JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

22 December 2005 *

In Case T-146/04,

Koldo Gorostiaga Atxalandabaso, former Member of the European Parliament, residing in Saint-Pierre-d'Irube (France), represented by D. Rouget, lawyer,

applicant,

v

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

defendant,

* Language of the case: French.

supported by

Kingdom of Spain, represented by its Agent, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of the decision of the Secretary-General of the European Parliament of 24 February 2004 concerning the recovery of the sums paid to the applicant by way of parliamentary expenses and allowances,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of J. Pirrung, President, A.W.H. Meij, N.J. Forwood, I. Pelikánová and S. Papasavvas, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 12 September 2005,

gives the following

Judgment

Legal context

1 The first paragraph of Article 199 EC provides that:

'The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.'

2 Rule 5 of the Rules of Procedure of the European Parliament, in the version applicable in the present case (OJ 2003 L 61, p. 1, the 'Rules of Procedure'), provides that:

'The Bureau shall lay down rules governing the payment of expenses and allowances to Members.'

3 Rule 16 of the Rules of Procedure lays down that:

'After the election of the Vice-Presidents, Parliament shall elect five Quaestors.

The Quaestors shall be elected by the same procedure as the Vice-Presidents.'

4 Under Rule 21 of the Rules of Procedure:

'1. The Bureau shall consist of the President and the fourteen Vice-Presidents of Parliament.

2. The Quaestors shall be members of the Bureau in an advisory capacity.'

5 In accordance with Rule 22(2) of the Rules of Procedure:

'The Bureau shall take financial, organisational and administrative decisions on matters concerning Members and the internal organisation of Parliament, its Secretariat and its bodies.'

6 Under Rule 25 of the Rules of Procedure:

'The Quaestors shall be responsible for administrative and financial matters directly concerning Members, pursuant to guidelines laid down by the Bureau.'

7 In accordance with Rule 182(1) of the Rules of Procedure:

'Parliament shall be assisted by a Secretary-General appointed by the Bureau.

The Secretary-General shall give a solemn undertaking before the Bureau to perform his duties conscientiously and with absolute impartiality.'

8 The Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament ('Rules Governing the Payment of Expenses and Allowances') were adopted by the Bureau of the European Parliament on the basis of Article 22 of the Rules of Procedure and pursuant to Article 199 EC, Article 112 EA and Article 25 CS.

9 In accordance with the first subparagraph of Article 13(1) of the Rules Governing the Payment of Expenses and Allowances, as applicable at the material time, 'Members shall be entitled to a monthly lump sum allowance at the rate currently fixed by the Bureau to meet expenditure resulting from their activities in their capacity as Members not covered by other allowances under these Rules (hereinafter referred to as the "general expenditure allowance")'.

10 Article 14(1) of the Rules Governing the Payment of Expenses and Allowances provides that:

'Subject to compliance with the provisions of this Article, Members shall be entitled to receive an allowance (hereinafter referred to as the "parliamentary assistance allowance") to cover the expenses arising from the employment or from the engagement of the services of one or more assistants. ...'

11 Under paragraphs 2 and 7(b) of Article 14 of the Rules Governing the Payment of Expenses and Allowances, Members may appoint a third party, termed a 'paying agent', to handle, in whole or in part, the administrative management of his parliamentary assistance allowance (also termed a 'secretarial allowance').

12 Pursuant to Article 16(2) of the Rules Governing the Payment of Expenses and Allowances:

'Where the Secretary-General is satisfied that undue sums have been paid from the parliamentary assistance allowance, he shall give instructions for the recovery of such sums from the Member concerned.'

13 Under Article 27 of the Rules Governing the Payment of Expenses and Allowances:

'2. Any Member who considers that these Rules have been incorrectly applied may write to the Secretary-General. In the event that no agreement is reached between the Member and the Secretary-General, the matter shall be referred to the Quaestors, who shall take a decision after consulting the Secretary-General. The Quaestors may also consult the President and/or the Bureau.

3. Where the Secretary-General, in consultation with the Quaestors, is satisfied that undue sums have been paid by way of allowances provided for Members of the European Parliament by these Rules, he shall give instructions for the recovery of such sums from the Member concerned.

4. In exceptional cases, and on a proposal submitted by the Secretary-General after consulting the Quaestors, the Bureau may, in accordance with Article 73 of the Financial Regulation and its implementing rules, instruct the Secretary-General temporarily to suspend the payment of parliamentary allowances until the Member has repaid the sums improperly used.

The Bureau's decision shall be taken with due regard for the effective exercise of the Member's duties and the proper functioning of the Institution, the views of the Member concerned having been heard before the adoption of the said decision.'

14 Paragraph 4, cited above, was added to Article 27 of the Rules Governing the Payment of Expenses and Allowances by a decision of the Bureau of 12 February 2003.

15 Article 5 of the Internal Rules on the Implementation of the European Parliament's Budget, which were adopted by the Bureau on 4 December 2002, provides:

'3. By delegation decision of the Institution, represented by its President, the Secretary-General shall be appointed principal authorising officer by delegation.

4. The delegation of powers to authorising officers by delegation shall be performed by the principal authorising officer by delegation. The subdelegation of powers to authorising officers by subdelegation shall be performed by authorising officers by delegation.'

16 Article 71(2) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1, the 'Financial Regulation'), provides that:

'The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.'

17 Under Article 72(2) of the Financial Regulation:

'The institution may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 256 of the EC Treaty.'

18 Pursuant to Article 73(1) of the Financial Regulation:

'The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. He/She shall exercise due diligence to ensure that the Communities receive their revenue and shall see that their rights are safeguarded.

The accounting officer shall recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself/herself has a claim on the Communities that is certain, of a fixed amount and due.'

19 In accordance with Article 78(3) of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation (OJ 2002 L 357, p. 1):

'The debit note shall be to inform the debtor that:

(a) the Communities have established the amount receivable;

(b) payment of the debt to the Communities is due on a certain date (hereinafter 'the due date');

(c) failing payment by the due date the debt shall bear interest at the rate referred to in Article 86, without prejudice to any specific regulations applicable;

(d) wherever possible the institution shall effect recovery by offsetting after the debtor has been informed;

(e) failing payment by the due date the institution shall effect recovery by enforcement of any guarantee lodged in advance;

(f) if, after all those steps have been taken, the amount has not been recovered in full, the institution shall effect recovery by enforcement of a decision secured either in accordance with Article 72(2) of the Financial Regulation or by legal action.

The authorising officer shall send the debit note to the debtor with a copy to the accounting officer.'

20 Article 80 of Regulation No 2342/2002 lays down that:

'1. The establishment of an amount receivable shall be based on supporting documents certifying the Communities' entitlement.

2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.'

21 Under Article 83 of Regulation 2342/2002:

'At any point in the procedure the accounting officer shall, after informing the authorising officer responsible and the debtor, recover established amounts receivable by offsetting in cases where the debtor also has a claim on the Communities that is certain, of a fixed amount and due relating to a sum established by a payment order.'

22 According to Article 84 of Regulation No 2342/2002:

'1. Without prejudice to Article 83, if the full amount has not been recovered by the due date specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.

2. Without prejudice to Article 83, where the recovery method referred to in paragraph 1 cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery decision secured either in accordance with Article 72(2) of the Financial Regulation or by legal action.'

23 Article 4(3) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) provides that:

'Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Background to the dispute

24 Mr Koldo Gorostiaga Atxalandabaso was a Member of the European Parliament from 1999 onwards on the list of the Basque political group 'Euskal Herritarok/Batasuna' ('EH/B'). By an order of the Juzgado de Instrucción No 5 (Local Criminal Court No 5), Madrid, of 26 August 2002 and a judgment of the Tribunal Supremo (Spanish Supreme Court) of 27 March 2003, the EH/B was declared illegal in Spain. The appeals against the latter judgment to the Tribunal Constitucional (Spanish Constitutional Court) were dismissed. The prohibition of the EH/B had no legal consequences for the applicant's parliamentary mandate, which he continued to exercise until the end of the parliamentary term in June 2004.

25 The applicant's parliamentary allowances were paid, from the beginning of his term in 1999 and, as far as the general expenditure and secretarial allowances were concerned, until 31 August 2001, into a current account opened with Banque Bruxelles Lambert SA in his name and that of the EH/B. The latter acted as paying agent within the meaning of Article 14(2) of the Rules Governing the Payment of Expenses and Allowances.

26 On 21 March 2002 the applicant withdrew the sum of EUR 210 354 from the green passbook associated with the current account.

27 On the following day, 22 March 2002, Mr Gorrotxategi, the Treasurer of the EH/B and the applicant's accountant, was questioned when he arrived on French territory from Belgium. The First Examining Magistrate at the Tribunal de Grande Instance (Regional Court), Paris, then ordered the seizure of a sum of EUR 200 304 held by Mr Gorrotxategi.

28 The Bureau of the Parliament first learnt of this matter at its meeting on 8 April 2002. Paragraph 8.2 of the minutes of that meeting reads as follows:

'The Bureau ...

— takes note of information published in the media, according to which the French authorities have arrested two members of a national political party who were in possession of a large sum of money and who allegedly stated that these funds had been paid to a Member of the European Parliament in connection with his activities;

— after consulting the President, authorises the Secretary-General to take all necessary measures in the case, in particular to ensure that the expenditure made by the Member in question complies with the various rules applicable and to report to the Quaestors on any breach of those rules.'

29 By letter of 12 April 2002 the Secretary-General of the Parliament ('the Secretary-General') reminded the applicant of the various allowances that had been paid to him since the beginning of his term of office and asked him to provide, by the end of April 2002, facts and figures on the use of the credits paid as secretarial allowances between 1999 and 31 January 2001 and details on the use of credits paid as general expenditure allowances.

30 The applicant replied by letter dated 6 May 2002, in which he set out accounting data on the use of the secretarial and general expenditure allowances in 1999, 2000 and 2001. According to those data, the applicant owed EUR 103 269.79 to the EH/B, EUR 51 070.19 to three assistants and EUR 15 359.46 to the social security institutions, making a total of EUR 169 699.44.

31 In the light of the explanations provided by the applicant, the Secretary-General asked him, in a letter of 7 June 2002, to have the use of these allowances audited by a specialised company. In that letter he also observed that the applicant had not used an amount of EUR 58 155.82 provided as secretarial allowance and requested its immediate repayment. The applicant undertook to repay that amount to the Parliament in monthly instalments of EUR 3 000.

32 The applicant replied to this letter on 20 June 2002, pointing out that the sum of approximately EUR 200 000 seized by the French authorities came entirely from the Parliament, that the current account from which it had been withdrawn received only payments from the Parliament and that its release was an essential prerequisite for meeting his obligations towards the Parliament, if such a liability were proven. The applicant also asked the Secretary-General to issue a certificate indicating the source of the said sum for presentation to the First Examining Magistrate at the Tribunal de Grande Instance, Paris. In addition, he agreed to the audit proposed by the Secretary-General.

33 The Secretary-General replied by letter of 8 July 2002, enclosing a certificate listing all the payments made by the Parliament to the current account. It is apparent from the certificate that the Parliament had paid into that account, between 1 July 1999 and 31 December 2001, a total of EUR 495 891.31 by way of travel, general expenditure and secretarial allowances (the secretarial allowance was paid into other accounts from 1 September 2001 onwards).

34 By a note of 9 January 2003, the Director-General for Finance of the Parliament sent the applicant the audit report (dated 19 December 2002) regarding the payments made by way of general expenditure and secretarial allowances. That audit was carried out by a private company, selected by agreement between the parties.

35 According to paragraph 4 of the report, the auditors' brief related to the sums paid between 1 July 1999 and 31 December 2001 in the form of general expenditure and secretarial allowances.

36 According to the audit report, between 1 July 1999 and 31 December 2001 the Parliament paid the applicant EUR 104 021 on account of general expenditure, of which EUR 103 927 was duly documented. Over the same period the Parliament paid the applicant EUR 242 582 on account of secretarial expenses. Of this amount, EUR 53 119 was duly documented, but the applicant failed to produce documents to provide evidence of the use of the remaining EUR 189 463.

37 The applicant made observations with regard to the report, to which they were appended.

38 By letter of 30 January 2003 the Secretary-General informed the applicant that, in the light of the audit report, he was invited to produce the documents evidencing the use of the sum of EUR 189 463 before the next meeting of the Bureau, which was scheduled for 10 February.

39 By letter of 6 February 2003 the applicant produced supporting documents and provided additional explanations.

40 On 12 February 2003 the Bureau decided to instruct the Secretary-General to establish the exact amount of the applicant's debt and to ask him to recover it.

41 On 26 February 2003 the Secretary-General wrote to the applicant indicating that, on the basis of the information the applicant had provided in his letter of 6 February 2003, only an amount of EUR 12 947 could be considered to be properly documented. He refused to take the other expenditure into account on the grounds that it was not evidenced by appropriate documents, did not involve the secretarial allowance or related to amounts that had not yet been paid to beneficiaries. As a consequence, the initial amount was reduced to EUR 176 516. The Secretary-General asked the applicant to contact the departments of the Parliament to agree arrangements for repayment.

42 On 10 March 2003 an application lodged by the applicant with the First Examining Magistrate at the Tribunal de Grande Instance, Paris, for the return of the EUR 200 304 that had been seized was dismissed by an order of that court. According to information provided by the applicant's lawyer, this case is currently pending before the European Court of Human Rights.

43 After the applicant's lawyer had requested certain documents and explanations, some of which were provided to him by the Secretary-General in a letter of 16 April 2003, on 21 April 2003 the applicant brought an administrative action under Article 27(2) of the Rules Governing the Payment of Expenses and Allowances against the Secretary-General's letter of 26 February 2003.

44 The Secretary-General responded to the applicant's administrative action by letter of 17 July 2003. He stated that in his view the action was really directed against the Bureau's decision of 12 February 2003. He observed that the latter decision merely

addressed to him, and to the legal department of the Parliament, instructions that were likely to lead to decisions affecting the applicant. The Secretary-General also indicated that the procedure in question was only at the investigation stage with a view to the possible consultation of the Quaestors under Article 27(2) of the Rules Governing the Payment of Expenses and Allowances, and that consequently it was not for him to examine the substance of the request, as the Bureau had taken no decision directly affecting the applicant.

45 The applicant subsequently provided other documents, in particular a summons to appear before the Department of Justice, Employment and Social Security of the Administration of the Autonomous Municipality of Euskadi for a conciliation regarding an action brought by three of his assistants for salary arrears totalling EUR 50 865.43. He also produced a breakdown of expenditure totalling EUR 63 308.64 incurred during the period covered by the audit in the form of the accommodation expenses of the applicant and his assistants in Brussels. These expenses had allegedly been met by the EH/B, which, under an agreement signed with the latter, allegedly withheld a lump sum of EUR 600 from the salary of each assistant. According to the applicant, that sum was still unpaid, and consequently owing to the EH/B.

46 The Secretary-General refused to take these items into consideration. By letter of 18 December 2003 he stated that the applicant had not produced documents showing that the salary arrears to which the conciliation related had been paid. With regard to the invoices for accommodation expenses, he noted the absence of documents demonstrating the existence of contractual obligations, on the basis of which the amount of EUR 63 308.64 had allegedly been paid, and indicated moreover that most of those invoices had been made out not to the EH/B but to another person.

47 By letter of 28 January 2004 the Secretary-General reminded the applicant that, according to the audit and the supporting documents that had subsequently been produced and accepted, his debt to the Parliament amounted to EUR 176 516 (see paragraphs 38 and 41 above). He indicated that, as the applicant had already repaid

EUR 58 155.82 of the debt in monthly instalments of EUR 3 000 (see paragraph 31 above), there remained a balance of EUR 118 360.18 to repay.

48 The Secretary-General stated that under Articles 16(2) and 27(3) of the Rules Governing the Payment of Expenses and Allowances he was required to give instructions for the recovery of the sum of EUR 118 360.18 that had been improperly paid or, if necessary, to propose that the Bureau temporarily suspend the payment of some of the applicant's allowances, in accordance with Article 27(4) of the said Rules.

49 The Secretary-General heard the applicant's views on 9 February 2004. According to the minutes of the hearing, the Secretary-General intended to submit a proposal to the Bureau for its meeting to be held on 25 February 2004.

50 By letter of 24 February 2004 the Secretary-General wrote to the applicant in the following terms:

'Further to my letter of 28 January last and after having heard your views on 9 instant, please find enclosed the decision that I have just taken, under the relevant provisions of the Financial Regulation of the Union and the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament, with regard to the repayment of the amount of EUR 118 360.18 which you owe to the Parliament. The Bureau will be notified at its next meeting ...'

51 The Secretary-General's decision of 24 February 2004, attached to the above-mentioned letter (the 'contested decision'), is based on Articles 16 and 27 of the

Rules Governing the Payment of Expenses and Allowances and on Articles 71 and 73 of the Financial Regulation. The contested decision also refers to consultation with the Quaestors on 14 January 2004. According to the first recital of the contested decision, the amount owing to the Parliament is EUR 176 576 and, as the applicant had already repaid EUR 58 155.82 in monthly instalments of EUR 3 000 (see paragraph 47 above), the amount repayable is EUR 118 360.18. The decision mentions recovery order No 92/332 of 18 March 2003 drawn up by the Parliament's authorising officer by subdelegation in the amount of EUR 118 360.18.

52 The second recital of the contested decision indicates that, in accordance with Articles 16(2) and 27(3) of the Rules Governing the Payment of Expenses and Allowances, the sum of EUR 118 360.18 must be recovered by offsetting against the parliamentary allowances that are least essential to the performance of the applicant's duties as an elected representative.

53 Under the terms of the operative part of the contested decision:

'1. The following shall be withheld from the allowances paid to Mr Koldo Gorostiaga Atxalandabaso, Member of the European Parliament, until the sum he owes to the European Parliament, currently amounting to EUR 118 360.18, has been repaid:

— 50% of the general expenditure allowance;

— 50% of the subsistence allowance.

2. Should the term of office of Mr Koldo Gorostiaga Atxalandabaso, Member of the European Parliament, come to an end, the following will be retained up to the amount required to extinguish his debt to the European Parliament:

— the transitional end-of-service allowance; and

— all other payments due to the Member.'

54 By letter of 1 March 2004 the applicant submitted his observations on the contested decision, requested additional documents and explanations and access to the full file that gave rise to the decisions affecting him.

55 The Secretary-General replied by letter of 31 March 2004, in which he provided certain information and indicated that the applicant would be allowed access to the entire file within the limits set by the relevant provisions of Regulation No 1049/2001 and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

Procedure and forms of order sought by the parties

56 By application lodged at the Registry of the Court of First Instance on 20 April 2004, the applicant brought the present action. The Parliament deposited its statement of defence at the Registry of the Court of First Instance on 29 June 2004.

57 By a separate document lodged at the Registry of the Court of First Instance on 13 July 2004, the Kingdom of Spain applied to intervene in the present proceedings in support of the Parliament. By order of 14 October 2004 the President of the Second Chamber of the Court of First Instance allowed that intervention. The intervener lodged its statement within the time allowed.

58 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure and, by way of measures of organisation of procedure, the parties were asked to reply in writing to a series of questions.

59 After the parties had been heard, the Court of First Instance referred the case to the Second Chamber (Enlarged Composition).

60 By letters from the applicant, lodged on 27 May 2005, and from the Parliament, lodged on 1 June 2005, the parties complied with the measures of organisation of procedure taken by the Court of First Instance and also produced certain documents.

61 The parties presented oral argument and replied to the questions put to them by the Court of First Instance at the hearing on 12 September 2005.

62 The applicant claims that the Court should:

— annul the contested decision;

— order the Parliament to pay the costs.

63 The Parliament claims that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

64 The Kingdom of Spain claims that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

65 In support of his claims for annulment, the applicant raises eight pleas, alleging, first, breach of the Rules Governing the Payment of Expenses and Allowances, secondly, infringement of the 'principle of objectivity and impartiality', thirdly, infringement of the principle that both parties must be heard and of the rights of the defence, fourthly, breach of the rules on the notification of decisions, fifthly, infringement of the obligation to state reasons, sixthly, infringement of the principle of equality and non-discrimination, seventhly, misuse of powers and eighthly, errors in the assessment of the supporting documents submitted to the Secretary-General.

The first plea, alleging breach of the Rules Governing the Payment of Expenses and Allowances

Arguments of the parties

66 The first plea is in five parts. The first two allege non-compliance with paragraphs 2 and 4 respectively of Article 27 of the Rules Governing the Payment of Expenses and Allowances and the subsequent three allege infringement of the rights of the defence, of the principle of equality and finally of Article 27(3) of the Rules Governing the Payment of Expenses and Allowances.

67 With regard to the breach of Article 27(2) of the Rules Governing the Payment of Expenses and Allowances, the applicant observes that, as a result of his letter of 21 April 2003 (see paragraph 43 above), in which he had pointed out that the Rules Governing the Payment of Expenses and Allowances had been incorrectly applied in his regard, and given that no agreement had been reached between the Secretary-General and himself, the matter should have been referred to the Quaestors in accordance with that article for them to take a decision after consulting the Secretary-General and, where appropriate, the President or the Bureau. However, according to the applicant, the contested decision was taken by the Secretary-General, who he claims had no authority in that regard.

68 With regard to the breach of Article 27(4) of the Rules Governing the Payment of Expenses and Allowances, the applicant notes that, according to that provision, only the Bureau is competent to decide to recover undue sums paid by way of parliamentary allowances by offsetting them against allowances owed to the Member in question.

69 With regard to the infringement of the principle of equality, the applicant maintains that the Parliament acted in a discriminatory manner regarding the publication of the names of Members in dispute with the institution. Whereas the Parliament does not usually disclose personal details on this subject, that practice had allegedly not

been followed as far as he was concerned. He states in this regard that in March 2003 the Office of the Parliament in Spain distributed a press review collating articles from Spanish daily newspapers on the present case that were unfavourable to him. In his view, this conduct constituted, at the same time, a breach of the provisions on the protection of personal data and of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the 'ECHR').

70 With regard to the breach of Article 27(3) of the Rules Governing the Payment of Expenses and Allowances, the applicant considers that, contrary to the requirements of that provision, the Secretary-General was satisfied, without having previously consulted the Quaestors, as from the date of his decision of 26 February 2003 (see paragraph 41 above) that the sum of EUR 176 516 had been improperly paid.

71 The Parliament states, with regard to the first two parts of the plea, that it is clear from a combined reading of Articles 16(2) and 27(2) to (4) of the Rules Governing the Payment of Expenses and Allowances that the latter provide for three distinct procedures in the event of disputes or irregularities in the payment or use of the various allowances.

72 According to the Parliament, the first procedure, described in Article 27(2), relates to the determination of the financial rights of the Member and the payment of expenses and allowances and is followed where there is a difference of opinion between the Member concerned and the institution. In this case, according to the Parliament, the Member first approaches the Secretary-General, who may accede to his 'complaint'. If no agreement is reached between the parties, the matter is referred to the Quaestors for decision, after optional consultation with the Secretary-General and the President or the Bureau.

73 The second procedure, described in Article 16(2) and Article 27(3), relates, according to the Parliament, to the ex post verification of the use of sums paid to the

Member by way of expenses and allowances and to the recovery of improperly paid sums. According to the Parliament, if the Secretary-General is satisfied that undue sums have been paid by way of parliamentary allowances (because they have not been used in accordance with the Rules Governing the Payment of Expenses and Allowances), he takes measures to recover them. In the opinion of the Parliament, Article 27(2) is not applicable in this procedure, because such an application would render it impossible to apply Article 27(3) and (4), as it would preclude any final decision by the Secretary-General.

74 According to the Parliament, the third procedure, provided for in Article 27(4), concerns exceptional cases, where the Bureau may order the temporary suspension of the payment of parliamentary allowances.

75 The Parliament also relies on Articles 71 and 73 of the Financial Regulation, pointing out that a recovery decision must comply with the provisions of that Regulation. In addition, it refers to Article 5 of the internal rules on the implementation of its budget (see paragraph 15 above), according to which the Secretary-General is appointed principal authorising officer by delegation. By contrast, according to the Parliament, there is no provision for the Bureau or the Quaestors to play a role in this context. The Parliament indicates that the debt owed by the applicant was recovered by means of offsetting in accordance with the second subparagraph of Article 73(1) of the Financial Regulation (see paragraph 18 above).

76 The Parliament points out that the present dispute relates exclusively to the third paragraph of Article 27 of the Rules Governing the Payment of Expenses and Allowances and not to the second paragraph of that article. It states in its replies to the written questions from the Court that it considered it preferable to apply cumulatively Articles 16(2) and 27(3) of the Rules Governing the Payment of Expenses and Allowances.

77 With regard to the applicant's letter of 21 April 2003 (see paragraph 67 above), the Parliament observes that the letter could not have triggered the procedure under Article 27(2) of the Rules Governing the Payment of Expenses and Allowances, as at that time the Secretary-General had not reached a final decision.

78 Furthermore, the Parliament maintains that the procedure under Article 27(4) of the Rules Governing the Payment of Expenses and Allowances was not applied either. By following the procedure under Article 27(3) of those Rules, the Parliament had not, in its view, called into question the expenses and allowances payable to the applicant but had used a part of them, by means of offsetting, to reduce the sum the applicant owed. If the Parliament had suspended the payment of allowances on the basis of Article 27(4) of the Rules Governing the Payment of Expenses and Allowances, there would not, according to the Parliament, have been sums that could subsequently be offset against the applicant's debt to the Parliament.

79 According to the Parliament, it follows that Article 27(4) of the Rules Governing the Payment of Expenses and Allowances does not describe an offsetting procedure but gives the Parliament the possibility of exerting pressure on its Members by temporarily suspending the payment of allowances until the Member in question repays, of his own accord, the sums improperly received by way of parliamentary allowances. According to the Parliament, the provision is clumsily worded, and consequently inoperable in its present form.

80 Lastly, the Parliament points out that the applicant's argument regarding a breach of the provisions on the protection of personal data is ineffective without factual and legal evidence to support it. As to the infringement of Article 8 of the ECHR, the Parliament claims that this plea is inadmissible on the grounds that it appears for the first time in the applicant's reply.

81 The Kingdom of Spain endorses the reasoning of the Parliament as regards the assessment of the three procedures described in Articles 16 and 27 of the Rules Governing the Payment of Expenses and Allowances and the application of the second of those procedures to the present case. It follows, according to the intervener, that Article 16(2) and Article 27(3) constitute the appropriate legal basis of the contested decision.

82 At the hearing the Kingdom of Spain made a number of remarks, in the alternative, on the possible consequences of the Court of First Instance considering that the Parliament should have held Article 27(4) of the Rules Governing the Payment of Expenses and Allowances to be the appropriate legal basis. In such a situation, the possible annulment of the contested decision would, according to the Kingdom of Spain, set the case back to the stage preceding the adoption of the contested decision and would regularise the procedure. In that context, the Kingdom of Spain cited the judgment in Case T-2/95 *Industrie des Poudres Sphériques* v *Council* [1998] ECR II-3939. According to the analysis by the Kingdom of Spain, the Court could be guided by paragraph 91 of that judgment and state that, if the contested decision must be annulled on that basis, there is no need to call into question the entire administrative procedure that led to its adoption.

Findings of the Court

— The first two parts of the first plea

83 With regard to the first part, alleging a breach of Article 27(2) of the Rules Governing the Payment of Expenses and Allowances, it must be stated that that provision lays down a procedure empowering the Quaestors to rule on any disagreement between a Member and the Secretary-General about the application of the Rules Governing the Payment of Expenses and Allowances. It is a provision of general application which, barring the application of special rules, relates to all matters governed by those Rules (insurance policies, language courses, pensions,

medical expenses, etc.). It is therefore a general provision by comparison with Articles 16(2) and 27(3) and (4), which relate in particular to differences regarding the recovery of parliamentary allowances that have been unduly paid. Hence, given that special provisions exist, Article 27(2) is not applicable to the recovery of parliamentary allowances that have been unduly paid (see by analogy the judgments in Cases C-469/93 *Chiquita Italia* [1995] ECR I-4533, paragraph 61, and C-444/00 *Mayer Parry Recycling* [2003] ECR I-6163, paragraphs 49 to 57). The first part of the first plea must therefore be dismissed as unfounded.

84 With regard to the second part, alleging a breach of Article 27(4) of the Rules Governing the Payment of Expenses and Allowances, it must be stated at the outset that the contested decision comprises essentially two aspects, namely, first, the finding by the Secretary-General that the sums mentioned had been improperly paid to the applicant and that they had to be recovered and, secondly, the decision to effect recovery by means of offsetting against allowances payable to the applicant.

85 This part of the plea relates solely to the lawfulness of the second aspect of the contested decision. In that regard, it is necessary to examine first whether this paragraph in fact describes an offsetting procedure and, if so, whether such a procedure, as a lex specialis, prevails over that set out in Articles 16(2) and 27(3) of the said Rules.

86 On the first point, the Court finds that Article 27(4) does in fact describe an offsetting procedure. That finding is based on the following factors. First, Article 27 (4) refers to Article 73 of the Financial Regulation and to the rules for implementing that article. The second subparagraph of Article 73(1) of the Financial Regulation places an obligation on the accounting officer of each institution to recover amounts by offsetting them up to the amount of the Communities' claims on any debtor who himself has a claim on the Communities that is certain, of a fixed amount and due.

87 Furthermore, it is clear from subparagraphs (d) to (f) of Article 78(3) and from Articles 83 and 84 of Regulation No 2342/2002 on the rules for the implementation of Articles 71 and 73 of the Financial Regulation that each institution must first attempt to recover Community claims by means of offsetting and that, if (partial or total) recovery is not achieved, it must initiate the procedure for recovery by any other means offered by the law (enforcement of any guarantee lodged in advance, enforcement of a decision secured in accordance with Article 72(2) of the Financial Regulation or enforcement of a decision secured by legal action).

88 In addition, it must be stated that the interpretation proposed by the Parliament, according to which Article 27(4) of the Rules Governing the Payment of Expenses and Allowances gives the institution the possibility of suspending, wholly or partially, the payment of the allowances owed to a Member until the latter repays of his own volition the amounts improperly received, without using for that purpose the amounts of the allowances due to him but the payment of which has been suspended, contravenes the principle of proportionality.

89 In that regard, the Court recalls that the principle of proportionality, which is one of the general principles of Community law, requires that measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see the judgment in Case C-41/03 P *Rica Foods* v *Commission* [2005] ECR I-6875, paragraph 85, and the case-law cited).

90 Furthermore, the principle of proportionality is a criterion for interpreting the provisions of Community law (see to that effect the judgments in Cases C-459/99 *MRAX* v *Belgium* [2002] ECR I-6591, paragraphs 61 and 62, T-37/97 *Forges de*

Clabecq v *Commission* [1999] ECR II-859, paragraph 128, and T-14/98 *Hautala* v *Council* [1999] ECR II-2489, paragraph 87), so that among several possible interpretations of a provision it is necessary to adopt the one that is consonant with the principle in question.

91 In the present case, the interpretation proposed by the Parliament involves a coercive measure against a parliamentarian (the suspension of some of his allowances so that he repays of his own volition the amounts improperly received), whereas offsetting carried out in accordance with Article 73 of the Financial Regulation and its implementing rules is sufficient to serve the interests of the institution for the purposes of recovering the undue amount. Such an interpretation would also run counter to the articles cited in paragraph 87 above, which provide that each institution must recover Community claims by offsetting in preference to other means of recovery. Hence, the interpretation proposed by the Parliament would lead to the adoption of a measure that could cause unreasonable inconvenience to the Member in question.

92 In addition, the terms 'temporarily' and 'until the Member has repaid the sums improperly used' in Article 27(4) of the Rules Governing the Payment of Expenses and Allowances do not confirm the Parliament's interpretation. The term 'temporarily' is stated in the article itself to mean until the Member has repaid the sums improperly used. The term 'repaid' does not necessarily imply a payment but can also describe reimbursement by means of offsetting, which constitutes a way of simultaneously extinguishing mutual obligations (see to that effect the judgment in Case C-87/01 P *Commission* v *CCRE* [2003] ECR I-7617, paragraph 59).

93 In reply to an oral question, the Parliament also asserted at the hearing that by adopting Article 27(4) of the Rules Governing the Payment of Expenses and

Allowances the Bureau intended to create a special rule vis-à-vis that contained in paragraph 3 of the same article, affording certain procedural guarantees to a Member whose debt is recovered by offsetting.

94 Moreover, the Court notes that the minutes of 14 January 2004 on the meeting between the Quaestors and the Secretary-General (deposited by the Parliament at the request of the Court) indicate that the conditions for applying Article 27(3) and (4) were met, that the final decision would be taken by the Bureau and that the Secretary-General was called upon to hear the applicant's views before referring the matter to the Bureau, which points to the applicability of Article 27(4).

95 As regards the special relationship between Article 16(2), Article 27(3) and Article 27(4) of the Rules Governing the Payment of Expenses and Allowances, the Court notes that the latter article lays down the procedure to be followed if it is intended to apply a recovery method (offsetting) that involves the allowances payable to a Member so that he can effectively perform his representative duties by ensuring that he can exercise his mandate in an effective manner. For that reason it provides for a series of procedural and substantive guarantees (prior consultation of the Quaestors, attribution of the power of decision to a collective body, in this instance the Bureau, protection of the effective exercise of the Member's duties and the proper functioning of the institution, and lastly the prior hearing of the Member's views). Since this provision concerns a particular method of recovering one or several allowances that have been improperly paid, it must be considered to be a lex specialis vis-à-vis Articles 16(2) and 27(3) of the Rules Governing the Payment of Expenses and Allowances, which moreover justifies its insertion after the last-mentioned paragraph.

96 It is in this light that the term 'in exceptional cases' at the beginning of Article 27(4) of the Rules Governing the Payment of Expenses and Allowances is to be understood, confirming that offsetting can be carried out only after the guarantees mentioned in the preceding paragraph have been complied with.

97 The Court therefore considers that, when it amended its Rules Governing the Payment of Expenses and Allowances in February 2003 by adding a new paragraph 4, the Parliament intended to provide that, if it is necessary to recover a claim from a Member by offsetting it against parliamentary allowances owed to that Member, that can be done only in accordance with the procedure laid down in paragraph 4 of the said article. Hence, since the Secretary-General was not competent to order the offsetting in question without having been instructed to do so by the Bureau in accordance with the procedure laid down in that provision, the contested decision must be annulled insofar as it orders such offsetting.

98 As regards the observations of the Kingdom of Spain on the possibility of correcting this flaw, the Court points out that under Article 233 EC it is not for the Court to rule on the action to be taken by an institution in response to a judgment annulling all or part of a measure. Rather, it is for the institution concerned to adopt the necessary measures to implement a judgment given in proceedings for annulment (judgment in Case T-67/94 *Ladbroke Racing* v *Commission* [1998] ECR II-1, paragraph 200).

99 The contested decision must therefore be annulled insofar as it requires recovery of the amount at issue by means of offsetting.

100 Consequently, the Court considers it necessary to examine whether the other pleas put forward in support of the action are well founded, in that they relate to whether the applicant is under an obligation to repay to the Parliament the sum indicated in the contested decision, and if so to what extent.

— The third, fourth and fifth parts of the first plea

101 The third part, alleging infringement of the rights of the defence, will be examined in the context of the third plea.

102 With regard to the infringement of the principle of equality concerning the publication of the names of Members in dispute with the Parliament and the infringement of the provisions on the protection of personal data (see paragraph 69 above), it is sufficient to note that the applicant does not indicate specific actions by the Parliament that would constitute such an infringement nor the data that were allegedly disclosed nor the alleged connection between such disclosure and the contested decision. The distribution of a press review collating articles on the present case does not constitute an action connected to the contested decision. Moreover, it is common ground that the articles in question were written by persons who had no connection whatsoever with the Parliament. The third part of the first plea must therefore be dismissed.

103 Lastly, the part of the present plea concerning the breach of Article 27(3) of the Rules Governing the Payment of Expenses and Allowances — according to which the Secretary-General was satisfied, without having previously consulted the Quaestors, as from the date of his decision of 26 February 2003 that the sum of EUR 176 516 had been improperly paid (see paragraph 70 above) — must be dismissed as inadmissible under Article 44(1)(c) and the first subparagraph of Article 48(2) of the Rules of Procedure of the Court of First Instance. The applicant only raises such a plea in paragraphs 30 to 32 of his reply, whereas the factual information put forward to support it (the Bureau's decision of 12 February 2003 and the letter from the Secretary-General of 26 February 2003) did not arise during the proceedings.

The second plea, alleging infringement of the 'principle of objectivity and impartiality'

Arguments of the parties

104 The applicant maintains first that there are no rules to ensure the independence and impartiality of the Bureau in the face of influences and pressures from the political groups in the Parliament.

105 The applicant also claims, secondly, that the dispute is part of a campaign to criminalise the political activity of Basque activists seeking independence and especially the EH/B, a campaign that began in 2002 following a press conference given by spokesmen of the Spanish parliamentary groups and political parties, which pressed the institution to open an enquiry.

106 The applicant produces several press articles that allegedly reveal the political background to the case. He claims that Members of the Parliament who were not Members of the Bureau received confidential information and made unfavourable comments about him, whereas he himself was unaware of the contents of the Bureau's decision of 12 February 2003. The applicant also refers to statements and verbal attacks by the three Vice-Presidents of the Parliament allegedly aimed at him.

107 Given the pressures exerted by the three Spanish Vice-Presidents of the Parliament, the applicant asserts that any member of the Bureau would have hesitated to take a stance that could be considered favourable or even neutral towards him.

108 The Parliament points out first that the Bureau took no decision affecting the applicant and secondly that the applicant does not indicate how his complaints relate to the contested decision.

Findings of the Court

109 It has to be observed that the applicant's complaints are directed against measures taken by the Bureau and not against the contested decision, which was reached by the Secretary-General. It follows that these allegations do not affect the lawfulness of the contested decision (see to that effect the judgment in Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others* v *Commission* [2003] ECR II-3275, paragraph 471).

110 Although the Bureau took decisions throughout the administrative proceedings, none of them forms the legal basis of the contested decision. It follows that the applicant cannot rely on alleged irregularities affecting those decisions of the Bureau as grounds for annulment of the contested decision.

111 In any event, the complaint about the absence of a regulatory mechanism guaranteeing the independence and impartiality of the Bureau is unfounded, because it is clear from the case-law that the guarantees conferred by the Community legal order in administrative proceedings include, in particular, the principle of good administration, to which is linked the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (judgments in

Cases C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14, T-44/90 *La Cinq* v *Commission* [1992] ECR II-1, paragraph 86, and T-70/99 *Alpharma* v *Council* [2002] ECR II-3495, paragraph 182). It was therefore for the applicant to provide evidence of infringement of that principle, which he has failed to do.

112 The Court finds the applicant's allegations mentioned in paragraphs 105 and 106 above to be irrelevant because they relate to the actions of third parties (the Spanish authorities, representatives of the Spanish political parties, the spokesmen of parliamentary groups, Members of the European Parliament and the media) that have no link with the contested decision. The complaints against the Vice-Presidents of the Bureau are also irrelevant, since the Bureau's decisions do not form the basis of the contested decision, in particular insofar as the decision refers to the existence and amount of the Parliament's claim on the applicant. As a consequence, the second plea must be dismissed.

The third plea, alleging infringement of the principle that both parties must be heard and of the rights of the defence

Arguments of the parties

113 According to the applicant, he did not receive a copy of the report to the Quaestors that the Secretary-General drew up on the basis of the authority granted to him by the Bureau on 8 April 2002. He also alleges that the Secretary-General refused him access to the file that led to the Bureau's decision of 12 February 2003. Furthermore, the outcome of the consultation with the Quaestors on 14 January 2004 was allegedly not communicated to the applicant. Moreover, the applicant maintains that, as the Quaestors had been consulted before 9 February 2004, they were not in a position to take account of the observations the applicant made on that date. Lastly, according to the applicant, the Parliament did not send him the full minutes of the Bureau's deliberations nor the results of the Bureau's votes on the measures taken.

114 As regards Article 4(3) of Regulation No 1049/2001, which was invoked by the Secretary-General, the applicant observes that the Parliament has not shown how disclosure of the said documents would have seriously undermined the decision-making process, confidentiality, professional secrecy or business secrecy, as required by the said provision.

115 According to the applicant, the Parliament erred in law by regarding him as a 'third party' belonging to the 'public' as defined in Regulation No 1049/2001. In fact, being the person directly 'concerned', the applicant is, in his view, a 'party' to the affair.

116 The Parliament points out that the Bureau took no decision regarding the applicant on 12 February 2003 and that, as a consequence, no file leading to such a decision could exist. Nevertheless, the Secretary-General had invoked Article 4(3) of Regulation No 1049/2001, and in particular the fact that the institution had not yet reached a final decision, in order to justify the Parliament's refusal to accede to the applicant's request.

117 With regard to the applicant's second request for access to the file made on 1 March 2004, the Parliament maintains that access was never refused to him and that he can still avail himself of that right, as was indicated to him in the letter of 31 March 2004 (see paragraph 55 above).

Findings of the Court

118 According to the general principle that the rights of the defence must be observed, a person against whom an objection is directed by the Community administration must have the opportunity to comment on every document which the latter intends to use against him. Where he is not given such an opportunity, the undisclosed documents must not be taken into consideration as evidence. However, the exclusion of certain documents used by the administration is of no significance except to the extent to which the objection can be proved only by reference to those documents (see to that effect the judgments in Case C-191/98 P *Tzoanos* v *Commission* [1999] ECR I-8223, paragraph 34, and Joined Cases T-24/98 and T-241/99 *E* v *Commission* [2001] ECR-SC I-A-149 and II-681, paragraph 92). It is for the Court to consider whether the non-disclosure of the documents indicated by the applicant influenced the course taken by the proceedings and the content of the contested decision to his detriment (judgment in *E* v *Commission*, paragraph 93).

119 Furthermore, in the context of an action brought before the Court of First Instance against the decision closing an administrative procedure, it is open to that Court to order measures of organisation of procedure and to arrange full access to the file, in order to determine whether the refusal to disclose a document may be detrimental to the defence of the applicant (see by analogy the judgment in Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraph 102).

120 As regards the consultation with the Quaestors on 14 January 2004, the Parliament produced the minutes thereof in the context of the measures of organisation of procedure. The applicant, for his part, did not comment on the manner in which the failure to communicate this document could have been damaging to his defence and could have affected the outcome of the administrative proceedings to his detriment.

The applicant's only complaint about this report is that, contrary to the Secretary-General's statements to the Quaestors at that meeting, he has never acknowledged, and indeed has always contested, the Parliament's assertion that the amount in question had been paid to him improperly. In that regard, it is sufficient to note that the contested decision was not reached on the basis of an acknowledgement on the part of the applicant but as a result of the audit of the supporting documents that the applicant subsequently produced (see paragraphs 39 and 41 above). In that context, it has to be noted that consultation with the Quaestors does not bind the Secretary-General, the institution's authorising officer, with regard to the determination of a claim based on the absence of documents demonstrating that a parliamentary allowance has been used in accordance with the Rules Governing the Payment of Expenses and Allowances. Consequently, the non-disclosure of the minutes on the consultation with the Quaestors on 14 January 2004 was not such as to infringe the applicant's right to a fair hearing.

121 Furthermore, it is clear from case-law that, where the institution concerned asserts that a particular document to which access has been sought does not exist, there is a presumption that it does not exist. That, none the less, is a simple presumption, which the applicant may rebut in any way by relevant and consistent evidence (see the judgment in Case T-5/02 *Tetra Laval* v *Commission* [2002] ECR II-4381, paragraph 95, and the case-law cited).

122 In reply to the written questions from the Court, the Parliament stated that no report had been drawn up by the Secretary-General for the attention of the Quaestors following the decision of 8 April 2002. As the applicant has not presented relevant and consistent evidence capable of calling that statement into question, his arguments must be dismissed.

123 Moreover, according to the Parliament's replies to the written questions from the Court, nor does there exist a file that led to the Bureau's decision of 12 February

2003. The applicant has not presented any arguments that call into question this assertion by the Parliament.

124 As regards the applicant's complaint that his views were heard after the Secretary-General had consulted the Quaestors, with the result that the latter were not able to take account of his comments, it must be recalled that, as consultation with the Quaestors does not bind the Secretary-General as regards his decision on the inference to be drawn from the absence of supporting documents, the fact that the applicant's views were heard after the said consultation was not such as to infringe the rights of the defence.

125 As to the applicant's arguments relating to the non-communication of the minutes of the Bureau's deliberations and the results of votes, it has to be found that these documents are irrelevant as they do not relate to the contested decision, from which it follows that the applicant cannot effectively rely on this failure to communicate (see by analogy the judgment in *Aalborg Portland and Others* v *Commission*, cited in paragraph 119 above, at paragraph 126). The third plea must therefore be dismissed.

The fourth plea, alleging breach of the rules on the notification of decisions

Arguments of the parties

126 According to the applicant, the decision of 12 February 2003, which allegedly formed the basis of the authorisation granted to the Secretary-General, was notified

to him only in response to his request. The applicant also indicates that he was not sent the decision resulting from the consultation with the Quaestors on 14 January 2004.

127 The applicant claims that the obligation on the institutions to notify each decision affecting the rights or interests of the persons concerned and to mention the means of obtaining redress and the time-limits involved stems from the general principles of Community law and from the Guide to the obligations of officials and other servants of the European Parliament (OJ 2000 C 97, p. 1, 'the Guide to Obligations'). Point A6 of Section III of the Guide to Obligations states that 'if it is possible to appeal against a decision, that fact must be clearly stated, together with the full details required to enable an appeal to be lodged'.

128 The Parliament observes that, in the absence of a genuine decision affecting the applicant taken on 12 February 2003, there was nothing to notify to him and hence there was no need to mention time-limits and means of redress. With regard to the Guide to Obligations, the Parliament maintains that the applicant's argument is inadmissible because it was stated for the first time in his reply. Moreover, any obligation to make reference to time-limits and means of redress (which the Parliament contests) was in any event met by the Secretary-General's letters of 16 April 2003 and 31 March 2004 (see paragraphs 43 and 55 above). The Parliament also states that the point of the Guide to Obligations to which reference is made relates only to the institution's relations with citizens and not to those with its Members.

Findings of the Court

129 With regard to notification of the Bureau's decision of 12 February 2003, it is sufficient to observe that it does not constitute the contested decision nor the legal basis thereof and that, in any event, it was notified to the applicant by fax on

20 February 2003. In those circumstances, the fact that notification was the result of a request from the applicant is irrelevant.

130 As regards notification of the outcome of the consultation with the Quaestors on 14 January 2004, this argument is identical to the complaint made in the context of the plea alleging infringement of the rights of the defence, which has already been dismissed.

131 Finally, with regard to mention of the time-limits and means of redress in the contested decision, it has to be found that no express provision of Community law imposes on the institutions any general obligation to inform the addressees of measures of the judicial remedies available or of the time-limits for availing themselves thereof (order in Case C-153/98 P *Guérin Automobiles* v *Commission* [1999] ECR I-1441, paragraphs 13 and 15, and judgment in Case T-145/98 *ADT Projekt* v *Commission* [2000] ECR II-387, paragraph 210). As regards the obligations that the institution assumed by adopting the Guide to Obligations, the fact that the Parliament did not indicate, in the contested measure, the possibility of bringing judicial proceedings is undoubtedly likely to constitute a breach of the obligations imposed by the Guide (see by analogy the order in Case T-218/01 *Laboratoire Monique Rémy* v *Commission* [2002] ECR II-2139, paragraph 25). However, the disregard of such an obligation does not constitute an infringement of essential procedural requirements, the consequence of which would be to affect the lawfulness of the contested decision. It follows that the fourth plea must be dismissed.

The fifth plea, alleging breach of the obligation to provide a statement of reasons

Arguments of the parties

132 The applicant maintains that the statement of the reasons on which the contested decision is based is inadequate in that it does not indicate how the supporting

documents which he submitted to the Secretary-General throughout the proceedings did not comply with the Rules Governing the Payment of Expenses and Allowances. He also points out that certain debts could not be paid until the sum seized by the French authorities had been returned. In his view, it followed that the statement of reasons for the requirement to produce documents demonstrating that his obligations had been met was inadequate, given that the existence of such obligations was not contested.

133 According to the Parliament, the contested decision indicates the amount to be repaid, the reason for repayment and the methods used for calculating the amount. In addition, the Parliament points out that as a general rule the requirement to state the reasons is less demanding if the person concerned has been closely associated with the preparation of the decision and knows, from an audit report to which the contested decision refers and which has been communicated to him, the reason why the institution considers that the disputed expenditure should not be charged to the budget.

Findings of the Court

134 It must be borne in mind that the statement of reasons must be appropriate to the nature of the measure in question and must show clearly and unequivocally the reasoning of the institution which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the competent Community court to exercise its power of review (judgments in Cases C-289/97 *Eridania* v *Azienda Agricola San Luca di Rumagnoli Viannj* [2000] ECR I-5409, paragraph 38, and C-340/98 *Italy* v *Council* [2002] ECR I-2663, paragraph 58).

135 Moreover, it can be considered that sufficient reasons were given for a decision if the decision refers to an audit report that has been communicated to the applicant (see to that effect the judgments in Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247,

paragraphs 142 to 144, and in Case T-137/01 *Stadtsportverband Neuss* v *Commission* [2003] ECR II-3103, paragraphs 52 to 58).

136 In the present case, the contested decision refers explicitly to the audit carried out in December 2002. A copy of the report on that audit was sent to the applicant by letter of the Director-General for Finance of the Parliament dated 9 January 2003. The applicant submitted his comments on that report in writing (see paragraphs 34 and 37 above). Likewise, the contested decision refers to the documents produced by the applicant after the audit and to the monthly instalments of EUR 3 000 paid as reimbursement of the debt of EUR 58 155.82. In these circumstances, the express reference to the audit report notified to the applicant must be considered sufficient to meet the requirement to state the reasons for the contested decision (judgment in *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 135 above, at paragraph 144).

137 Moreover, the applicant was indeed closely associated with the preparation of the contested decision and knows, from the audit report and from the supporting documents that he himself submitted to the Parliament, the facts on which the Secretary-General based his determination of the precise amount of the debt (see paragraphs 37, 39, 41 and 51 above).

138 The arguments that certain supporting documents were not taken into account relate not to the existence or adequacy of the statement of reasons but to the soundness of the reasons, which goes to the substantive legality of the contested measure (see to that effect the judgment in Case C-17/99 *France* v *Commission* [2001] ECR I-2481, paragraph 35), and will therefore be examined in the context of the eighth plea. It follows from the foregoing that the fifth plea must be dismissed.

The sixth plea, alleging infringement of the principle of equality and non-discrimination

Arguments of the parties

139 The applicant points out that, even though he has not been accused of an abuse similar to those regularly discovered, particularly by the Court of Auditors, the measures taken against him are unprecedented. In his opinion, that constitutes an infringement of the principle of equality and non-discrimination.

140 The Parliament replies that possible or actual abuses are investigated by the Secretary-General and that amounts improperly paid have already been recovered.

Findings of the Court

141 As may be seen from the case-law, the principle of equality of treatment must be reconciled with the principle of legality, according to which no person may rely, in support of his claim, on an unlawful act committed in favour of another (judgments in Cases 188/83 *Witte* v *Parliament* [1984] ECR 3465, paragraph 15, 134/84 *Williams* v *Court of Auditors* [1985] ECR 2225, paragraph 14, and *Italy* v *Council*, cited in paragraph 134 above, at paragraphs 87-93).

142 Hence, even supposing that the applicant's complaints concerning unlawful acts committed in favour of other Members, on account of the absence or inadequacy of checks on the use of parliamentary allowances, are well founded, the applicant cannot benefit therefrom. The sixth plea must therefore be dismissed.

The seventh plea, alleging misuse of powers

Arguments of the parties

143 According to the applicant, in the present case there are objective, relevant and consistent factors to indicate that the procedure was initiated by the Bureau for purely political reasons under pressure from the spokesmen of two Spanish political groups, which allegedly asked the three Spanish Vice-Presidents to take action within the Bureau against the applicant.

144 The Parliament replies that the arguments put forward by the applicant are irrelevant, as the Bureau took no decision in his regard. Furthermore, the evidence in the Parliament's possession justified opening an investigation of the matter.

Findings of the Court

145 It is established case-law that a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (judgments in Cases C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24, and C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 52).

146 The applicant has adduced no such factors. It must be recalled that, up to the time of seizure, the applicant had received a total of EUR 495 891.31 by way of parliamentary expenses and allowances. The seizure of a substantial part of this amount (EUR 200 304), which according to the statements of the applicant had been received from the Parliament, was bound to give rise to doubts as to whether the use of a substantial part of the expenses and allowances paid to the applicant complied with the Rules Governing the Payment of Expenses and Allowances. The opening of an investigation was therefore justified. Consequently, the seventh plea must be dismissed.

The eighth plea, alleging errors in the assessment of the supporting documents submitted to the Secretary-General

Arguments of the parties

147 The applicant maintains that the Parliament committed a manifest error of assessment in not taking account of the fact that he was not able to provide some items of his accounts because of the detention of his treasurer and the seizure of numerous accounting documents as well as the sum of EUR 200 304. According to the applicant, that sum came entirely from the Parliament.

148 The refusal to take several categories of expenses into account without indicating the way in which they were supposedly contrary to the Rules Governing the Payment of Expenses and Allowances also constitutes, in the view of the applicant, a manifest error of assessment. He asserts that the expenses which, according to the Secretary-General, could not be proven by acceptable accounting documents could be assessed on a lump-sum basis. In this regard the applicant recalls his letter of 6 February 2003 to the Secretary-General (see paragraph 39 above), which contained a new breakdown showing that the justified expenses under the heading of the

secretarial allowance now amounted to EUR 191 860, that is to say EUR 138 741 justified by the documents attached to the said letter in addition to the EUR 53 119 already justified by the audit, so that the balance to be repaid to the Parliament amounted to EUR 50 722.

149 More precisely, the applicant considers that the Secretary-General should have taken into account the amounts relating to arrears of salaries (EUR 67 340) and arrears of social security contributions (EUR 26 054), since these debts will be paid once the seized amount has been released. In addition, he questions the Parliament's refusal to take into consideration amounts relating to lump-sum personal expenses (EUR 27 600), which could be demonstrated by other means, and mobile telephone expenses calculated on the basis of an extrapolation (EUR 4 800).

150 Similarly, in the view of the applicant, the refusal to take into account a series of documents and invoices relating to the accommodation expenses of the applicant and his assistants, amounting to EUR 63 308.64, and the expenses stemming from salary arrears which the Labour Court of San Sebastián has found him to owe (EUR 50 865.43, see paragraph 45 above) also constitutes a manifest error of assessment.

151 The applicant stated at the hearing that Mr Gorrotxategi would retain EUR 100 000 of the EUR 200 304 that had been seized, as he had allegedly advanced this amount to the applicant as a cash loan so that he could meet his obligations to his assistants. Moreover, the amount which the court in San Sebastián had found he owed to his assistants would, according to the applicant, be paid out of the seized amount.

152 The Parliament indicates first of all that the certificate drawn up at the request of the applicant (see paragraphs 32 and 33 above) merely lists the payments made to the bank accounts belonging to him and to the third party paying body by way of different parliamentary allowances, and does not refer to the sum seized.

153 The Parliament observes that there is no link between the recovery of the EUR 200 304 and the production of additional supporting documents, since the sum seized relates to a period after the one in which the allowances should have been used in accordance with the Rules Governing the Payment of Expenses and Allowances. It is therefore both the lack of supporting documents and the existence of a considerable balance on the current account that led the Parliament to consider that these sums had not been used to honour commitments undertaken in compliance with the Rules Governing the Payment of Expenses and Allowances.

154 According to the Parliament, the audit report established that the applicant had breached the Rules Governing the Payment of Expenses and Allowances. Moreover, the applicant himself had acknowledged that some of his obligations to his assistants had not been honoured. Furthermore, the Parliament disputes the probative value of the items adduced by the applicant regarding the conciliation of his assistants' arrears (see paragraph 149 above) and that of the documents produced in the course of the procedure.

155 The Parliament points out that the amounts mentioned by the applicant, which are allegedly due to the assistants, could not be taken into account because, according to the audit report, the contracts in question had been concluded between the assistants and the EH/B, a fact that was also pointed out by the Kingdom of Spain.

156 Lastly, the Parliament declares that, as stated in paragraph 3 of the contested decision, it is still prepared to take into consideration any additional supporting documents that the applicant might submit.

Findings of the Court

157 It should be noted at the outset that, under the system established by the Rules Governing the Payment of Expenses and Allowances, a Member who appoints a paying agent to manage amounts paid by way of parliamentary assistance allowances must also be in a position to produce documents demonstrating their use in accordance with the contracts he has concluded with his assistants. The lack of documents to evidence expenses claimed by way of assistants' salaries or any other expenditure repayable in accordance with the Rules Governing the Payment of Expenses and Allowances can have no other consequence than the obligation to repay the amounts in question to the Parliament. Any amount for which there is no documentary proof that it was used in compliance with the Rules Governing the Payment of Expenses and Allowances must be considered to have been paid improperly. A person who has submitted documents to the administration in order to demonstrate the use of the funds received must therefore claim and prove, in support of his action before the Court, that the administration has erred in refusing to take them into account.

158 In that context, the applicant's argument regarding the difficulties he had faced because of the arrest of his treasurer and the seizure of numerous documents cannot be accepted. In reply to a written question from the court, the applicant stated in this regard that the only document seized by the French authorities was the debit note for the withdrawal of EUR 210 354, issued by Banque Bruxelles Lambert to the holder of the current account. The applicant obtained a copy of that document from the bank branch and produced it to the Court. Hence, the fact that the applicant had to submit his accounts without the help of his treasurer is irrelevant.

159 The lump-sum assessment of expenses advocated by the applicant cannot be accepted. It is common ground that the payment of the obligations covered by the secretarial allowance must be proved by supporting documents furnishing all the information needed to carry out ex post checks (the precise amounts, the dates of payment, the information on the debtor and the creditor, the legal basis of the payment, etc.). Lump-sum assessment, for which there is no provision in any case, does not offer such a possibility.

160 As to the return of the sum of EUR 200 304 seized in France and, more precisely, the applicant's argument that the Parliament should have taken account of the fact that the production of some of the supporting documents depended on the return of that sum, this argument cannot be accepted.

161 The applicant attempts to prove that he owes certain sums to persons paid out of the secretarial allowance and claims that, for that reason, the Parliament should have considered those sums to be duly evidenced. He makes reference in this regard to the arrears of salaries (EUR 67 340) and arrears of social security contributions (EUR 26 054) and asserts that these debts will be paid when the seized sum has been returned.

162 However, the fact that the applicant owes certain amounts to persons for whom the secretarial allowance is intended cannot exempt him from the duty to produce the documents showing that he has met his obligations. Otherwise, a Member could collect an allowance without paying the sums intended for the providers of services and subsequently deprive the Parliament of any means of checking by producing whatever he saw fit as evidence of his debt to them.

163 It follows that, as has already been noted, the Parliament must check the existence of supporting documents demonstrating that the funds have been used in accordance with the Rules Governing the Payment of Expenses and Allowances. Moreover, the Parliament cannot be obliged to exempt the applicant from producing supporting documents because of a seizure for which it is not responsible. It is the parliamentarian who bears the risks inherent in the management of an allowance from the time when he collects it. In any case, the Parliament has stated that it is still

prepared to take into consideration documents supporting the payment of the debts to which the applicant refers. Hence the Parliament has taken account of the seizure in France and is offering the applicant an opportunity to provide evidence of sums spent by way of parliamentary allowances.

164 With regard to the Parliament's refusal to take into consideration amounts relating to lump-sum personal expenses (EUR 27 600) even though, according to the applicant, these amounts could be proved by other means, it is sufficient to note that the applicant does not specify the means in question. Where mobile telephone expenses are concerned, it should be noted that, for the reasons set out in paragraph 159 above, the proposed extrapolation cannot be accepted as a method of demonstrating expenses in the framework of the Rules Governing the Payment of Expenses and Allowances.

165 As to the decision of the Labour Court of San Sebastián, on which the applicant relies as proof of his debt of EUR 50 865.43 to his assistants, it must be pointed out that the decision is not a measure emanating from a judicial authority but an administrative decision reached by the conciliator of the Department of Justice of the Basque Government and based on an agreement between the applicant and his assistants. In any event, as that measure does not attest to the extinction of the applicant's debt to his assistants, it does not constitute an acceptable supporting document (see paragraphs 162 and 163 above). For the sake of completeness, an agreement reached as a result of conciliation, such as the one underlying the above-mentioned decision, does not, in reality, offer any certain proof that a claim exists. The Parliament is therefore right to demand documents proving the payment of these arrears to the assistants in order to reduce the debt.

166 The applicant maintains that a sum of EUR 63 308.64 should have been considered duly evidenced by way of accommodation expenses. He alleges that these expenses were borne by the EH/B, which by agreement retained a flat amount of EUR 600 from the salary of each assistant. According to the applicant, this amount is owed to the EH/B (see paragraphs 45 and 150 above).

167 It is sufficient to observe in this regard that, for the reasons stated, a debt that has not been paid cannot be taken into account as a duly documented expense. Consequently, the Parliament rightly refused to take this item into consideration.

168 It is clear from the foregoing that the Secretary-General did not err in refusing to take account of the above-mentioned documents produced by the applicant. It follows that the eighth plea must be dismissed.

169 As the last three parts of the first plea and all of the following pleas (from the second to the eighth) have been dismissed, the contested decision must be annulled only insofar as it lays down that the recovery of the sum owed by the applicant will be effected by means of offsetting.

Costs

170 Under Article 87(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the Court of First Instance may order that the costs be shared or that each party bear its own costs. In the present case, in view of the partial annulment of the contested decision and the dismissal of the majority of the applicant's pleas, each party must be ordered to bear its own costs.

171 Under the first subparagraph of Article 87(4) of the Rules of Procedure, the Member States which intervened in the proceedings shall bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

1. **Annuls the decision of the Secretary-General of the European Parliament of 24 February 2004 concerning the recovery of the sums paid to the applicant by way of parliamentary expenses and allowances insofar as it lays down that the recovery of the sum owed by the applicant shall be effected by means of offsetting;**

2. **Dismisses the remainder of the application;**

3. **Orders the applicant, the Parliament and the Kingdom of Spain to bear their own costs.**

Pirrung Meij Forwood

Pelikánová Papasavvas

Delivered in open court in Luxembourg on 22 December 2005.

E. Coulon J. Pirrung

Registrar President