedure provides:

'The following shall be considered as the date of the end of the term of office and the effective date of a vacancy:

— in the event of resignation: the date on which the vacancy is established by Parliament, in accordance with the notification of resignation;

— in the event of appointment to an office incompatible with the office of a Member of the European Parliament, either in respect of national electoral law, or in respect of Article 6 of the [1976 Act]: the date notified by the competent authorities of the Member States or of the Union.'

13 Article 8(9) of the Rules of Procedure provides:

'Parliament shall reserve the right, where acceptance or termination of office appears to be based on material inaccuracy or vitiated consent, to declare the appointment under consideration to be invalid or refuse to establish the vacancy.'

French law

14 Under Article 5 of Law 77-729 of 7 July 1977 on the election of representatives to the Assembly of the European Communities, as amended (JORF of 8 July 1977, p. 3579, 'the 1977 Law'):

'Articles LO 127 to LO 130-1 of the Electoral Code shall apply to the election of [Members of the European Parliament]....

Ineligibility arising during the term of office shall bring that term to an end. Ineligibility will be declared by decree.'

15 Article 25 of the 1977 Law provides:

'The election of [Members of the European Parliament] may, within 10 days of the declaration of the results of the voting and in respect of any matter concerning the application of this law, be challenged by any elector before the Conseil d'État. The decision shall be given in plenary session.

The application will not have suspensory effect.'

Facts giving rise to the dispute and procedure

16 The applicant was elected as a Member of the European Parliament on 13 June 1999.

17 By judgment of 23 November 1999, the French Cour de cassation (Criminal Chamber) dismissed the applicant's appeal against the decision of the Cour d'appel de Versailles of 17 November 1998, finding him guilty, *inter alia*, of assault on a public officer acting in the course of his duties and when the victim's status was apparent or known to the perpetrator of the assault, an offence contrary to Article 222-13, first subparagraph, point 4, of the French Criminal Code. For that offence the applicant received a suspended sentence of three months' imprisonment and a fine of FRF 5 000. By way of further sentence, he was declared ineligible for a period of one year under Article 131-26, point 2, of the Criminal Code.

18 In the light of that conviction and pursuant to the second subparagraph of Article 5 of the 1977 Law, the French Prime Minister declared, by decree dated 31 March 2000, that '[the applicant's] ineligibility brought to an end his term of office as a representative in the European Parliament'.

19 The Secretary General of the French Ministry of Foreign Affairs notified the applicant of that decree by letter dated 5 April 2000. In that letter, it was stated that the applicant could bring proceedings challenging that decree before the French Conseil d'État within a period of two months from the date of notification.

20 In an undated letter, the President of the Parliament, Ms Fontaine, informed the applicant that the French authorities had officially brought before her the matter of the applicant's disqualification from holding office as a Member of the European Parliament. She stated that she would '[make a statement on the matter] in the plenary sitting on 3 May [2000]', and that, in accordance with the second subparagraph of Rule 7(4) of the Rules of Procedure, 'the matter [would] be referred to the committee responsible'.

21 The report of the plenary session of 3 May 2000, under the heading 'Withdrawal of [the applicant's] parliamentary mandate', states as follows:

'The President announced that she had received from the French authorities on 26 April 2000 a letter from Mr Védrine, French Foreign Minister, and Mr Moscovici, Minister in Charge of European Affairs, dated 20 April 2000, enclosing a dossier concerning the withdrawal of [the applicant's] parliamentary mandate. She announced that she would refer this dossier to the Legal Affairs Committee pursuant to Rule 7(4), second subparagraph...'

22 The Legal Affairs and Internal Market Committee ('the Legal Affairs Committee') verified the applicant's credentials in closed sessions on 4, 15 and 16 May 2000.

23 The minutes of the meeting of 4 May 2000 record that the Legal Affairs Committee postponed to a further meeting consideration of those aspects of the matter which might enable it to take a decision. It appears from the minutes of the meeting of 15 May 2000 that the President of that committee, Ms Palacio, proposed that the decision of the Parliament be confined to the 'formality of whether to take note or not'. However, that 'proposal for a recommendation to the President of the Parliament' was 'rejected by 15 votes to 13'. The discussion was resumed the next day, and the minutes of the meeting of 16 May 2000 record only that the Committee 'upheld the decision of the day before'.

24 In the plenary session of 18 May 2000, the President of the Parliament, after stating that she had asked for the opinion of the Legal Affairs Committee on the French authorities' communication on the disqualification of the applicant from holding office, read out a letter of 17 May 2000 from Ms Palacio which was worded as follows:

'Madam President,

The [Legal Affairs Committee] resumed the examination of the position of [the applicant] at its meeting on 16 May 2000. The Committee is aware that the French Prime Minister's decree, notified to [the applicant] on 5 April 2000 and published in the *Journal officiel de la République française* on 22 April 2000, is now enforceable. However, the Committee notes that, as mentioned in the letter

notifying the party concerned of the decree, the latter is entitled to bring proceedings before the Conseil d'État accompanied by a request for suspension of operation of the decree.

In the light of the decision yesterday not to recommend for the time being that the Parliament take formal note of the decree concerning [the applicant], the Committee considered the possible ways forward. In support of this decision, the case of Mr Tapie was raised as a precedent to be followed, with the effect that the European Parliament should take formal note of the decree of disqualification from holding office only after expiry of the period prescribed for bringing proceedings before the Conseil d'État, or after the decision of that court, as the case may be.'

25 The President of the Parliament then stated that it was her intention to follow the 'opinion of the Legal Affairs Committee'.

26 In the course of the debate between several Members of the Parliament that followed that statement, the President of the Parliament stated, in particular, 'that it [was] Parliament which [would] take note and not its President'.

27 According to the minutes of that plenary session, the President of the Parliament considered, at the conclusion of the debate, that Mr Barón Crespo, who had asked that the Parliament should adopt a position on the opinion of the Legal Affairs Committee, was finally won over to the position taken by Mr Hänsch, namely that no vote should take place, on the ground, in particular, that there was no formal proposal from that committee. The President of the Parliament concluded that, in the absence of a 'concrete proposal from the Legal Affairs Committee', this course represented the 'best solution all round'.

28 By application to the French Conseil d'État dated 5 June 2000, the applicant sought the annulment of the decree of 31 March 2000.

29 By letter dated 9 June 2000 to Mr Védrine and Mr Moscovici, the President of the Parliament stated:

'Following the opinion of our [Legal Affairs Committee], it seems to me to be right, having regard to the irreversible nature of disqualification from holding office, that the European Parliament should take formal notice of the decree [of 31 March 2000] only after expiry of the period prescribed for bringing proceedings [before the] Conseil d'État or after the decision of the latter, as the case may be.'

30 In a letter dated 13 June 2000, Mr Moscovici informed the President of the Parliament that the French Government formally challenged the position taken by that institution in its session of 18 May 2000, in refusing to take note of the applicant's disqualification, by the decree of 31 March 2000, from holding office. It stated that, in doing so, the Parliament was in breach of Article 12(2) of the 1976 Act, and that the reason given did not justify such a breach. The Parliament was therefore invited to take note of the disqualification 'forthwith'.

31 The President of the Parliament replied by letter dated 16 June 2000 stating that the Parliament 'would take note of [the applicant's] disqualification from holding office once [the decree of 31 March 2000] was no longer open to challenge', which was not yet the case since annulment proceedings had been instituted before the French Conseil d'État. The President justified this position by reference to the precedent set in the case of Mr Tapie, and the requirement of legal certainty.

32 On 6 October 2000, the French Conseil d'État dismissed the applicant's application.

33 On 17 October 2000, the French Permanent Representation to the European Union forwarded to the President of the Parliament a letter dated 12 October 2000 from Mr Védrine and Mr Moscovici. The two ministers stressed that the French Government had at all times 'strongly disputed' the European Parliament's decision to await the outcome of the applicant's proceedings before the French Conseil d'État challenging the decree of 31 March 2000, which it regarded as a breach of the 'letter and spirit of the 1976 Act'. After stating that the French Conseil d'État had dismissed the applicant's action, they added:

'We expect the European Parliament to act in compliance with Community law and take note, by means of a vote, of [the applicant's] disqualification from holding office as soon as possible, failing which we reserve the right to take legal action.'

34 By letter of 20 October 2000, the President of the Parliament informed the applicant of the receipt, the day before, of the 'official communication from the competent French authorities' confirming the judgment of the Conseil d'État of 6 October 2000 and that, in accordance with the Rules of Procedure and the 1976 Act, 'it would take note of the decree [of 31 March 2000] in the next plenary session on 23 October' 2000.

35 The applicant replied by letter dated 23 October 2000 to the President of the Parliament, stating that that judgment of the French Conseil d'État had only been given by two combined sub-divisions whereas, where such a decision concerned the term of office of a Member of the European Parliament, Article 25 of the 1977 Law required that it be given in plenary session and that he would again be

bringing the matter before the French Conseil d'État. He also informed the President of the Parliament that a request for clemency to the President of the French Republic and an application to the European Court of Human Rights had been made. Consequently, he requested that there be a further meeting of the Legal Affairs Committee and that he and his lawyers be given a hearing by that committee.

36 At the plenary session of the Parliament on 23 October 2000, the applicant and other representatives of his political party again raised alleged irregularities on the part of the French authorities in the course of the procedure culminating in the judgment of the French Conseil d'État of 6 October 2000. They requested that the Parliament should not take note of the disqualification in question, at least until the matter had been referred back to the Legal Affairs Committee.

37 According to the minutes of the debates of the session of 23 October 2000, in the context of the agenda heading 'Announcement of the President', the President of the Parliament announced as follows:

'I must inform you that on 19 October 2000, I received official notification from the relevant authorities of the French Republic of a ruling by the Council of State on 6 October 2000 rejecting the appeal lodged by [the applicant] against the decree of the French Prime Minister on 31 March 2000 terminating his mandate as Member of the European Parliament.

I must also inform you that I have received a copy of a request for clemency for [the applicant] presented to Mr Jacques Chirac, President of the Republic, by Mr Charles de Gaulle, Mr Carl Lang, Mr Jean-Claude Martinez and Mr Bruno Gollnisch.'

38 The President then handed over to the President of the Legal Affairs Committee, who said:

'Madam President, the [Legal Affairs Committee], following its deliberations of 15 and 16 May last, recommended the suspension of the communication in plenary session of the Parliament's declaration of the disqualification of [the applicant] from holding office. I stress that the Legal Affairs Committee recommended that this communication be suspended until the expiry of the period available to [the applicant] for bringing proceedings before the French Conseil d'État or the resolution of those proceedings. I quote here the letter of 17 May that you yourself, Madam President, read out to the Parliament.

The Conseil d'État — as you have stated — has dismissed those proceedings and has duly informed us of this fact. Consequently, there are no further grounds for postponing this announcement to the Parliament, which is mandatory as a matter of primary law, specifically under Article 12(2) of the [1976 Act].

The request for clemency that you have mentioned, Madam President, does not alter the situation, because it is not a legal proceeding. As its name suggests, it is the act of a public authority that does not concern the decree of the French Government which, in accordance with the recommendation of the Legal Affairs Committee, must be notified in plenary session.'

39 Then the President of the Parliament declared:

'Pursuant to Article 12(2) of the [1976 Act], the European Parliament takes note of the notification from the French government confirming [the applicant's] removal from office.'

40 She therefore invited the applicant to leave the auditorium and suspended the session in order to enable him to do so.

41 In a note dated 23 October 2000, the Director General of the Administration of the Parliament requested Ms Ratti, Secretary General of the Technical Group of Independent Representatives, to take the necessary steps to ensure that the applicant's offices in Strasbourg and Brussels were cleared of his personal possessions by 27 October and 31 November 2000 respectively.

42 In a letter of 27 October 2000, the President of the Parliament wrote to Mr Védrine informing him that the Parliament had taken note of the decree of 31 March 2000 and requested that he 'inform [me], in accordance with Article 12(1) of the [1976 Act], of the name of the person called upon to fill the seat left vacant by [the applicant]'.

43 Mr Védrine replied in a letter dated 13 November 2000 that 'Ms Marie-France Stirbois [should] succeed [the applicant] on behalf of the list of the Front National for the European elections'.

44 By application lodged at the Registry of the Court of First Instance on 21 November 2000, the applicant brought the present action for the annulment of the decision taken in the form of the declaration of the President of the Parliament of 23 October 2000 ('the contested act').

45 By separate document, lodged at the Registry on the same day, the applicant instituted an application for interim relief seeking suspension of operation of the contested act.

46 In response to a request by the President of the Court of First Instance to the Parliament at the hearing on 15 December 2000, the Director General of Finances and Financial Control of the Parliament confirmed, *inter alia*, in a statement of 18 December 2000, that [the applicant] had 'received travel and accommodation allowances, and all the other allowances provided for... up to the end of his term of office'.

47 The French authorities, by letter dated 5 January 2001, confirmed, also in response to a request from the President of the Court of First Instance at the hearing, that they had continued to pay the applicant's salary until 24 October 2000.

48 By order of the President of the Court of First Instance of 26 January 2001 in Case T-353/00 R *Le Pen* v *Parliament* [2001] ECR II-125, the operation of 'the decision in the form of a declaration of the President of the European Parliament of 23 October 2000, in so far as it constitutes a decision of the European Parliament taking note of the applicant's disqualification from holding office as a Member of the European Parliament', was suspended and the costs were reserved.

49 By separate document, lodged at the Registry on 12 December 2000, the Parliament raised a plea of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicant lodged his observations on that plea on 29 January 2001. By order of the Court of First Instance (Fifth Chamber) of 12 February 2001, the plea was joined to the main proceedings and costs were reserved.

50 By document lodged at the Registry of the Court of First Instance on 3 April 2001, the French Republic applied for leave to intervene in support of the form of order sought by the Parliament. By order of the President of the Fifth Chamber of the Court of First Instance of 14 May 2001, that application was granted.

51 The French Republic lodged its statement in intervention on 27 June 2001, and the applicant presented his observations on that statement on 21 September 2001. The Parliament elected not to lodge any observations on that pleading.

52 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, it requested the Parliament to reply to written questions and to produce certain documents. The Parliament complied with those requests.

53 The parties presented oral argument and replied to the Court's questions at the hearing on 25 June 2002.

Forms of order sought by the parties

54 The applicant claims that the Court should:

— declare the application admissible;

— annul the contested act;

— order the Parliament to pay FRF 50 000 as 'compensation for irrecoverable costs';

— order the Parliament to pay the costs.

55 The Parliament contends that the Court should:

— dismiss the application as inadmissible or, in any event, unfounded;

— order the applicant to pay the costs.

56 The French Republic supports the form of order sought by the Parliament.

Admissibility

Arguments of the parties

57 The Parliament advances two pleas in law in support of its plea that the present application is inadmissible. The first alleges lack of 'Community competence where the incompatibility or ineligibility of its Members results from national law' and the second alleges that there is no measure open to challenge under Article 230 EC.

58 First, the Parliament claims that the application is inadmissible because there can be no Community competence where the disqualification from office of one of its Members results from national law.

59 Referring to Article 5 EU, it states that, in common with the other Community institutions, it can exercise its powers only under the conditions and for the purposes laid down by the Treaties. It states that, contrary to Article 190(4) and (5) EC, the Council has not yet given its final approval to the draft uniform electoral procedure drawn up by the Parliament nor has it approved the regulations and general conditions applicable to the members of that institution. In those circumstances, the '1976 Act constitutes the sole Community instrument currently in force concerning Parliamentary law' applicable to the facts of the present case. That measure refers largely to the national provisions, particularly with regard to seats falling vacant. The Parliament points out that Article 12(2) of that act draws a distinction between cases where a seat falls vacant as a result of the application of national provisions and those when this is so due to other circumstances, such as resignation. In the former case, its role is confined to taking note of the measure adopted at national level.

60 Thus, in the present case, the French authorities alone were competent to determine the applicant's disqualification from office and the Parliament should merely have taken note of the application, by those authorities, of Article 5 of the 1977 Law. The contested act is therefore devoid of any legal effect.

61 The Parliament challenges the validity of the finding of the President of the Court of First Instance in the proceedings for interim relief in the present case that 'it cannot be excluded that Parliament has, at least, a power to verify whether the procedure laid down by the national law applicable in the case has been observed, and also, where appropriate, whether the fundamental rights of the Member of Parliament in question have been respected' (order of 26 January 2001, cited above, paragraph 63). It states that the Rules of Procedure must be read in the light of the Treaties and the 1976 Act and asserts that it has no discretion or

power to verify laws, regulations and other acts adopted by the national authorities. That situation results not merely from the principle of conferred powers but also from 'a fundamental principle of public international law'. It points out, in particular in that regard, that it is settled case-law in relation to references for a preliminary ruling that it is not for the Court of Justice to verify whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure, and that it must therefore adhere to the decision ordering a reference (Case C-10/92 *Balocchi* [1993] ECR I-5105, paragraph 16). The International Court of Justice and the Permanent Court of International Justice have exercised the same restraint in relation to national law.

62 The Parliament also disputes the applicant's argument that the first subparagraph of Article 12(2) of the 1976 Act refers only to cases of incompatibility arising during the term of office and not to cases of ineligibility. According to the Parliament, that argument fails to have regard to the fact that the 1977 Law was adopted in the light of the 1976 Act — and therefore only concerns 'representatives to the European Parliament' — and that it 'brings together in the same Chapter III the conditions of ineligibility and incompatibility'. Furthermore, that argument 'subordinates Article 12 of the 1976 Act to the cases referred to in Article 6 (incompatibilities) alone, thereby denying it any independent role in the scheme of the 1976 Act'.

63 Second, the Parliament submits that the contested act is purely declaratory in nature and that the applicant's legal position was not altered by that act, but by the decree of 31 March 2000. It asserts that it acted 'in strict compliance with the national provisions, as required by the 1976 Act'.

64 In addition, the Parliament contends that the claim that it be ordered to pay FRF 50 000 as 'compensation for irrecoverable costs' is inadmissible.

65 The French Republic essentially supports the position of the Parliament. It states that, by the contested act, the Parliament did no more than declare a pre-existing legal situation, arising from an enforceable decision of the French authorities, namely the decree of 31 March 2000. That act did not therefore alter in the least the 'system of legal rules' applicable in the present case.

66 The French Republic adds that the fact that the French authorities paid the applicant's salary until 24 October 2000 is irrelevant in the present case.

67 The applicant contends that his application is admissible.

68 First, he argues that the contested act produces binding legal effects. Reproducing almost verbatim the findings of the President of the Court of First Instance in the proceedings for interim relief set out in paragraphs 63 and 64 of the order of 26 January 2001, cited above, he submits, first, that it cannot be excluded that the Parliament has, at least, a power to verify whether the procedure laid down by the applicable national law has been observed and also, where appropriate, whether the fundamental rights of the person concerned have been respected and, second, even if the Parliament's competence must be regarded as circumscribed, that institution remains under an obligation to adopt a decision, in accordance with the requirements of the Rules of Procedure.

69 The applicant further asserts that the contested act is final and produces effects beyond the purely internal sphere of the Parliament since that act is clearly intended to bring about his disqualification from office and so infringes his civil and political rights, 'thereby affecting the electoral representation and negating *a posteriori* the outcome of the elections'. In his reply, setting out the findings of the President of the Court of First Instance in the proceedings for interim relief in paragraphs 66 and 67 of the order of 26 January 2001, cited above, he argues

that the contested act produced particular legal effects for the applicant, both in terms of the performance of his parliamentary duties and of his personal position. First, the disqualification of the applicant from holding office became effective, at the earliest, only as from the adoption of the contested act. Second, until 23 October 2000, he received all the allowances from the European Parliament normally received by members of that institution and the French authorities paid him his salary until 24 October 2000.

70 Second, the applicant contests the merits of the plea in law alleging 'lack of Community competence' in the matter.

71 First, he submits that the Member States have no power, unilaterally and anticipatively, to bring to an end the term of office of a Member of the European Parliament 'on purely national grounds', particularly following 'a disqualifying measure adopted strictly within the national legal system'. In his submission, Article 5 of the 1977 Law is therefore unlawful for two reasons.

72 First, that article is contrary to the 1976 Act and Article 8 of the Rules of Procedure, which contemplate only death, resignation and appointment to an office incompatible with the office of Member of the European Parliament as circumstances bringing such a term of office to an early end. More particularly, it is apparent from Article 6(3) when read together with the first subparagraph of Article 12(2) of the 1976 Act that the latter provision does not refer to ineligibility but solely to incompatibility arising in the course of the term of office.

73 Second, in so far as Article 5 of the 1977 Law interprets the role of the Parliament in the context of proceedings for the disqualification of one of its members as a

case of purely circumscribed competence, it compromises the independence of that institution and constitutes an intolerable interference in its functions.

74 According to the applicant, it follows from those considerations that the application of Article 5 of the 1977 Law must be set aside and that the Parliament could not confine itself to taking note of the decree of 31 March 2000. In support of that last conclusion, he also refers to the wording of the second subparagraph of Rule 7(4) and of Rule 8(9) of the Rules of Procedure.

75 Second, the applicant submits that there is 'a general principle of law deriving from the ordinary law of the Member States to the effect that the disqualification must be declared by the parliamentary assembly concerned'.

76 Third, he pleads the fundamental principle of the primacy of Community law.

Findings of the Court

77 According to settled case-law, only measures which produce binding legal effects such as to affect the interests of an applicant, by bringing about a distinct change in his legal position may be the subject of an action for annulment under Article 230 EC (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9, and Case T-87/96 *Assicurazioni Generali and Unicredito* v *Commission* [1999] ECR II-203, paragraph 37). Thus, an action for annulment is available in the case

of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects (Case 22/70 *Commission* v *Council* [1971] ECR 263, paragraph 42).

78 In the present case, the contested act is the declaration of the President of the Parliament in the plenary session of 23 October 2000 by which, 'in accordance with Article 12(2) of the [1976 Act], the... Parliament takes note of the notification of the French Government declaring the disqualification of [the applicant] from holding office'.

79 It is, therefore, necessary to examine whether that declaration produced binding legal effects such as to affect the interests of the applicant by bringing about a distinct change in his legal position.

80 It is necessary, in that respect, to note the legal context in which that declaration was made.

81 It is not in dispute that, at the material time in the present case, no uniform electoral procedure for the election of Members of the European Parliament had been adopted.

82 Accordingly, pursuant to Article 7(2) of the 1976 Act, the electoral procedure for that election continued to be governed by the national provisions in each Member State.

83 Thus, in particular, it follows from the first subparagraph of Article 12(2) of the 1976 Act, that the application of 'national provisions in force in a Member State' could bring about a vacancy for a seat of a Member of the European Parliament.

84 In application of the 1976 Act, the French Republic adopted, in particular, the 1977 Law. Article 2 of that law provides that the election of Members of the European Parliament is governed by 'Title I of Book I of the Electoral Code and the provisions of the following chapters'. Article 5 of the same law, placed in Chapter III on 'Conditions of eligibility, ineligibility and incompatibility', provides in particular that 'Articles LO 127 to LO 130-1 of the Electoral Code shall apply to the election of [Members of the European Parliament]', that 'ineligibility arising during the term of office shall bring that term to an end' and that 'ineligibility will be declared by decree'.

85 Article 12(2) of the 1976 Act draws a distinction between two situations in which seats of Members of the European Parliament become vacant.

86 The first situation, referred to in the first subparagraph of that provision, covers cases where the vacancy arises from the application of 'national provisions'. The second situation, referred to in the second subparagraph of the same provision, covers 'all other cases'.

87 Contrary to the applicant's contention in that regard, the first situation is not at all confined to the cases of incompatibility referred to in Article 6 of the 1976 Act, but also includes cases of ineligibility. Whilst it is true that Article 6(3) of the 1976 Act states that Members of the European Parliament to whom 'paragraphs 1 and 2' become applicable are to be replaced 'in accordance with Article 12', it cannot be inferred from that reference that that article concerns solely cases of

incompatibility covered by Article 6(1) and (2). It is to be observed, furthermore, that nowhere does Article 12 refer to the concept of 'incompatibility', but uses the much wider concept of 'vacancy [of the seat]'.

88 In the first situation covered by Article 12(2) of the 1976 Act the role of the Parliament is confined to 'taking note' that the seat of the person concerned is vacant. In the second situation, which covers, for example, the resignation of one of its Members, the Parliament 'shall establish that there is a vacancy and inform the Member State thereof'.

89 In the present case, since the contested act was adopted pursuant to the first subparagraph of Article 12(2) of the 1976 Act, it is necessary to determine the scope of the process of 'taking note' prescribed by that provision.

90 It should be pointed out, in that regard, that the process of 'taking note' refers not to the disqualification from office of the person concerned but to the simple fact that his seat has become vacant as a result of the application of national provisions. In other words, the role of the Parliament is not to 'bring about' the disqualification from office, as the applicant claims, but merely to take note of the declaration, already made by the national authorities, that the seat is vacant, that is to say, of a pre-existing legal situation resulting exclusively from a decision of those authorities.

91 The Parliament's power of verification in that context is particularly limited. It is essentially confined to verifying whether the seat of the person concerned is in fact vacant. In particular, contrary to the applicant's contention, it is not for the Parliament to verify that the procedure laid down by the applicable national law or the fundamental rights of the person concerned have been respected. That power belongs exclusively to the competent national courts or, as the case may

be, to the European Court of Human Rights. It should be noted, moreover, in that regard that, in the present case, the applicant has specifically asserted his rights before both the French Conseil d'État and the European Court of Human Rights. It should also be noted that the Parliament itself never claimed, either in its written pleadings or at the hearing, to have a power of verification as wide as that alleged by the applicant.

92 It should be added that such a wide concept of the Parliament's power of verification under the first subparagraph of Article 12(2) of the 1976 Act would imply that it would be open to that institution to challenge the very lawfulness of the disqualification declared by the national authorities and to refuse to take note that a seat was vacant if it considered that it was faced with an irregularity. Rule 8(9) of the Rules of Procedure alone contemplates the possibility for the Parliament to refuse the vacancy of a seat and then only where it is called upon to 'establish' such a vacancy and where there is 'material inaccuracy' or 'vitiated consent'. It would be paradoxical if the Parliament were to have a greater discretion in cases where it is required simply to take note of the vacancy of a seat established by the national authorities than in cases where it itself establishes the vacancy of a seat.

93 Those findings are in no way contradicted by the wording of the second subparagraph of Article 7(4) of the Rules of Procedure. As the Parliament and the French Republic rightly point out, that provision applies 'upstream of the disqualification' and therefore of the vacancy of the seat. It provides for the President of the Parliament to refer the matter to the competent committee where 'the competent authorities of the Member States initiate a procedure which might lead to the disqualification of a [Member of the European Parliament] from holding office'. Once that procedure is completed and the vacancy of the seat of the person concerned has been established by the competent national authorities, it remains only for the Parliament to take note of that vacancy, pursuant to the first subparagraph of Article 12(2) of the 1976 Act. In any event, pursuant to the principle of the hierarchy of norms, a provision of the Rules of Procedure cannot

allow derogation from the provisions of the 1976 Act and confer on the Parliament wider powers than it holds under that act.

94 Nor are those findings undermined by the fact that, until 23 October 2000, the applicant continued to sit in the Parliament and to receive the allowances from that institution and that, until 24 October 2000, the French authorities paid him his salary. It is not in dispute between the parties that the decree of 31 March 2000 was enforceable. The fact that the Parliament did not take note of that decree as soon as it was notified by the French authorities, but at a later date, and the fact that certain practical consequences for the applicant flowed from it cannot alter the legal consequences which attach to that notification pursuant to Article 12(2) of the 1976 Act.

95 The applicant's arguments, first, that Article 5 of the 1977 Law compromises parliamentary independence and constitutes an intolerable interference in its functions and, second, that there is a general principle that 'the disqualification must be declared by the parliamentary assembly concerned', are unfounded. As has already been pointed out in paragraph 83 above, it is plain from the express wording of the first subparagraph of Article 12(2) of the 1976 Act that a seat of a Member of the European Parliament may become vacant pursuant to the 'national provisions in force in a Member State'. Since no uniform electoral procedure had been adopted at the material time, that provision, and therefore the 1977 Law, were fully applicable. Whatever the development of the Parliament's powers, new powers cannot render inapplicable provisions of primary law, such as the 1976 Act, in the absence of express repeal by a text of equal rank.

96 For the same reasons, the applicant's argument founded on the primacy of Community law is wholly irrelevant. In the present case, there is neither contradiction nor conflict between national law and Community law.

97 It follows from all the foregoing considerations that, in the present case, the decree of 31 March 2000 is the measure which produced binding legal effects such as to prejudice the interests of the applicant. The contested act was not intended to produce legal effects of its own, distinct from those of that decree.

98 It must, therefore, be found that the contested act is not capable of being the subject of an action for annulment under Article 230 EC. Accordingly, the present application must be dismissed as inadmissible without there being any need to address the other pleas in law and arguments on admissibility.

Costs

99 Under Article 87(2) of the Rules of Procedure, 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 applicant has been unsuccessful, he must be ordered to pay the costs, including those of the application for interim relief, as applied for by the Parliament.

100 In accordance with the first subparagraph of Article 87(4) of the Rules of Procedure, the French Republic is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicant to bear his own costs and to pay those of the Parliament in the main proceedings and in the proceedings on the application for interim relief;**

3. **Orders the French Republic bear its own costs.**

Cooke García-Valdecasas Lindh

Delivered in open court in Luxembourg on 10 April 2003.

H. Jung
Registrar

J.D. Cooke
President