ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
26 January 2001 *

In Case T-353/00 R,

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

applicant,

v

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

defendant,

* Language of the case: French.

supported by

Republic of France, represented by D. Wibaux and G. de Bergues, acting as Agents, with an address for service in Luxembourg,

intervener,

APPLICATION for suspension of operation of the decision in the form of a declaration of the President of the European Parliament of 23 October 2000,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

Legal background

Community law

1 Article 5 EU provides:

'The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the

purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.'

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

3 Article 190(4) EC, Article 21 CS and Article 108(3) EA provide that the European Parliament is to draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all the Member States, or in accordance with principles common to all the Member States, and that the Council, acting unanimously, is to lay down provisions, which it is to recommend to the Member States for adoption. It is further provided by Article 7(1) of the Act concerning the election of representatives to the European Parliament by direct universal suffrage, annexed to the Council Decision of 20 September 1976 ('the 1976 Act'), that it is to be the responsibility of the Parliament to draw up a uniform electoral procedure. To date, notwithstanding drafts prepared by the Parliament, no uniform system has been adopted.

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

5 Article 6(1) of the 1976 Act sets out the functions with which the office of representative in the Parliament is to be incompatible, and provides, in paragraph

2, that each Member State 'may, in the circumstances provided for in Article 7(2), lay down rules at national level relating to incompatibility'. Article 7(2) of the 1976 Act provides:

'Pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.'

6 Article 11 of the 1976 Act provides:

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

7 Article 12 of the 1976 Act provides:

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

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

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

8 Rule 7 of the Rules of Procedure of the European Parliament (OJ 1999 L 202, p. 1, hereinafter 'the Rules of Procedure') is headed 'Verification of credentials'. Point 4 and 5 provides:

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

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

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

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

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

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

10 The duties of the President of the Parliament are set out in Rule 19 of the Rules of Procedure, which states as follows:

'1. The President shall direct all the activities of Parliament and its bodies under the conditions laid down in these Rules. He shall enjoy all the powers necessary to preside over the proceedings of Parliament and to ensure that they are properly conducted.

2. The duties of the President shall be to open, suspend and close sittings; to ensure observance of these Rules, maintain order, call upon speakers, close debates, put matters to the vote and announce the results of votes; and to refer to committees any communications that concern them.

3. The President may speak in a debate only to sum up or to call speakers to order. Should he wish to take part in a debate, he shall vacate the Chair and shall not reoccupy it until the debate is over.

4. Parliament shall be represented in international relations, on ceremonial occasions and in administrative, legal or financial matters by the President, who may delegate these powers.'

11 Rule 19(1) of the Rules of Procedure has been the subject of an interpretation in accordance with Rule 180 thereof, in the following terms:

'These powers include the power to put texts to the vote in an order other than that set out in the document to be voted on. By analogy with the provisions of Rule 130(7), the President may seek the agreement of Parliament before doing so.'

French law

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

'Articles LO 127 to LO 130-1 of the Electoral Code shall apply to the election of representatives to the Assembly of the European Communities.

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

13 According to the first subparagraph of Article 24 of the 1977 Law,

'The candidate whose position on a list immediately follows that of the last elected candidate will be called upon to replace the elected representative on that list where the latter's seat becomes vacant for any reason.'

14 Article 25 of the 1977 Law provides:

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

The application will not have suspensory effect.'

Facts and Procedure

15 The applicant, Mr Jean-Marie Le Pen, was elected as a Member of the European Parliament on 13 June 1999.

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

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

18 The Secretary General of the French Ministry of Foreign Affairs notified the applicant of the decree of 31 March 2000 by letter dated 5 April 2000. In that letter, it was stated that the applicant could bring proceedings challenging the decree before the French Conseil d'État within a period of two months from the date of notification.

19 In an undated letter the President of the European Parliament, Ms Fontaine, informed the applicant that the French authorities had officially brought before her the matter of the applicant's disqualification from holding office as a member of the Parliament (apparently on 25 April 2000, by means of a letter from the French Permanent Representation to the European Union). She stated that she would '[make a statement on the matter] in the plenary sitting on 3 May [2000]', and that, in accordance with the second subparagraph of Rule 7(4) of the Rules of Procedure, 'the matter [would] be referred to the committee responsible'.

20 The report of the plenary session of 3 May 2000, under the heading 'Term of office of Mr Jean-Marie Le Pen', states as follows:

'The President of the European Parliament... has, pursuant to the second subparagraph of Rule 7(4) of the Rules of Procedure, referred the matter to the Legal Affairs Committee. The Committee will meet tomorrow at 9h 00.'

21 The Legal Affairs and Internal Market Committee (hereafter 'the Legal Affairs Committee') verified Mr Le Pen's credentials in closed sessions on 4, 15 and 16 May 2000.

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

23 In the plenary session of 18 May 2000 the President of the Parliament, after stating that she had asked for the opinion of the Legal Affairs Committee on the French authorities' communication on the disqualification of the applicant from

holding office, read out a letter of 17 May 2000 from Ms Palacio which was worded as follows:

'Madam President,

The [Legal Affairs Committee] resumed the examination of the position of Mr Jean-Marie Le Pen at its meeting on 16 May 2000. The Committee is aware that the French Prime Minister's decree, notified to Mr Le Pen on 5 April 2000 and published in the *Journal officiel de la République française* on 22 April 2000, is now enforceable. However, the Committee notes that, as mentioned in the letter notifying the party concerned of the decree, the latter is entitled to bring proceedings before the Conseil d'État accompanied by a request for suspension of operation of the decree.

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

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

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

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

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

27 By letter dated 9 June 2000 to Mr Védrine and Mr Moscovici, the French Ministers for Foreign Affairs and European Affairs respectively, the President of the Parliament stated:

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

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

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

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

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

'We expect the Parliament to act in compliance with Community law and take note, by means of a vote, of Mr Le Pen's disqualification from holding office as soon as possible.'

32 On 20 October 2000, the President of the Parliament sent a letter informing Mr Le Pen of the receipt, the day before, of the 'official communication from the competent French authorities' confirming the dismissal by the Conseil d'État of the latter's application challenging the decree of 31 March 2000 and that, in accordance with the Rules of Procedure and the 1976 Act, 'it would take note of the decree [of 31 March 2000] in the next plenary session on 23 October'.

33 The applicant replied by letter dated 23 October 2000. He brought to the attention of the President of the Parliament the fact that the judgment of the Conseil d'État of 6 October 2000 had only been given by two combined subdivisions whereas, where such a decision concerned the term of office of a Member of the European Parliament, Article 25 of the 1977 Law required that it be given in plenary session. He also informed the President of the Parliament that a request for clemency to the President of the French Republic and an application to the European Court of Human Rights would be made. Consequently, he requested that there be a further meeting of the Legal Affairs Committee and that he and his lawyers be given a hearing by that committee.

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

35 According to the minutes of the debates of the session of 23 October 2000, in the context of the agenda heading 'Communication of the notification of Mr Le Pen's disqualification from holding office', the President of the Parliament stated, firstly, as follows:

'On Thursday, 19 October 2000, I received official notification from the competent French authorities of a decision, of 6 October 2000, of the Conseil d'État, dismissing the application of Mr Jean-Marie Le Pen challenging the decree of the French Prime Minister of 31 March 2000, terminating the former's term of office as a Member of the European Parliament.

Since that time, I have received a copy of the request for clemency to Mr Jacques Chirac, President of the Republic, made by Messrs Charles de Gaulle, Carl Lang, Jean-Claude Martinez and Bruno Gollnisch on behalf of Mr Le Pen.'

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

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

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

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

37 Then the President of the Parliament declared:

'Consequently, in accordance with Article 12(2) of the [1976 Act], the European Parliament takes note of the notification of the French Government declaring the disqualification of Mr Jean-Marie Le Pen from holding office.'

38 She therefore invited Mr Le Pen to leave the auditorium and suspended the session in order to enable him to do so.

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

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

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

42 According to the minutes of the plenary session of the Parliament of 17 November 2000, Vice President Onesta, who chaired the session, informed the Parliament that the competent French authorities had appointed Ms Stirbois as member of the Parliament in place of the applicant 'with effect from 13 November 2000'.

43 By application lodged at the Registry of the Court of First Instance on 21 November 2002, the applicant brought an action for the annulment of the decision taken in the from of the declaration of the President of the Parliament of 23 October 2000 (hereinafter 'the contested act').

44 By separate document, lodged on the same day at the Registry of the Court of First Instance, the applicant applied to the President of the Court of First Instance for suspension of operation of the contested act.

45 By letter dated 14 December 2000, the French Republic applied, pursuant to Article 37 of the Protocol on the EC Statute of the Court of Justice and in accordance with the provisions of Article 115 of the Rules of Procedure of the Court of First Instance, for leave to intervene in support of the defendant in the present proceedings for interim relief.

46 At the hearing before the President of the Court of First Instance on 15 December 2000, the French Republic was formally granted leave to intervene.

47 In response to a request by the President of the Court of First Instance to the defendant at that hearing, the Director General of Finances and Financial Control of the Parliament confirmed, in a statement of 18 December 2000, that Mr Le Pen had 'received travel and accommodation allowances, and all the other allowances provided for... up to the end of his term of office'. It was further confirmed that the applicant had been in receipt of a pension 'from the Pension

Fund of the Assemblée nationale' since 21 October 2000 and, since 1 November 2000, an allowance payable at the end of term of office. Furthermore, the Director General stated that 'one half of the allowance for general expenses was payable in the three months from 1 November 2000' and that the 'allowance for secretarial expenses was payable within a period of three months if the conditions laid down... for the members' expenses and allowances were fully complied with'.

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

Law

49 By virtue of Articles 242 and 243 EC, in conjunction with Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 (OJ 1988 L 319, p. 1) as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court of First Instance may, if it considers that the circumstances so require, order a suspension of operation of the measure challenged, or prescribe any other necessary interim measures.

50 Article 104(2) of the Rules of Procedure provide that an application for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the measures applied for. Those requirements are cumulative, so that an application for suspension of operation will be dismissed where any of them is lacking (orders of the President of the Court of First Instance in Case T-222/99 R *Martinez and de Gaulle* v *Parliament* [1999] ECR II-3397, paragraph 22, and Case T-17/00 R *Rothley and Others* v *Parliament* [2000] ECR II-2085, paragraph 37.) The President of the Court of First Instance will also proceed, where appropriate, to determine the balance of

interests (orders in *Martinez and de Gaulle* v *Parliament* and *Rothley* v *Parliament*, cited above, paragraphs 22 and 37 respectively).

Admissibility

Arguments of the parties

51 The applicant submits that his application is admissible. Referring primarily to the judgment of the Court of Justice in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, he points out that an action for annulment may be brought against acts of the Parliament intended to produce legal effects vis-à-vis relations with third parties. Although emanating from the President of the Parliament, the contested act takes the form of a communication that the Parliament takes note of the letter of the French authorities declaring the disqualification of the applicant from holding office. Since he clearly was a Member of the European Parliament when the contested act was adopted, he submits that he is directly and individually concerned by it.

52 The contested act is definitive and gives rise to legal effects outside the purely internal sphere of the Parliament. The legal effects of that act follow from the fact that it brings about a distinct change in the applicant's legal position by declaring his disqualification from holding office (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9).

53 The Parliament submits that the application for interim relief must be dismissed, given that the main application to which the present application relates is clearly

inadmissible. At the hearing, the French Republic adopted the Parliament's argument as to the inadmissibility of the main application.

54 The Parliament contends that the main application is inadmissible because there can be no Community competence where the incompatibility or ineligibility of its members results from national law. It refers, first, to the principle that the European Communities are vested only with the powers conferred on them, specified exhaustively by the Treaties, and, referring to Article 5 EU, states that, in common with the other Community institutions, it cannot properly act outside the sphere of its competence. In the absence of a uniform system for the election of members of the European Parliament, the 1976 Act constitutes the sole Community instrument currently in force concerning parliamentary law and is based on the maintenance of the national provisions governing the election of members of the Parliament.

55 In the case of vacancies arising from the application of provisions of national law concerning incompatibilities with the term of office of a member of the European Parliament, the role of the Parliament is confined, under the first subparagraph of Article 12(2) of the 1976 Act, to taking note of the application of relevant national provisions. Therefore, the Parliament, supported by the French Republic, submits that the contested act is without any legal effect, given that, in this case, the French Prime Minister has exclusive competence in the matter by virtue of Article 5 of the 1977 Law. It is therefore the decree of 31 March 2000, and not the contested act, that adversely affects the applicant. In brief, the applicant has seised the wrong court in bringing proceedings before the Community court, and it is for the national court to determine the case, which the Conseil d'État has already done in dismissing Mr Le Pen's action against the decree of 31 March 2000.

56 Furthermore, at the hearing, the French Republic, supported by the Parliament, described the Parliament's competence to adopt the contested act as 'more than circumscribed', the measure being no more than a purely administrative formality. Since there is no act adopted by the Parliament within the meaning of Article 230 EC, both the main application and the present application for interim relief are, in their submission, clearly inadmissible.

Findings of the Court

57 Under the first subparagraph of Article 104(1) of the Rules of Procedure, an application for suspension of operation of a measure 'shall be admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance'. That rule is not a mere formality, but presupposes that the main application, to which the application for interim relief is related, can in fact be considered by the Court of First Instance.

58 It is settled case-law that the problem of the admissibility of the main action must not, as a rule, be examined in the course of interim relief proceedings because of the risk of pre-judging the main action. Such examination may, however, prove to be necessary, where the manifest inadmissibility of the main application to which the application for interim relief is related has been raised, to establish whether certain factors exist that would allow the conclusion, *prima facie*, that the main application is admissible (orders of the President of the Court of Justice in Case 146/85 R *Diezler and Others* v *ESC* [1985] ECR 1805, paragraph 3; Case 221/86 R *Groupe des droites européennes et Front national* v *Parliament* [1986] ECR 2969, paragraph 19; Case 376/87 R *Distrivet* v *Council* [1988] ECR 209, paragraph 21; Case C-239/96 R and C-240/96 R *United Kingdom* v *Commission* [1996] ECR I-4475, paragraph 37; orders in *Martinez and de Gaulle* v *Parliament* and *Rothley and Others* v *Parliament*, cited above, paragraphs 59 and 44).

59 The first subparagraph of Article 230 EC provides that the Court is, in particular, to review the legality of acts of the Parliament intended to produce legal effects vis-à-vis third parties. That provision is intended to ensure that measures adopted by the European Parliament in the sphere of the EC Treaty that could encroach on the powers of the Member States, or of the other institutions, or exceed the limits which have been set to the Parliament's powers can be referred to the Community judicature for review (*Les Verts* v *Parliament*, cited above, paragraph 25).

60 In this case, the main application challenges the legality of an 'act' in the form of a 'declaration' of the President of the Parliament, dated 23 October 2000, in which the President, on behalf of the Parliament, took note of the disqualification of the applicant from holding office. According to the applicant, the President of the Parliament overstepped the limits of her powers because the contested act could only be adopted by the Parliament itself. The Parliament does not deny that the declaration of the applicant's disqualification from holding office falls within its competence but submits, essentially, that, since this is a competence 'that is more than circumscribed', the declaration could be made in the form it was, since the contested act is not a true 'act' within the meaning of Article 230 EC.

61 It must be observed, firstly, that, according to settled case-law, measures producing binding legal effects affecting the interests of the applicant by bringing about a distinct change in his legal position, are acts and decisions capable of being the subject of an action for annulment within the meaning of Article 230 EC, and that, by contrast, the form in which such acts or decisions are adopted, is, in principle, irrelevant as regards the possibility of challenging them by such an action (*IBM* v *Commission*, cited above, paragraph 9; order in Case C-50/90 *Sunzest* v *Commission* [1991] ECR I-2917, paragraph 12; and judgment in Case C-147/96 *Netherlands* v *Commission* [2000] ECR I-4723, paragraph 25). It follows that the fact that the contested act was adopted, not by the Parliament, but by its President on behalf of the latter, does not affect the question whether Mr Le Pen may challenge its validity, inasmuch as it produces binding legal effects.

62 It should be stated that, *prima facie*, that is the case.

63 Firstly, it is not possible, *prima facie*, to discount the applicant's argument that the Parliament's role in the context of the procedure for the disqualification of one of its members from holding office cannot conceivably be seen as an instance of a competence in the exercise of which there is no scope for discretion. It cannot be excluded that Parliament has, at least, a power to verify whether the procedure laid down by the national law applicable in the case has been observed, and also, where appropriate, whether the fundamental rights of the member of the

Parliament in question have been respected. Moreover, such a power would appear to arise from the wording of the second subparagraph of Rule 7(4) of its Rules of Procedure, which provides not only that the President of the Parliament is to ask to be regularly informed of the progress of such disqualification procedures, but also that they must be referred to the Legal Affairs Committee so that the Parliament will decide on the basis of a proposal from that committee.

64 Furthermore, only an examination of the substance of the case can make it possible to undertake a proper appraisal on the applicant's alternative argument to the effect that, first, even if the Parliament's competence must be regarded as circumscribed, that institution remains obliged, as an administrative authority, to decide, in accordance with the requirements of its Rules of Procedure, and in particular with the requirement to consult the Legal Affairs Committee, on each application, such as the one in issue, made by a Member State, and second, that the act so adopted produces specific legal effects.

65 Third, there can be no doubt that the contested act both individually and directly concerns the applicant. Although in the form of a declaration by the President of the Parliament by which she took note of the letter from the French authorities declaring the disqualification of the applicant from holding office, its purpose is clearly to give effect to that disqualification.

66 Furthermore, it should be observed that the contested act produced particular legal effects vis-à-vis the applicant, as regards both his parliamentary duties and his personal situation. First, Mr Le Pen was able to carry out his duties as a member of the Parliament, and even to take part in the debates in plenary session up to that of 23 October 2000, when the contested act was adopted. Second, it appears from the exchange of correspondence on 27 October and 13 November 2000, between the President of the Parliament and the French Government, and from the minutes of the plenary session of 17 November 2000, that the vacancy created by the applicant's departure only came to an end on 13 November 2000. At the hearing, in response to questions from the President of the Court of First Instance, the Parliament confirmed that 13 November 2000 was chosen for practical reasons, the French Government not having indicated a date in its letter of the same day. It seems clear, therefore, that, notwithstanding the interpretation of Article 12 of the 1976 Act put forward by the defendant and the intervener, the

disqualification of the applicant from holding office became effective, at the earliest, only as from the adoption of the contested act.

67 Lastly, as regards the effects of the contested act on the applicant's personal situation, it is not in dispute (see paragraphs 47 and 48 above) that Mr Le Pen received all of the allowances payable by the Parliament that a Member of the European Parliament working in Brussels and Strasbourg normally receives until 23 October 2000, and that his salary as a Member of the European Parliament was paid by the French authorities until 24 October 2000.

68 The present application for interim relief must therefore be declared admissible.

Prima facie case

Arguments of the parties

69 The applicant puts forward a number of pleas in law alleging 'external' and 'internal' illegality of the contested act. In his oral submissions, he also pleaded breach of his parliamentary immunity.

70 It is appropriate, first, to consider the plea alleging 'external' illegality of the contested act on the ground that the procedure followed prior to its adoption was irregular.

71 The applicant submits, first, that respect for the Rules of Procedure is an essential formal requirement by virtue of the general principle of respect for the rights of defence (Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661). In this case, the Legal Affairs Committee did not give the applicant and his lawyers a hearing before the endorsement of the decree of 31 March 2000 at the plenary session on 23 October 2000.

72 Second, he submits that the President of the Parliament, in expressing herself, in the contested act, as acting on behalf of the Parliament, infringed the competence of the Parliament. In the case of disqualification of a member of the Parliament from holding office pursuant to national law, Rule 19 of the Rules of Procedure does not give the President of the Parliament the power to take formal notice of such a measure. The Parliament must, instead, rule by vote in plenary session on a proposal from the Legal Affairs Committee, in accordance with Rule 7(4) of the Rules of Procedure.

73 Lastly, even assuming that the competence of the Parliament is circumscribed, such a limitation ought not to have precluded it from ruling on the application by the French authorities.

74 At the hearing, the applicant emphasised that that conclusion was reinforced by the attitude adopted by the defendant in the course of the exchange of correspondence with the French authorities following the initial refusal by the Parliament to take note of the decree of 31 March 2000.

75 He concludes that the requirement of a *prima facie* case is satisfied.

76 The defendant, supported by the French Republic, disputes that the arguments put forward by Mr Le Pen are such as to fulfil that requirement.

77 First, the Parliament submits that the main application is manifestly unfounded because it seeks the annulment of a legal act emanating not from a Community, but from a national authority; the French authorities alone were competent to declare the applicant to be disqualified from holding office, which they did in accordance with the rules of their internal law. It follows that the notification by the President of the Parliament on 23 October 2000 was no more than a mere administrative formality. Taking note of the decree of 31 March 2000 required no active involvement of the Parliament. No vote was required on 23 October 2000 because it was a matter of communicating the information in question to the plenary session.

78 Next, the defendant denies that the procedure followed, in particular, the fact that the matter was not referred back to the Legal Affairs Committee, was contrary to the second subparagraph of Rule 7(4) of the Rules of Procedure. That provision does not cover a situation in which, as, in this case, a request for a new meeting of the Legal Affairs Committee is made after the conclusion of the national proceedings in question. The purpose of that provision is only to enable national proceedings liable to result in disqualification from holding office to be monitored and a purely technical analysis for the benefit of the Parliament to be carried out.

79 The procedure followed before the Legal Affairs Committee at its meetings on 4, 15 and 16 May 2000 did not, moreover, infringe the applicant's rights of defence. First, the agendas of that committee's meetings are public and, second, Mr Le Pen could personally have made known his position at those meetings.

80 In any event, a second referral to the Legal Affairs Committee would have been pointless, since the committee had already decided definitively on the question of the applicant's disqualification from holding office. In that respect, the Parliament submits that it is clear from the letter of 17 May 2000 from the President of the Legal Affairs Committee to the President of the Parliament that that committee had recommended that the Parliament should take note of the applicant's disqualification from holding office only after the expiry of the period prescribed for the bringing of proceedings challenging the decree of 31 March 2000 before the Conseil d'Etat or after the decision of the latter, as the case might be.

Findings of the President of the Court

81 It must first be observed that the applicant's plea alleging 'external' illegality of the contested act in fact falls into three parts: lack of competence of the President of the Parliament to adopt that measure, lack of a proposal from the Legal Affairs Committee and the proposition that the competence of the Parliament is not, or at least not totally, circumscribed.

82 It is also to be noted that the Parliament stated, in response to questions put at the hearing, that it was for it, and not for its President, under Article 12(2) of the 1976 Act, to take note of vacancies arising from the application of national law. It also confirmed that such a power had not been delegated to its President.

83 The defendant contends that, by the contested act, the President of the Parliament simply passed on the information concerning the applicant's disqualification from holding parliamentary office, as previously forwarded by the competent French authorities. Given that Article 12(2) of the 1976 Act does not give the Parliament any discretion or power of verification (except for a purely formal power as to the response to be given to communications from the Member States on the basis of that provision), it would have been pointless to ask the Parliament to vote on the matter in plenary session. In those circumstances, the passing on of the information by the President, without objection from the Parliament, constituted a taking note by the Parliament of the disqualification notified.

84 It must be found that, notwithstanding the literal interpretation of the 1976 Act which forms the basis for that contention, the arguments raised by the applicant are far from appearing to be devoid of merit.

85 First, it has already been found, in the context of the admissibility of the present application (paragraph 63 above), that the applicant's argument that the role of the Parliament envisaged by Article 12(2) of the 1976 Act is not confined to a purely administrative formality, cannot be discounted.

86 That finding is supported, in this case, by the position taken by the Parliament, which did not confine itself to the formal requirement of the notification from the French Republic. The President of the Parliament did not ask the Parliament to take note of the decree of 31 March 2000 from the time of its notification by the French Government on 25 April 2000, despite the fact that such a decree is enforceable in French law. On the contrary, at the plenary session of 3 May 2000, the President stated that she had exercised the power under the second subparagraph of Rule 7(4) of the Rules of Procedure to refer the matter to the Legal Affairs Committee. At the plenary session of 18 May 2000, and following an intervention to that effect by the President, the Parliament did not vote on the question of the applicant's disqualification from holding office. The President of the Parliament subsequently defended that position when the French authorities, by letter of 13 June 2000, requested the Parliament to take note of the disqualification notified 'as soon as possible'. In her letter of 16 June 2000, she justified the contested refusal by reference, in particular, to the fact that the decree of 31 March 2000 was not yet final and to the need for legal certainty, having regard to the irreversible effects of a declaration of disqualification.

87 That reaction tends, *prima facie*, to show that the Parliament did not consider itself bound to take note, at least not forthwith, of the decree of 31 March 2000. The President of the Legal Affairs Committee had pointed out in her letter of 17 May 2000, which the President of the Parliament read out to the plenary session on 18 May 2000, that the action that the applicant might bring before the Conseil d'État could be accompanied by an 'application for suspension of operation of the decree'. Notwithstanding its enforceability, the Parliament did not take note of the decree of 31 March 2000 until after the Conseil d'État had dismissed, on 6 October 2000, the action brought by the applicant.

88 Second, and without there being any need, for the purposes of the examination of this application for interim relief, to determine in detail what was the procedure which should have been for followed by the Parliament in the exercise of the competence which, according to the applicant, is vested in it by Article 12(2) of the 1976 Act, it is sufficient to observe that it is not in dispute that no vote took place at the plenary sessions on 18 May 2000 and 23 October 2000 on the question of the applicant's disqualification from holding office, even though the President of the Parliament stated, at the session on 18 May, that the Parliament was competent in the matter. The defendant's argument that the contested act must be regarded as a mere communication of information which gave rise to no objection on the part of the Parliament does not, *prima facie*, make it possible to dismiss the applicant's assertion that such a declaration ought to have been put to a vote in order to satisfy the requirement in Article 12(2) of the 1976 Act that Parliament must 'take note'.

89 Third, as to the applicant's argument that, in the case of termination of a parliamentary term of office, both referral of the matter to the Legal Affairs Committee and a proposal by that committee are required before the Parliament takes a position, it is clear from the minutes of the committee's meetings of 4, 15 and 16 May 2000 and from the statement of its President at the plenary session on 23 October 2000 that that committee did not adopt any proposal capable of being put to a vote. In those circumstances, having regard to Rule 7(4) of the Rules of Procedure, it cannot be excluded, at this stage, that the procedure leading to the adoption of the contested act was flawed by a breach of an essential procedural requirement such as to entail its annulment.

90 It follows that these are reasonable grounds for considering that the plea alleging 'external' illegality of the contested act may succeed.

91 It must therefore be held that, the requirement that there be a *prima facie* case is satisfied, without there being any need to consider the merits of the applicant's other pleas in law.

Urgency and the balance of interests

Arguments of the parties

92 The applicant submits that, if the operation of the contested act is not suspended he will suffer serious and irreparable harm since he will be deprived of his term of office and, therefore, prevented from carrying out the tasks with which he has been entrusted by his electors. Moreover that harm has existed since the adoption of the contested act.

93 The Parliament contends that the condition of urgency is not satisfied. There is no legal basis for a return to the *status quo ante* since the origin of the applicant's disqualification from holding office is to be traced to judgments of the French courts and the decree of 31 March 2000.

94 As regards the balancing of the interests at issue, the Parliament submits that a comparative assessment should be made, on the one hand, of the applicant's interest in regaining his position as a member of the Parliament, and, on the other hand, of the Parliament's interest in being legally constituted, that of the French Republic's interest in having its electoral legislation respected, that of the interest of the applicant's successor in not being uncertain as to her status as a member of the Parliament, and also of respect for the separation of powers as between the Community and its Member States, and, therefore, for the Community public interest.

Findings of the Court

95 It is settled case-law that the urgency of an application for interim relief is to be determined by reference to the need for an interim ruling in order to avoid serious

and irreparable harm to the party seeking the interim relief. The burden of proof is on the applicant to demonstrate that he cannot wait for the resolution of the main proceedings without suffering harm of that kind (orders in Case T-143/99 R *Hortiplant* v *Commission* [1999] ECR II-2451, paragraph 18, and in *Rothley and Others* v *Parliament*, cited above, paragraph 103).

96 In this case, given that the term of office of a member of the Parliament is restricted to five years (Article 3(1) of the 1976 Act) and that the disqualification of the applicant from holding office as a result of the contested act makes it impossible for him to carry out his duties as a Member of the European Parliament, it is clear that, if the contested act is annulled by the Court in the main proceedings, the harm suffered by the applicant would be irreparable in the absence of suspension of the operation of that act.

97 Furthermore, the harm has already begun to be suffered since the applicant's disqualification from holding office, at issue before the Court, is effective as from 23 October 2000, whilst his seat has been filled as from 13 November 2000.

98 It follows that the condition of urgency is satisfied.

99 Following that finding, it still remains necessary to weigh, first, the applicant's interest in obtaining the interim relief sought against that of the Parliament and of the French Republic, as the Member State on whose legislation the disqualification in question is based, in the maintenance in force of the contested act.

100 In assessing those competing interests the President of the Court of First Instance must determine whether the possible annulment of the contested act by the Court in the proceedings on the merits would make it possible to reverse the situation brought about by the immediate implementation of that act and, conversely,

whether the suspension of its operation would be such as to prevent it from being fully effective in the event of the main application being dismissed (orders in Joined Cases 76/89 R, 77/89 R and 91/89 R *RTE and Others* v *Commission* [1989] ECR 1141, paragraph 15, Case T-41/97 R *Antillean Rice Mills* v *Council* [1997] ECR II-447, paragraph 42, and in *Rothley and Others* v *Parliament*, cited above, paragraph 112).

101 In this case, whilst it is undeniably in the general interest that the composition of the Parliament be in accordance with Community law, it is also in the general interest that its members be allowed to carry out the duties entrusted to them by their electors for the entire duration of their term of office, unless that term is brought to an end in conformity with the applicable rules of law.

102 It is not in dispute that the termination of the applicant's term of office as a member of the Parliament has been effective from 23 October 2000, with all the ensuing unfavourable consequences for him. Furthermore, the longer the applicant is prevented from carrying out the mandate conferred on him in the election of 13 June 1999, of which there remains only three and a half years, the greater will be the harm, by its nature irreparable, sustained by him.

103 In those circumstances, the general interest of the Parliament in the maintenance of the application of the applicant's disqualification from holding office pursuant to national law cannot prevail over the specific interest of the applicant in resuming his seat in the Parliament and his public duties until the decision of the Court on the substance of the case in the main proceedings, unless the Parliament takes note of the disqualification in accordance with the rules laid down by Community law.

104 Furthermore, however important may be the French Republic's interest in having its electoral legislation respected by the Parliament in accordance with the powers

vested, in its opinion, in the Member States under Articles 7(2) and 12(2) of the 1976 Act, such an interest is still of a general nature and cannot prevail over the immediate and specific interest of the applicant.

105 As for the interest of the applicant's successor, Ms Stirbois, relied on by the Parliament, in not being uncertain as regards her status as a member of the Parliament, the defendant institution is not entitled to plead the interest of a person who, unlike the French Republic, is wholly external to the procedure for disqualification from holding office contested in the main proceedings. Furthermore, whilst the alleged interest of Ms Stirbois is specific, it cannot prevail over the applicant's prior and pre-eminent interest. In any event, in a letter which the applicant read out at the hearing, and the authenticity of which was not contested by either the Parliament or the French Republic, Ms Stirbois stated that she is performing her duties subject to judicial decisions yet to come, including the decision on this application for interim relief. This is somewhat surprising since she was on the same electoral list in France as the applicant at the election in June 1999.

106 Lastly, it should be observed that the Parliament's argument alleging that there is no legal basis for the applicant to resume his seat pending the judgment in the main proceedings is wholly unfounded. It follows from the force of the applicant's plea concerning the extent of the Parliament's power when it is seised of a request for it to take note of a disqualification pursuant to national law that, in the absence of a valid decision of the Parliament on such a request, the procedure required, in this case, for the valid declaration of the applicant's disqualification from holding office cannot be regarded as having been completed. As a result, the applicant's seat never fell vacant and there is nothing to prevent him from re-entering the Parliament and resuming his parliamentary duties.

107 It follows from the foregoing that all of the conditions necessary for the grant of a suspension of operation of the contested act are satisfied.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The operation of the decision in the form of a declaration of the President of the European Parliament of 23 October 2000, in so far as it constitutes a decision of the European Parliament taking note of the applicant's disqualification from holding office as a Member of the European Parliament, is suspended.

2. Costs are reserved.

Luxembourg, 26 January 2001.

H. Jung — Registrar

B. Vesterdorf — President