ORDER OF THE PRESIDENT OF THE COURT
21 February 2002 *

In Joined Cases C-486/01 P-R and C-488/01 P-R,

Front National, established in Saint-Cloud (France),

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,

APPLICATION for suspension of the effects of a 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,

* Language of the case: French.

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,

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

applicant at first instance in Case T-222/99,

THE PRESIDENT OF THE COURT

makes the following

Order

1 By two applications under Article 225 EC and Article 49 of the EC Statute of the Court of Justice, lodged at the Registry of the Court of Justice on 17 December 2001, the Front National and Mr Martinez appealed, in relation to the matters affecting them respectively, against the judgment of the Court of First Instance 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'), in which it dismissed the applications they had brought for the annulment of the European Parliament's decision of 14 September 1999 on the interpretation of Rule 29(1) of its Rules of Procedure and dissolving with retroactive effect the 'Groupe technique des députés indépendants (TDI) — Groupe mixte' ('Technical Group of Independent Members — Mixed Group') ('the contested act').

2 By separate documents lodged at the Registry of the Court of Justice on the same day, the Front National and Mr Martinez submitted applications pursuant to Article 242 EC for an order suspending the effects of the contested judgment.

3 Since the written observations of the parties contain all the information necessary to rule on the application, there is no need to hear their oral arguments.

4 Given the similarity of the issues raised by the two cases, they should be joined for the purposes of the present order.

Legal context and background

5 Rule 29 ('Formation of political groups') of the Rules of Procedure of the European Parliament, in the version in force as from 1 May 1999 (OJ 1999 L 202, p. 1, hereinafter 'the Rules of Procedure'), provides:

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

...

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.

...'

6 Rule 30 of the Rules of Procedure, concerning non-attached Members, provides:

'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.'

7 Under Rule 180, on the application of the Rules of Procedure:

'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 32 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.

...'

8 The background to the dispute, which led to the adoption of the contested act, is summarised in paragraphs 6 to 11 of the contested judgment.

9 It is clear from the contested judgment that, during the plenary session of 14 September 1999, an interpretative note was put to a vote, in accordance with Rule 180 of the Rules of Procedure, in Parliament, which adopted it by a majority of its Members. The text of the interpretative note is reproduced as follows in paragraph 9 of the contested judgment:

'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 [Groupe technique des députés indépendants (TDI) — Group mixte, hereinafter "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."

...'

10 By applications lodged at the Registry of the Court of First Instance on 5 October, 19 November and 22 November 1999 respectively, Mr Martinez and Mr de Gaulle (Case T-222/99), the Front National (Case T-327/99) and Mrs Bonino, Messrs Pannella, Cappato, Dell'Alba, Della Vedova, Dupuis, Turco and La Lista Emma Bonino (Case T-329/99) brought actions for annulment of the contested act.

11 By a separate document, Mr Martinez and Mr De Gaulle applied 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

12 By the contested judgment, the Court of First Instance declared the three actions mentioned in paragraph 10 of this order admissible, but dismissed them as unfounded.

13 The Parliament maintained that those actions were inadmissible, putting forward three pleas in support of that contention: the first to the effect that the contested act was non-existent, the second to the effect that it was not subject to review by the Community judicature and the third to the effect that it was not of direct and individual concern to the applicants within the meaning of the fourth paragraph of Article 230 EC.

14 First, in response to the plea of non-existence of the contested act in so far as it dissolved the TDI Group, the Court of First Instance concluded, in paragraph 46 of the contested judgment, that by that act the Parliament had decided to adopt the general interpretation of Rule 29(1) proposed by the Committee on Constitutional Affairs and also the view expressed by that committee concerning conformity with that Rule of the statement of formation of the TDI Group and to declare the non-existence *ex tunc* of that group for non-observance of the condition referred to in that provision. The Court of First Instance therefore rejected that plea of the Parliament.

15 Next, with regard to the second plea of inadmissibility put forward by the Parliament, as to the non-actionable nature of the contested act, the Court of First Instance held, in paragraph 62 of the contested judgment, that such an act 'cannot be deemed merely to be an act confined to the internal organisation of the work of the Parliament' and that 'it must be open to review by the Community judicature under the first paragraph of Article 230 EC'. Consequently, that plea also was rejected.

16 Finally, in paragraphs 65, 66 and 72 of the contested judgment, the Court of First Instance considered that the applicants were directly and individually concerned by the contested act. It therefore held, in paragraph 75, that the actions for annulment brought before it must be declared admissible.

17 In support of their claims for annulment, the appellants put forward at first instance a series of pleas, some of which were common to the actions whilst others were specific to their respective cases. Their arguments were broken down by the Court of First Instance into nine pleas.

18 With regard to the first plea, to the effect claiming that the contested act is 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 appellants' 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'. Moreover, in paragraphs 85 and 92 of the contested judgment, the Court of First Instance took the view that the Parliament's attitude in regard to the statements of formation of other political groups and the fact that the Parliament did not react to the differing voting behaviour in plenary sittings of members of one and the same political group could not be construed as evidencing the optional nature of the requirement as to political affinity referred to in Rule 29(1).

19 With regard to the second plea, alleging infringement of the principle of equal treatment and of the Rules of Procedure, as well as the lack of a legal basis, inasmuch as the Parliament was wrong to review the conformity of the TDI Group with Rule 29(1) of the Rules of Procedure and to take the view that the members of that group did not share any political affinity, the Court of First Instance pointed out, in particular, in paragraph 101 of the contested judgment, that, as is clear from Rule 180, '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'.

20 In examining the validity of the claims that the statement of formation of the TDI Group did not comply with Rule 29(1) of the Rules of Procedure, the Court of First Instance 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 appellants' 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 ... 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'.

21 As to the third plea, alleging infringement of the principle of equal treatment with regard to the members of the TDI Group, the Court of First Instance rejected it as unfounded after declaring admissible the objection of illegality put forward against Rules 29(1) and 30 of the Rules of Procedure.

22 In particular, in paragraph 149 of the contested judgment, the Court of First Instance pointed out 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 Treaty'. It added, in paragraph 152, that the distinction introduced by Rule 29(1) in conjunction with Rule 30 is justified by the fact that those belonging to 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.

23 Moreover, in paragraph 155 of the contested judgment, the Court of First Instance took the view that the differences in treatment as between non-attached Members and members of political groups stemmed not from the combined provisions of Rule 29(1) and Rule 30 of the Rules of Procedure, but from a series of other internal provisions of the Parliament, listed in paragraph 156 of the contested judgment, against which no objection of illegality had been put forward.

24 With regard to the argument that the contested act entails unjustified discrimination inasmuch as it prohibits formation of the TDI Group even though, in earlier legislative periods, the formation of a number of technical groups was allowed, the Court of First Instance held in paragraph 171 of the contested judgment that, since the Parliament was right to deem the TDI Group to be non-existent for failure to comply 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 different assessment made by the Parliament concerning the statements of formation of the groups in earlier legislative periods. It pointed out, in paragraph 172, 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. Finally, in paragraph 184, in response to the arguments based on the protection of legitimate expectations, it took the view 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 reasonable expectations as to its compliance with Rule 29(1).

25 Moreover, with regard to 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 had demonstrated, on those occasions, a high degree of political cohesion, the Court of First Instance pointed out, in paragraph 191 of the contested judgment, that the applicants had adduced no evidence to show that those political groups openly abjured, as did the TDI Group, any political identity and that the fact that members of the same political group voted differently on specific questions could not be regarded as constituting evidence of that kind.

26 In regard to the fourth plea, alleging breach of the principle of democracy, the Court of First Instance noted, 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.

27 In response to the fifth plea, alleging breach of the principle of proportionality, the Court of First Instance held, in paragraph 217 of the contested judgment, that Rule 29(1) in conjunction with Rule 30 could not be regarded as constituting measures which go beyond what is appropriate and necessary in order to attain the legitimate objectives pursued by those provisions.

28 With regard to the sixth plea, alleging breach of the principle of freedom of association, the Court of First Instance stated, in paragraphs 232 and 233 of the contested judgment, that, even if that principle were intended to apply to the internal organisation of the Parliament, it is not absolute and 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 and from

prohibiting, as in the contested act, the formation of a group which, like the TDI Group, is in patent breach of that requirement.

29 So far as concerns the seventh plea, alleging disregard of the 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 according to which the Community judicature, in ensuring that fundamental rights are safeguarded, 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, in so far as it bans the formation of groups whose members abjure, as in the present case, any political affinity, could not be adjudged contrary to a parliamentary tradition common to the Member States. In paragraphs 241 and 242, it pointed out 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 does not necessarily mean that those national parliaments which, like the European Parliament, make formation of a group within them subject to a requirement of political affinity would not interpret a statement concerning the formation of a group such as the TDI Group in the same way as the Parliament did in the contested act. Nor, according to the Court of First Instance, does that information warrant the conclusion that formation of a group such as the TDI Group, whose members expressly state that it is entirely non-political, would be possible in the majority of national parliaments.

30 The eighth plea relied on before the Court of First Instance alleged infringement of essential procedural requirements.

31 By the first part of that plea, it was maintained that the contested act is more than a general and declaratory interpretation. That act amounts to a decision taking effect retroactively from the date of the statement concerning the formation of the TDI Group, making formation of a group subject to a new condition.

32 In that regard, the Court of First Instance held, in particular, in paragraph 252 of the contested judgment, that the interpretation by the Parliament of a rule elucidates and specifies its meaning and scope as it ought to be and ought to have been understood and applied from the time of its entry into force. It follows that the provision so construed may be applied to situations arising prior to the adoption of the interpretative decision.

33 In response to the second part of that eighth plea, maintaining that the Committee on Constitutional Affairs was not competent to take a specific decision concerning the conformity of the statement of formation of the TDI Group with Rule 29(1) of the Rules of Procedure, the Court of First Instance held that that committee remained within the limits of the powers conferred on it by paragraph XV.8 of Annex VI to the Rules of Procedure and Rule 180 thereof.

34 With regard to the claim that the decision to dissolve the TDI Group was not put to a vote in a sitting of Parliament, since only the general interpretation of Rule 29(1) of the Rules of Procedure proposed by the Committee on Constitutional Affairs was put to the vote, the Court of First Instance took the view, in paragraph 264 of the contested judgment, that, following the opposition expressed by the TDI Group to that general interpretation, the Members necessarily understood that, in ruling on the abovementioned interpretation, they were at the same time ruling on the conformity of that statement with Rule 29(1) and, thus, on the fate of the TDI Group. In those circumstances there was no reason to have a separate vote on that point.

35 As regards the third part of the eighth plea, alleging infringement of the right to be heard and the rights of the defence, the Court of First Instance rejected it, noting, in paragraph 267 of the contested judgment, that the members of that group had on several occasions been able to put their point of view to the other Members concerning criticisms as to the failure of that group to comply with Rule 29(1) of the Rules of Procedure.

36 In the case of the ninth plea, based on a presumption of misuse of procedure, inasmuch as previous amendments of the Rules of Procedure reflected the Parliament's desire systematically to reduce the rights of certain Members, the Court of First Instance held, in paragraph 277 of the contested judgment, that the examples drawn from such amendments were not such as to prove that the decisions adopted by the Parliament on 14 September 1999 were prompted by a deliberate intention on its part to affect the rights of certain Members, in particular those of the Front National. On the contrary, the Court of First Instance took the view that, faced with a case in which the lack of political affinity was as patently clear as it was in the statement concerning the formation of the TDI Group, the Parliament could not but establish the non-existence of that group for failure to observe the requirement laid down in Rule 29(1) of the Rules of Procedure.

37 Consequently, the Court of First Instance dismissed the three actions for annulment brought before it.

The applications for suspension

Arguments of the parties

38 In order to establish a *prima facie* case, the Front National and Mr Martinez rely on eight pleas, four of which are common to both applications for suspension.

39 By their first plea, the Front National and Mr Martinez maintain that the contested act is based on a misreading of Rule 29(1) of the Rules of Procedure.

The use of the verb 'may' in that provision shows that Members have the right to form a group according to political affinities, and there is no need to see it as imposing an additional restriction not present in the text. According to the appellants, the term 'political affinities' should not be interpreted literally, but should be understood as an attempt to achieve solidarity which is expressed, in this case, by the desire to secure for each Member the right to carry out fully his parliamentary mandate without unequal treatment affecting the exercise of that mandate.

40 The second plea, which is common to both applications for interim relief, alleges lack of a legal basis for the Parliament's review of the TDI Group's compliance with Rule 29(1) of the Rules of Procedure and infringement of the principle of equality. In that connection, the appellants take the view, first, that the Court of First Instance expressly acknowledged, in paragraph 102 of the contested judgment, that the Parliament does not carry out any review, when a group is formed, of the political affinities of the members of that group. The wording of Rule 180 of the Rules of Procedure does not, contrary to what the Court of First Instance maintains, confer on the Parliament any power of review in respect of the correct application and interpretation of the provisions of the Rules of Procedure. The appellants also maintain that the fact of adopting a common position and forming a group for the purpose of ensuring that all Members are able to exercise fully their parliamentary mandates reflects the existence of a political affinity within the meaning of Rule 29. Finally, they claim that, on several occasions, different political members of the TDI Group have joined forces with a view to tabling a text.

41 The third plea, which is common to both applications for interim relief, alleges breach of the principle of equal treatment. The appellants claim, first, that the Court of First Instance acknowledged, in paragraph 165 of the contested judgment, the existence of discrimination between Members who belong to a political group and non-attached Members, but merely stated that such differences in treatment stemmed 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 lawfulness had not been called in question before the

Court of First Instance. Even if the objection of illegality had not been raised by the appellants, the Court of First Instance should have drawn the appropriate legal inferences from that discrimination.

42 Next, they claim that, when other technical groups have been formed, there has never been any prior examination of a group's statement of formation submitted in the prescribed manner by the required number of Members. Mr Martinez adds that, in those circumstances, the TDI Group was legitimately entitled to rely on the Parliament's consistent interpretation of Rule 29(1) of the Rules of Procedure.

43 Finally, the Front National and Mr Martinez argue that the Court of First Instance was wrong to reject the evidence showing the consistent voting pattern of the members of the TDI Group, on the ground that the facts in question post-dated the contested act, even though those facts were such as to enlighten the Court as to the political affinities of the TDI Group.

44 By its fourth plea the Front National, and by his sixth plea Mr Martinez, complain that the Court of First Instance disregarded the parliamentary traditions common to the Member States. The Court's restrictive interpretation of Rule 29(1) is at variance with most of the parliamentary practices and legislation of the Member States.

45 The Front National's fifth plea alleges infringement of essential procedural requirements. First, a literal reading of the Rules of Procedure shows that they include no specific procedure for recognising a political group and, second, the retroactive application of the contested act, which amounts to dissolving the TDI Group, is contrary to the principles of legal certainty, of the protection of acquired rights and of non-retroactivity.

46 The Front National's sixth plea is based on the existence of a presumption of misuse of procedure, in so far as it produced objective, relevant and consistent evidence clearly showing that the Parliament intended systematically to reduce the rights of certain Members.

47 Mr Martinez alleges, in his fourth plea, breach of the principle of democracy. That principle precludes the conditions for the exercise of a parliamentary mandate from being affected by the fact that its holder does not belong to a political group. It is irrelevant in that regard that the difference in treatment stems from provisions against which no objection of illegality has been raised.

48 In his fifth plea, alleging breach of the principle of freedom of association, Mr Martinez claims that the contested act, by endorsing a restrictive interpretation of that freedom, unquestionably impairs it.

49 The appellants claim that their applications for interim relief are intended to enable the members of the TDI Group to exercise their mandates by enjoying the rights and advantages connected with membership of a political group until the Court of Justice has ruled on the appeals against the contested judgment.

50 Failure to suspend the effects of the contested judgment could cause serious harm to the members of the TDI Group, since they would be unable to enjoy the rights and advantages conferred on political groups. That harm would be all the more serious since the period necessary for disposing of the appeals on the substance, during which it is conceivable that the appellants would suffer discrimination, could correspond to a significant proportion of the limited duration of their term of office. That harm would also be irreparable inasmuch as any annulment of the contested act following the proceedings on those appeals could no longer remedy that situation.

51 Moreover, suspension of the effects of the contested judgment could not harm the internal organisation of the Parliament since it would have the effect of enabling the TDI to receive the same treatment as technical groups formed since 1979.

52 The Parliament submits that both applications for suspension of the effects of the contested judgment should be dismissed.

53 It contends that the applications for interim relief are irrelevant. Suspension of the effects of the contested judgment would not in any way alter the fact that, in practice, no judicial decision has been given as to the lawfulness of Rule 29(1) of the Rules of Procedure. Nor would suspension of the contested judgment revive the effects of the order in *Martinez and de Gaulle* v *Parliament*, cited above, since such an order would lapse when final judgment is delivered, as provided by Article 107(3) of the Rules of Procedure of the Court of First Instance.

54 The Parliament has serious doubts as to the admissibility of the application by the Front National for suspension of the effects of the contested judgment, submitting that the action brought by the Front National before the Court of First Instance was itself inadmissible. In that connection, the Parliament contends that only Members belonging to the Front National can be directly affected by the contested act, and not the political party itself, which can be only indirectly affected.

55 The Parliament also pleads that the appeals as a whole are inadmissible because the appellants merely reiterate the pleas already put forward before the Court of First Instance and considered by it. They do not state precisely which elements of the contested judgment are being challenged or identify the specific legal

arguments on which the appeal is based. In any event, the Parliament disputes that the pleas relied on are sufficiently strong to make out a *prima facie* case, as is required for the grant of a suspension of effects.

56 In that regard, the Parliament contends that there is no parallel between the situation in which the President of the Court of First Instance made the order in *Martinez and de Gaulle* v *Parliament*, cited above, and that on the basis of which suspension of the effects of the contested judgment is sought. Whereas that order is, in particular, based on possible arbitrary discrimination as compared with the formation of the Group for a Europe of Democracies and Diversities (EDD), the contested judgment instead highlights the relevant differences between that group and the TDI Group.

57 With regard to the first plea common to the Front National and Mr Martinez, alleging a misreading of Rule 29(1) of the Rules of Procedure, the Parliament agrees with the reasoning of the Court of First Instance and submits that the plea relied on by the appellants fails to make out a *prima facie* case capable of properly refuting that reasoning.

58 With regard to the second plea common to the Front National and Mr Martinez, the Parliament contends that the appellants misread paragraph 102 of the contested judgment when they claim that the Court of First Instance acknowledged that the Parliament does not carry out any review at the time of formation of a group, of the political affinities of its members. Moreover, the restrictive interpretation which the appellants place on the powers derived by the Parliament from Rule 180 stems from a superficial reading of that provision which renders it ineffective.

59 With regard to breach of the principle of equality, the Parliament takes the view that the appellants assign to the term 'political affinities' a meaning devoid of

substance inasmuch it is limited purely to the ability to exercise a parliamentary mandate. Moreover, they are, in reality, contesting the findings of fact made by the Court of First Instance in paragraph 122 of the contested judgment, according to which the various initiatives taken on behalf of the TDI Group demonstrate the total absence of political affinities between the members of that group. However, appeals are limited to points of law and such a plea is therefore inadmissible.

60 With regard to the allegations concerning differences in treatment as between the members of the TDI Group and the members of the Parliament's political groups, which constitute the first part of the third plea common to the Front National and Mr Martinez, the Parliament contends that they do not challenge any specific part of the contested judgment and that the Court of First Instance did not establish the existence of discrimination, but merely found differences of treatment, whilst stating that they did not stem from the contested act.

61 As regards the plea alleging differing treatment, in so far as the contested act bans the formation of the TDI Group whereas the formation of a number of technical groups was allowed in earlier legislative periods, the Parliament maintains that it has never been faced with such patent cases of absence of political affinity, as is clear from paragraph 175 of the contested judgment. Moreover, each Parliament, in each parliamentary term, is entitled to decide at its absolute discretion on its internal rules, subject to possible review by the Community judicature. Furthermore, the interpretation procedure laid down in Rule 180 of the Rules of Procedure has never been applied in the past.

62 So far as concerns the fourth plea common to the Front National and Mr Martinez, relating to the parliamentary traditions common to the Member States, the Parliament submits that the description of German parliamentary law is inaccurate and that, in any event, there is such a variety of situations that it is not possible to draw from them a single conclusion which could apply definitively at Community level.

63 As to the infringement of essential procedural requirements and alleged misuse of procedure, which constitute, respectively, the fifth and sixth pleas raised by the Front National, the Parliament submits that they merely make complaints against the Court of First Instance in general terms without stating precisely which parts of the contested judgment are being challenged or which legal arguments specifically support the claim that it should be set aside.

64 So far as concerns the fourth plea relied on by Mr Martinez, based on the principle of democracy, the Parliament contends that the appellant does not explain the reason for the alleged breach of that principle by the Court of First Instance.

65 As to the principle of freedom of association, which is the fifth plea raised by Mr Martinez in his appeal, the Parliament points out that, contrary to what is maintained by the appellant and even accepting that that principle is intended to apply to the internal organisation of the Parliament, the Court of First Instance referred, in paragraphs 232 and 233 of the contested judgment, to the legitimate objective pursued by the contested act.

66 As to urgency, the Parliament contends that the Front National does not plead any harm which could be caused to it by the enforcement of the contested judgment.

67 The Parliament further contends that the facilities for enhanced participation in parliamentary business which are granted to political groups can be usefully exercised only by bodies with common political convictions. Those facilities do not constitute means of action which have been rendered politically meaningless, but provide ways of conveying a political message developed following internal

discussions. The former TDI group could not, therefore, benefit effectively from facilities for participation which are reserved for political groups in the proper sense of the term.

68 Moreover, the Parliament now informs the Court of Justice of its decision to increase the funds allocated to non-attached Members. In any event, it states that, if there were discrimination affecting the exercise of parliamentary mandates, the appellants could, according to the contested judgment, challenge the specific decisions taken by the Parliament on the basis of the relevant provisions of the Rules of Procedure.

69 As regards the weighing of interests, the Parliament maintains that suspension of the effects of the contested judgment would be detrimental to its functioning. Not only would payments chargeable to the budget, which the new TDI Group would claim, be difficult to recover after delivery of the judgment on the substance, should it be in favour of the Parliament, but the latter's internal composition and services would again be destabilised.

70 The Parliament claims that 120 different political parties currently have elected representatives within it and that, if it were obliged to recognise 'notional' groups, the performance of its tasks would become even more complicated. In that regard, the Parliament draws attention to the fact that the importance of political parties active at European level, of which the Front National is not one, as a factor for integration within the Union is recognised by Article 191 EC. In order for them to be able to contribute to forming European awareness and to expressing the political will of the citizens of the Union, it is essential for European political parties to be granted a certain privileged role within the Parliament. However, that role would be distorted if any faction whatsoever could form a group within the Parliament without fulfilling the material conditions required for its formation.

Findings

71 It must be borne in mind that, under Article 53 of the EC Statute of the Court of Justice, an appeal against a judgment of the Court of First Instance does not, in principle, have suspensory effect. However, pursuant to Article 242 EC, the Court of Justice may, if it considers that the circumstances so require, order that application of the contested act be suspended.

72 Moreover, it is clear from Article 83(2) of the Court's Rules of Procedure that a suspension can be granted pursuant to the provisions referred to in the previous paragraph only if there are circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for such a measure are specifically indicated.

73 It should also be remembered that an application for suspension of operation cannot, in principle, be envisaged against a negative decision, since the grant of suspension could not have the effect of changing the applicant's position (see the orders in Case 206/89 R *S* v *Commission* [1989] ECR 2841, paragraph 14, and Case C-89/97 P(R) *Moccia Irme* v *Commission* [1997] ECR I-2327, paragraph 45).

74 In this case the appellants have provided no evidence that the grant, exceptionally, of suspension of the effects of the contested judgment, which may be regarded as comparable to a negative decision since it dismisses the actions in their entirety, would alter their position.

75 Consequently, suspension of the effects of the contested judgment could not, in itself, make possible the formation of the TDI Group and, in particular, would not revive the effects of the order in *Martinez and de Gaulle* v *Parliament*, cited above.

76 Under Article 107(3) of the Rules of Procedure of the Court of First Instance, unless the order of the judge hearing an application for interim relief fixes the date on which the interim measure is to lapse, the measure lapses when final judgment is delivered. It follows that the President of the Court of First Instance has jurisdiction to grant, by way of reasoned order, suspension of the operation of an act in the context of proceedings that are pending before that court but may not extend the effects of such an order to any appeal which may be brought before the Court of Justice and that only the Court of Justice has jurisdiction to rule on any application for suspension of operation of a measure made in the context of an appeal (order in Case C-361/00 P(R) *Cho Yang Shipping* v *Commission* [2000] ECR I-11657, paragraph 99).

77 In those circumstances, since the grant of suspension of the effects of the contested judgment would not be capable of preventing the serious and irreparable damage pleaded by the appellants in support of their applications for interim relief, those applications must be dismissed.

78 In any event, even if the appellants' applications had to be construed as seeking in essence the suspension of operation of the contested act or the adoption of interim measures which would allow them to re-form the TDI Group, the conclusion mentioned in the previous paragraph would not thereby be invalidated, for the following reasons.

79 First, it must be observed that the admissibility of the pleas relied on in support of the appeals appears, at first sight, extremely doubtful.

80 In addition, virtually all those pleas merely reproduce those already relied on before the Court of First Instance, without including any arguments designed specifically to challenge the contested judgment.

81 According to settled case-law, it follows from Article 225 EC, the first paragraph of Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice 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. That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the contested judgment, confines itself to reproducing the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts which were expressly rejected by that court. Such an appeal amounts in reality to no more than a request for a re-examination of the application submitted to the Court of First Instance, which the Court of Justice does not have jurisdiction to undertake (see, for example, the judgments in Case C-73/95 P *Viho* v *Commission* [1996] ECR I-5457, paragraphs 25 and 26, and Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 34 and 35).

82 In addition, it appears, at first sight, that certain pleas seek in essence to call in question findings of fact made by the Court of First Instance in the contested judgment regarding, in particular, the absence of political affinity between the members of the TDI Group, the characteristics of other technical groups which had been formed in the past or the existence of a misuse of procedure.

83 However, under Articles 225 EC and 51 of the EC Statute of the Court of Justice, an appeal is to be limited to points of law. Under the latter provision, it must lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant or the infringement of Community law by the Court of First Instance.

84 The Court of First Instance has exclusive jurisdiction to find the facts, save where a substantive inaccuracy in its findings is attributable to the documents submitted to it, and to appraise those facts. That appraisal thus does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice in the context of an appeal

(Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 29).

85 Second, even if one or other of the pleas relied on in the appeals could possibly be regarded as admissible, the fact remains that, although the contested judgment responds in a detailed manner to all the pleas put forward by the applicants at first instance, the legal arguments put forward by the latter at the appeal stage remain extremely cursory and, as to substance, appear, on first analysis, to seek the negation of both Rule 29(1) and Rule 180 of the Rules of Procedure.

86 Third, with regard to the Front National, it must also be pointed out that it has not put forward any arguments to show why the contested judgment would have the effect of causing serious and irreparable damage to it.

87 Fourth and last, it must be pointed out that, although there are differences between the status of a non-attached Member and that of a Member belonging to a political group, such differences stem from provisions which were not alleged to be illegal at first instance. The arguments put forward by the appellants to justify urgency therefore appear to be largely an attempt to obviate the consequences of provisions of the Rules of Procedure or of other internal administrative provisions which have not been contested in this dispute. However, the purpose of interlocutory proceedings is merely to ensure the full effectiveness of the final decision to be given in the main proceedings to which the interlocutory proceedings are an adjunct.

88 It follows from all the foregoing considerations that the applications for suspension of the effects of the contested judgment must be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. **Case C-486/01 P-R and C-488/01 P-R are joined for the purposes of the order;**

2. **The applications for interim relief brought by the Front National and Mr Martinez are dismissed;**

3. **The costs are reserved.**

Luxembourg, 21 February 2002.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President