ORDER OF THE COURT
27 January 1993 *

In Case C-25/92,

Hans Joachim Miethke, a company manager, residing at 211 Chemnitzer Strasse, D-O-1144 Berlin Kaulsdorf 1, represented by Frank Montag, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, assisted by Johann Schoo, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat-General of the European Parliament, Kirchberg,

defendant,

APPLICATION for a review of the mandates of German Members of the European Parliament following the attainment of German unification on 3 October 1990,

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: W. Van Gerven,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,

* Language of the case: German.

makes the following

Order

1 By application lodged at the Court Registry on 28 January 1992, Hans-Joachim Miethke, a German national, brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of the decision of which he was notified on 20 November 1991 and by which the European Parliament dismissed his objection of 19 October 1990 concerning the maintenance of the validity, beyond 3 October 1990, of the mandates of Members of the European Parliament elected in the Federal Republic of Germany on 18 June 1989.

2 By his objection of 19 October 1990, entitled 'Objection concerning the European Parliamentary elections of 18 June 1989, by reason of the invalidity of the mandates of the German Members following the attainment of German unity on 3 October 1990', the applicant asked the Parliament to take a decision to the effect that:

(1) Following the unification of Germany on 3 October 1990, the German Members of the European Parliament elected on 18 June 1989 no longer possess a valid mandate since, in terms of the principle of universal suffrage, they are no longer representative of the whole German population. The President of the Bundestag is called upon to communicate to the President of the European Parliament the number and names of those among the 81 current Members who, after 3 October 1990, may still be regarded as properly elected, in the view of those voters who, in the election on 18 June 1989, were

(a) asked to register a personal vote

or

(b) represented by the Berlin House of Deputies.

(2) Following the suspension of the rights of the Allied Powers on 3 October 1990, the mandate given to the Members representing the population of *Land* Berlin is no longer valid since it is contrary to the principle of direct suffrage.

(3) The Federal Republic of Germany is called upon to designate without delay Members to carry out the mandate in question, on the basis of a direct universal ballot on a date to be determined in accordance with Article 13 of the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage.

3 In parallel with the objection of 19 October 1990, the applicant requested the Bundestag, by objection of 21 October 1990, to verify credentials based on the results of the European election of 18 June 1989 in the light of German unification. According to the applicant, it follows from the principles of universal and equal suffrage that 20 out of a total of 81 mandates must revert to the population of the former GDR and Berlin. Consequently, 20 of the Members elected to the Parliament on 18 June 1989 no longer command sufficient legitimacy.

4 By decision of 31 October 1990, the Bundestag dismissed the objection as inadmissible on the ground that it had been submitted out of time, that is to say, after the expiry of the period of one month prescribed by the relevant national law, which had started to run on 15 July 1989 when the election result was officially announced in the Bundesanzeiger (Federal Gazette).

5 By judgment of 10 April 1991, the Bundesverfassungsgericht (Federal Constitutional Court) dismissed the application for verification of credentials based on that election result, on the grounds given by its Judge-Rapporteur by letter of 13 December 1990 in which he concludes: 'It appears that you take issue exclusively with the fact that, on the occasion of Germany's unification, no provision was made to secure the necessary representation in the European Parliament — totally lacking, in your opinion, in the current assembly — of the German people living in the new *Länder*. The question whether the provisions whose absence you deplore are necessary cannot be the subject of proceedings for the verification of credentials.'

6 By request to the President of the European Parliament on 18 September 1991, the applicant's representative asked that a decision be taken with regard to the objection of 19 October 1990. By letter of 20 November 1991, the President informed the applicant that the Committee on Rules of Procedure, the Verification of Credentials and Immunities had come to the conclusion that the objection must be dismissed. The letter stated that the Committee based its decision in that regard on Article 7(2) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage (OJ 1976 L 278, p. 5, hereinafter the 'Act'), which provides that, pending the entry into force of a uniform electoral procedure and subject to other provisions of the Act, the electoral procedure is to be governed in each Member State by its national provisions.

7 Upon receiving that letter, the applicant brought the present proceedings. In his application the applicant observes that, following German unification on 3 October 1990, the number of German nationals belonging to the Community rose by approximately 16 million. Since those nationals were unable to take part in the election in June 1989 and since the number of Members of the European Parliament allocated to Germany has not been adjusted to reflect the increase in population, representation of the whole German people can only be achieved through a redistribution of Members with respect to the whole territory of Germany.

8 In a document lodged at the Registry of the Court of Justice on 28 February 1992, the Parliament raised a preliminary objection of inadmissibility under Article 91(1) of the Rules of Procedure. In support of that objection, the Parliament claims, first, that if the action were to be regarded as challenging the Parliamentary election of 18 June 1989, it would be inadmissible, since the Parliament had not jurisdiction to consider the questions raised which, pursuant to Article 7(2) of the Act, fall within the exclusive competence of the national authorities. Secondly, if the action were to be regarded as a call to act addressed to the legislature, it would be inadmissible by reason of the applicant's lack of standing.

9 In the circumstances of the present case, the Court considers it appropriate, pursuant to Article 9(3) of the Rules of Procedure, to give its decision on the admissibility of the action in the form of an order and to dispense with the oral procedure.

10 It must first be pointed out that a letter sent by a Community institution in response to a request made by the addressee does not constitute a decision for the purposes of the second paragraph of Article 173 of the Treaty and thereby enable the addressee to bring an action for annulment.

11 Secondly, the so-called 'Objection concerning the European Parliamentary election of 18 June 1989', submitted by the applicant to the Parliament, has not called in question either the proper conduct of the procedure for that election, with particular reference to the Federal Republic of Germany, or the results of that election as announced at the time. Nor has that so-called objection given rise to any issue of incompatibility within the meaning of Article 6 of the Act, mentioned above.

12 Thirdly, the unification of Germany, which was attained in October 1990, took place more than a year after the election which the applicant purports to challenge, and independently of that election.

13 The applicant asked the Parliament to declare that the mandates of the German Members, which were undisputedly valid following the election in June 1989, had lost their validity by reason of the unification of Germany in October 1990. The purpose of the applicant's request was thus to secure a declaration that, as a consequence of German unification, some of those representatives no longer possessed a valid mandate.

14 In that connection it must be pointed out that, as Article 3 of the Act provides, 'representatives shall be elected for a term of five years'. That five-year period may be shortened under Article 12 of the Act by reason of circumstances giving rise to a vacancy, and particularly in the situations mentioned in Article 6(3) where there is incompatibility with the office of representative in the Parliament.

15 On the other hand, no provision exists whereby Parliament may declare that the mandates of its Members are no longer valid by reason of an event, subsequent to and independent of the election, which causes no incompatibility, on the part of its Members, with the office of representative in the Parliament.

16 Consequently, the Parliament was not in a position to act on the request addressed to it by the applicant. The fact that, out of courtesy, the President of the Parliament so informed the applicant cannot be deemed to imply the communication of a decision for the purposes of Article 173 of the Treaty. That letter cannot, therefore, be construed as an act enabling the applicant to bring an action for annulment.

17 It follows that the application must be dismissed as inadmissible and that there is no need to consider the other pleas in law put forward by the Parliament.

Costs

18 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. The application is dismissed;

2. The applicant is ordered to pay the costs.

Luxembourg, 27 January 1993.

J.-G. Giraud

Registrar

O. Due

President