JUDGMENT OF THE COURT (Fourth Chamber)

30 April 2009 *

In Joined Cases C-393/07 and C-9/08,

ACTIONS for annulment under Article 230 EC, brought on 1 August 2007 and 22 June 2007 respectively,

Italian Republic, represented initially by I.M. Braguglia, and subsequently by R. Adam, acting as Agents, and by P. Gentili, avvocato dello Stato, with an address for service in Luxembourg,

applicant in Case C-393/07,

supported by:

Republic of Latvia,

intervener,

* Language of the case: Italian.

Beniamino Donnici, residing in Castrolibero (Italy), represented by M. Sanino, G. M. Roberti, I. Perego and P. Salvatore, avvocati,

applicant in Case C-9/08,

supported by:

Italian Republic,

v

European Parliament, represented by H. Krück, N. Lorenz and L. Visaggio, acting as Agents, and by E. Cannizzaro, professor, with an address for service in Luxembourg,

defendant,

supported by:

Achille Occhetto, residing in Rome (Italy), represented by P. De Caterini and F. Paola, avvocati,

intervener,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of Chamber, T. von Danwitz (Rapporteur), E. Juhász, G. Arestis and J. Malenovský, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 March 2009,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their actions, the Italian Republic and Mr Donnici request the Court to annul Decision 2007/2121(REG) of the European Parliament of 24 May 2007 on the verification of credentials of Mr Beniamino Donnici, declaring invalid his mandate as a Member of the European Parliament ('the contested decision').

Legal context

Community legislation

The 1976 Act

2 Articles 1, 2, 6 to 8, 12 and 13 of the act concerning the election of representatives to the European Parliament by direct universal suffrage, annexed to Council Decision

76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended and renumbered by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1; 'the 1976 Act'), provide:

'*Article 1*

…

3. Elections shall be by direct universal suffrage and shall be free and secret.

Article 2

In accordance with its specific national situation, each Member State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

Article 6

1. Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.

…

Article 7

1. The office of member of the European Parliament shall be incompatible with that of:

— member of the Government of a Member State,

— member of the Commission of the European Communities,

— Judge, Advocate General or Registrar of the Court of Justice of the European Communities or of the Court of First Instance,

— member of the Board of Directors of the European Central Bank,

— member of the Court of Auditors of the European Communities,

— Ombudsman of the European Communities,

— member of the Economic and Social Committee of the European Economic Community and of the European Atomic Energy Community,

— member of committees or other bodies set up pursuant to the Treaties establishing the European Economic Community and the European Atomic Energy Community for the purpose of managing the Communities' funds or carrying out a permanent direct administrative task,

— member of the Board of Directors, Management Committee or staff of the European Investment Bank,

— active official or servant of the institutions of the European Communities or of the specialised bodies attached to them or of the European Central Bank.

2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a National Parliament.

…

Article 8

Subject to the provisions of this act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.

Article 12

The European Parliament shall verify the credentials of members of the European Parliament. 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.

Article 13

1. A seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.

2. 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.

3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the European Parliament, that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the European Parliament thereof.

4. Where a seat falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the competent authorities of the Member State concerned thereof.'

The Rules of Procedure of the European Parliament

3 Rules 3 and 4 of the Rules of Procedure of the European Parliament ('the Rules of Procedure') are worded as follows:

'*Rule 3*

Verification of credentials

…

3. On the basis of a report by the committee responsible, Parliament shall verify the credentials without delay and rule on the validity of the mandate of each of its newly elected Members and also on any dispute referred to it pursuant to the provisions of the [1976 Act], except those based on national electoral laws.

4. The committee's report shall be based on the official notification by each Member State of the full results of the election specifying the names of the candidates elected and those of any substitutes together with their ranking in accordance with the results of the vote.

It shall not be possible to confirm the validity of the mandate of a Member unless the written declarations required under this Rule and Annex I to these Rules have been made.

On the basis of a report by the committee, Parliament may at any time rule on any dispute as to the validity of the mandate of any of its Members.

5. Where the appointment of a Member is due to the withdrawal of candidates from the same list, the committee responsible for the verification of credentials shall ensure that such withdrawals have taken place in accordance with the spirit and the letter of the [1976 Act] and Rule 4(3).

…

Rule 4

Term of office of Members

…

3. Members who resign shall notify the President of his resignation and of the date on which that resignation shall take effect, which shall be not more than three months after notification. This notification shall take the form of an official record drawn up in the presence of the Secretary-General or his representative, signed by the latter and by the Member concerned and immediately submitted to the committee responsible, which shall enter it on the agenda of its first meeting following receipt of the document.

If the committee responsible considers that the resignation is not in accordance with the spirit or the letter of the [1976 Act] it shall inform Parliament to this effect so that Parliament can decide whether or not to establish the vacancy.

Otherwise, the vacancy shall be established with effect from the date indicated by the resigning Member in the official record. There shall be no vote in Parliament on the subject.

…

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

The Statute for Members of the European Parliament

4 Recital 4 of Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (OJ 2005 L 262, p. 1; 'the Statute for Members') provides that 'the freedom and independence of Members, which are enshrined in Article 2 and which are not

mentioned in any provision of primary law, should receive statutory protection. Undertakings made by Members to relinquish their office at a given time, or declarations of their intent to relinquish office on an unspecified date, which political parties can make use of at their discretion, should be considered as incompatible with Members' freedom and independence and should therefore not be binding in law'.

5 In addition, recital 5 of the Statute for Members states that Article 3(1) thereof reproduces in full the provisions of Article 6(1) of the 1976 Act.

6 Lastly, Articles 2 and 30 of the Statute for Members provide:

'*Article 2*

1. Members shall be free and independent.

2. Agreements concerning the resignation from office of a Member before or at the end of a parliamentary term shall be null and void.

Article 30

This Statute shall enter into force on the first day of the European Parliament parliamentary term beginning in 2009.'

National legislation

7 Italian Law No 18 of 24 January 1979 concerning the election of Italian representatives to the European Parliament (GURI No 29 of 30 January 1979, p. 947; 'the Law of 24 January 1979') concerns the election of Italian Members of the Parliament. It provides that Members of Parliament are to be elected by universal suffrage and by direct, free and secret voting list. Seats are to be divided between the lists on a proportional basis, according to the detailed rules laid down by that law, and the number of seats is to be attributed to the various constituencies, which number five in total, on the basis of the results of the most recent general population census.

8 Article 20 of the Law of 24 January 1979 provides that the electoral offices of the various constituencies have the task inter alia of determining the ranking of the candidates on each list on the basis of the individual results. The results are to be forwarded to the Ufficio elettorale nazionale per il Parlamento europeo presso la Corte di cassazione (National Electoral Office for the European Parliament at the Court of Cassation; 'the National Electoral Office'). In accordance with Article 21 of that law, the National Electoral Office is required to determine the number of votes obtained nationally by each list, to divide the seats between the lists on the basis of the number of votes for each list and to apportion the seats thus attributed to each list between the various constituencies. In accordance with Article 23 of that law, that office is to draw up an official record which must be notified to the secretariat of the Parliament.

9 Article 41 of the Law of 24 January 1979 also contains a detailed set of rules for substitution, whereby a candidate elected in several constituencies must declare to the National Electoral Office the constituency for which he wishes to opt. For a constituency which has not been chosen, that office is to declare elected the candidate with the next largest number of votes. In addition, a seat which falls vacant during the term of office is to be attributed by the National Electoral Office to the candidate from the same list and constituency with the next largest number of votes.

10 In accordance with Article 46 of that law, the National Electoral Office is to communicate to the secretariat of the Parliament substitutions resulting from legal rulings and judgments which have irrevocably settled the disputes giving rise to them, to correct, where applicable, the result of the elections and to replace candidates who have been declared elected unlawfully by those who are entitled to be declared elected, whilst informing the parties having an interest and the secretariat of the Parliament thereof.

The facts and the contested decision

11 At the elections to the European Parliament, held on 12 and 13 June 2004, Mr Donnici was a candidate on the 'Società Civile — Di Pietro Occhetto' list. That list won two seats, the first in the Italy South constituency and the second in the Italy North-West constituency. Mr Di Pietro was placed first on the lists in both constituencies and opted for the Italy South constituency.

12 Mr Occhetto was second on the electoral lists in the light of the number of votes obtained in the two constituencies, coming ahead of Mr Donnici in the Italy South constituency and of Mr Chiesa in the Italy North-West constituency. Since Mr Di Pietro opted to take his seat for the Italy South constituency, Mr Occhetto should have been declared elected in the Italy North-West constituency. However, by a written declaration of 6 July 2004 received the next day by the National Electoral Office, Mr Occhetto, who at the time was a member of the Italian Senate, withdrew from the election to the European Parliament in both constituencies.

13 Following that withdrawal, on 18 July 2004 the National Electoral Office declared Mr Chiesa elected in the Italy North-West constituency and Mr Di Pietro elected in the Italy South constituency and, on 12 November 2004, communicated the name of Mr Donnici as first on the list of substitutes for Mr Di Pietro in respect of the Italy South constituency, whilst Mr Occhetto, who had withdrawn, did not appear on that list.

14 In the parliamentary elections held in Italy on 9 and 10 April 2006, Mr Di Pietro was elected as a Member of the Italian Parliament and opted to take his seat in the National Parliament, with effect from 28 April 2006. Since, pursuant to Article 7(2) of the 1976 Act, that office was incompatible with the office of Member of the European Parliament, the latter established that the seat in question was vacant.

15 By declaration of 27 April 2006, addressed to the National Electoral Office, Mr Occhetto, who had stood as a candidate at those national elections, but had not been re-elected, revoked his withdrawal of 6 July 2004 and asked to take over the seat which had fallen vacant following Mr Di Pietro's decision to opt for the National Parliament.

16 Following that declaration, on 8 May 2006 the National Electoral Office declared Mr Occhetto elected as Member of the European Parliament and on the same day communicated his name to the Parliament as substitute for Mr Di Pietro.

17 By judgment of 21 July 2006, the Tribunale amministrativo regionale del Lazio (Lazio Regional Administrative Court) dismissed as unfounded Mr Donnici's action for annulment of that declaration.

18 Mr Donnici also appealed before Parliament against the declaration that Mr Occhetto had been elected as Member of the European Parliament in place of Mr Di Pietro. His objection was examined by the Parliament's Committee on Legal Affairs at its meeting held on 21 June 2006. After establishing that, under Article 12 of the 1976 Act, the objection was inadmissible because it was founded on Italian electoral law, the Committee on Legal Affairs passed a unanimous resolution proposing that the Parliament validate Mr Occhetto's mandate. On 3 July 2006, the Parliament confirmed Mr Occhetto's mandate.

19 By judgment of 6 December 2006, the Consiglio di Stato (Council of State) allowed Mr Donnici's appeal against the ruling of the Tribunale amministrativo regionale del Lazio and annulled the declaration that Mr Occhetto had been elected as a Member of the European Parliament made by the National Electoral Office on 8 May 2006. The Consiglio di Stato found inter alia that 'the will of the people … has never prevented any candidate from withdrawing from an election' and that 'the obligatory nature of the [electoral] ranking prohibits … the withdrawing party from returning … to his position in the ranking as he sees fit'.

20 The judgment of the Consiglio di Stato became *res judicata* following the judgment of 26 March 2007 of the Corte suprema di cassazione (Supreme Court of Cassation), which declared the appeal brought by Mr Occhetto inadmissible on account of a procedural defect. By application of 19 April 2007, Mr Occhetto brought a complaint before the European Court of Human Rights; according to the information given by Mr Occhetto's representative at the hearing of 5 March 2009, that complaint was still pending.

21 On 29 March 2007, the National Electoral Office took note of the judgment of the Consiglio di Stato and declared Mr Donnici to have been elected as Member of the European Parliament for the Italy South constituency, and accordingly revoked Mr Occhetto's mandate. That declaration was notified to the European Parliament, which took note of it in the minutes of the plenary session of 23 April 2007 pursuant to which Mr Donnici took his seat in the Parliament, but only provisionally and subject to the Parliament's subsequent decision regarding the verification of his credentials.

22 Meanwhile, by letter of 5 April 2007, Mr Occhetto raised an objection and requested the Parliament to ratify his mandate and not to validate that of Mr Donnici. In response to that objection, the Parliament submitted Mr Donnici's mandate to examination by its Committee on Legal Affairs.

23 On 24 May 2007, the Parliament adopted the contested decision, which states:

'The European Parliament,

— having regard to the [1976 Act],

— having regard to Rules 3, 4 and 9 of and Annex I to its Rules of Procedure,

— having regard to the official communication from the Italian authorities concerning the election to the European Parliament of Mr Beniamino Donnici,

— having regard to the contestation of the validity of the election to the European Parliament of Mr Beniamino Donnici received from Mr Achille Occhetto on 25 March 2007,

— having regard to the report of the Committee on Legal Affairs (A6-0198/2007),

...

D. whereas national provisions concerning the European electoral procedure must be in keeping with the fundamental principles of the Community legal system, Community primary law and the spirit and letter of the [1976 Act]; whereas, therefore, the competent national legislative, administrative and judicial authorities, when applying and/or interpreting their national provisions on the European electoral procedure, cannot fail to take due account of the principles of Community electoral law,

E. whereas the compatibility of Mr Achille Occhetto's withdrawal with the letter and spirit of the [1976 Act] must be evaluated in the light of Article 6 of that act, … thus defining the freedom and independence of Members as an authentic key principle,

F. whereas the Statute for Members of the European Parliament (which will be in force from 2009) states in its Article 2(1) that "Members shall be free and independent", while the second paragraph of the same article, clearly deriving from the first paragraph, adds: "Agreements concerning the resignation from office of a Member before or at the end of a parliamentary term shall be null and void",

G. whereas those provisions of the Statute merely spell out the principle of freedom and independence already contained in the [1976 Act] …,

…

K. whereas the legal scope of Article 6 of the [1976 Act] includes candidates who are officially on a post-electoral list, this being in Parliament's interest since such candidates are potential Members of the European Parliament,

L. whereas Mr Achille Occhetto's withdrawal arises from an agreement, … and should therefore be regarded as incompatible with the letter and spirit of the [1976 Act] and, consequently, as null and void,

M. whereas if Mr Achille Occhetto's withdrawal is to be regarded as null and void, then the mandate of his successor Beniamino Donnici cannot be justified in law or in fact,

…

O. whereas the [Consiglio di Stato], in a final judicial ruling, annulled the proclamation of Mr Achille Occhetto's election to the European Parliament,

P. whereas under Article 12 of the [1976 Act] it is the European Parliament — and the European Parliament alone — that verifies the credentials of its Members elected by universal suffrage; whereas this fundamental prerogative of the European Parliament may not be challenged or, still less, invalidated by a decision adopted by national authorities in clear breach of the relevant rules and principles of Community law, even if that decision was finally adopted by the supreme judicial body of the relevant State, as was the case with the ruling of the [Consiglio di Stato] that is at issue here; …

Q. whereas Parliament may legitimately both refuse to validate the mandate of Mr Beniamino Donnici and ignore the decision of the [Consiglio di Stato] on the grounds that it contradicts the letter and spirit of the [1976 Act], thus upholding the mandate of Mr Achille Occhetto,

1. Declares the mandate as Member of the European Parliament of Mr Beniamino Donnici, whose election was communicated by the national authorities, to be invalid;

2. Confirms the validity of the mandate of Mr Achille Occhetto;

…'

The proceedings before the Community courts and the forms of order sought

24 By application lodged at the Registry of the Court of First Instance of the European Communities on 22 June 2007, registered as Case T-215/07, Mr Donnici brought an action for annulment of the contested decision which had been notified to him on 29 May 2007. By order in Case T-215/07 *Donnici* v *Parliament* [2007] ECR II-5239, the Court of First Instance declined jurisdiction in Case T-215/07 in favour of the Court of Justice in order to enable the latter to rule on the action for annulment. That action was registered at the Court of Justice as Case C-9/08. By order of the President of the Court of Justice of 21 February 2008, Mr Occhetto was granted leave to intervene in support of

the form of order sought by the Parliament, and the Italian Republic was granted leave to intervene in support of the form of order sought by Mr Donnici.

25 By separate document lodged at the Registry of the Court of First Instance on 14 August 2007, the Parliament raised an objection under Article 114(1) of the Rules of Procedure of the Court of First Instance requesting that the opinion of its legal service of 2 May 2007 produced in Annex A.11 to Mr Donnici's application be withdrawn from the file. By order of 29 January 2009, the Court of Justice granted the Parliament's request and reserved to the judgment on the substance the decision on Mr Donnici's request to order, by way of measure of inquiry, the production of that legal opinion.

26 By application lodged at the Registry of the Court of Justice on 1 August 2007, registered as Case C-393/07, the Italian Republic also brought an action for the annulment of the contested decision which had been notified to it on 28 May 2007. By order of the President of the Court of Justice of 1 February 2008, the Republic of Latvia was granted leave to intervene in that case in support of the form order sought by the Italian Republic. The Republic of Latvia did not participate in either the written or the oral procedure.

27 By order of the President of the Fourth Chamber of 30 January 2009, the two actions for annulment were joined for the purposes of the oral procedure and the judgment.

28 By a separate document lodged at the Registry of the Court of First Instance on 22 June 2007, registered as Case T-215/07 R, Mr Donnici applied for suspension of the operation of the contested decision. The judge hearing the application for interim measures, replacing the President of the Court of First Instance, granted that application and, by order in Case T-215/07 R *Donnici* v *Parliament* [2007] ECR II-4673, suspended the operation of the contested decision.

29 By order of the President of the Court of 13 January 2009 in Joined Cases C-512/07 P(R) and C-15/08 P(R) *Occhetto and Parliament* v *Donnici and Italy*, the appeals brought by Mr Occhetto and the Parliament against that order were dismissed.

30 By their actions, the Italian Republic and Mr Donnici request the Court to annul the contested decision and to order the Parliament to pay the costs. Mr Donnici requests, incidentally, that, pursuant to Article 241 EC, Rule 3(5) of the Rules of Procedure be declared illegal, and, in the alternative, that the legal opinion of the Parliament's legal service of 2 May 2007 be ordered to be added to the file of these proceedings. The Parliament contends that the actions should be dismissed and that the Italian Republic and Mr Donnici should be ordered to pay the costs.

The actions

31 In Case C-393/07, the Italian Republic puts forward five pleas alleging, respectively, that the contested decision infringed Articles 6, 8, 12 and 13 of the 1976 Act and Article 6 EU, Article 2 of the Statute for Members, Article 199 EC and Rules 3 and 4 of the Rules of Procedure, Articles 6 EU and 10 EC and 230 EC and, lastly, that that decision is vitiated by an inadequate statement of the reasons on which it is based.

32 In Case C-9/08, Mr Donnici puts forward two pleas alleging, first, breach of Article 12 of the 1976 Act and Rule 3(1) of the Rules of Procedure, of the principle of independence, of the prohibition on a binding mandate and of the force of *res judicata* and, second, an inadequate statement of the reasons on which the contested decision is based.

The first plea

Arguments of the parties

33 The Italian Republic and Mr Donnici claim in essence that the Parliament should have confined itself, in accordance with Article 12 of the 1976 Act, to taking note of the declaration relating to the election of Mr Donnici made by the National Electoral Office. Article 12 does not enable the Parliament to depart from that declaration on account of its alleged incompatibility with Community law. Similarly, the Parliament may not rely, in the context of a decision ruling on disputes, only on the provisions of the 1976 Act to the exclusion of the other provisions of Community law, including the general principles thereof.

34 They submit that Article 6 of the 1976 Act applies only to Members of Parliament and not to unelected candidates, so that that article does not cover Mr Occhetto's declaration of withdrawal of 6 July 2004, when he was not a Member of the Parliament. Since, according to its wording, that article relates only to the exercise of the parliamentary mandate, the events arising during the electoral procedure and the conduct of unelected candidates prior to their appointment as Members of Parliament are not covered by that article.

35 By contrast, the Parliament, supported by Mr Occhetto, submits that, pursuant to Article 12 of the 1976 Act, it is the task of the Parliament to ensure that the declaration made by the national authorities complies with Community law in general and, in particular, the principles laid down by the 1976 Act. That interpretation of its powers is reflected by Rules 3(4) and (5), 4(3) and (9) of its Rules of Procedure and by its relevant practice. In the electoral procedure leading to the Parliament's formation, it is clear that there is a Community regulatory basis laying down a minimum standard designed to ensure the absence of any distortion arising from disparities between national procedures which the Parliament must guarantee. However, if the Parliament had to confine itself when exercising its powers to examining whether or not an incompatibility exists for the purposes of Article 7 of the 1976 Act, its powers would be deprived of any real content.

36 The Parliament, supported by Mr Occhetto, claims that, in the event of a clear infringement of the fundamental principles of the 1976 Act, such as the principle enshrined in Article 6 of that act that the parliamentary mandate is to be exercised freely, and the principles of universal and proportional suffrage in accordance with Articles 1 and 2 of that act, it has the right and even the duty not to allow that infringement when taking note of the result of the national procedure; otherwise its own decision as to validation would be vitiated by illegality. The primacy of Community law requires the Parliament to leave unapplied the appointment of a candidate effected by the national authorities which is in clear breach of Community law.

37 Article 6 of the 1976 Act also protects an elected candidate. Otherwise, the guarantee conferred by that article would not apply to acts, such as in the present case Mr Occhetto's withdrawal which was motivated by an electoral agreement, which prevent the mandate intended by the electors from being given effect to. That interpretation of Article 6 is supported by Article 2 of the Statute for Members and by Article 3 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

38 The Parliament also claims that Article 6 is clearly applicable to this case by virtue of the fact that Mr Occhetto was sitting in the Parliament when the national authorities notified it of the substitution of Mr Donnici for Mr Occhetto.

Findings of the Court

39 The first plea raises the question of the extent of the Parliament's powers when it verifies the mandates of its members under Article 12 of the 1976 Act. Thus, in order to examine the validity of the contested decision, it is necessary in essence to analyse the extent of the powers that that provision confers on the Parliament. Article 12 of that act requires, in any event, that the Parliament's decision be based on a provision of that act in relation to which a dispute may arise. Since the Parliament relies in this respect

principally on Article 6 of the 1976 Act, it is first necessary to determine whether that provision is, as a matter of principle, applicable in the present case.

— The applicability of Article 6 of the 1976 Act

40 Article 6(1) of the 1976 Act provides that Members of the Parliament are to vote on an individual and personal basis and are not to be bound by any instructions or receive a binding mandate.

41 That article refers expressly to 'Members of the Parliament' and it is apparent from its wording that it concerns the exercise of the mandate of a Member of the European Parliament. Furthermore, that article mentions the power to vote of those members, a power which, by its nature, cannot be associated with the status of a candidate declared officially elected on the post-electoral list (see the order in *Occhetto and Parliament* v *Donnici*, paragraph 41).

42 In view of its clear wording, Article 6 of the 1976 Act does not apply to measures which have as their object the withdrawal of an elected candidate, as in the present case the withdrawal declared by Mr Occhetto from his position of substitute for Mr Di Pietro.

43 The Parliament's arguments in this respect do not justify that interpretation being departed from.

44 In particular, the Parliament cannot be recognised as having a general power to assess the lawfulness of the Member States' electoral procedures in the light of all the principles allegedly underlying Article 6 of the 1976 Act, such as inferred by the Parliament in particular from Article 3 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, by means of a broad interpretation of Article 6 in the light of those principles (see, to that effect, order in *Occhetto and Parliament* v *Donnici*, paragraph 43).

45 Such an interpretation of Article 6 would fail to have regard to the decision taken by those responsible for its wording by transforming a provision relating to the exercise of the mandate, notwithstanding the fact that the scope of the provision is specifically limited to that exercise, into a rule of jurisdiction governing the electoral procedure, since, in accordance with Article 8 of the 1976 Act, that field is in principle governed by national provisions.

46 As regards Article 2 of the Statute for Members, to which the Parliament refers to support its interpretation of Article 6 of the 1976 Act, it should be pointed out, first of all, that that statute was not in force at the time of the facts at issue. In addition, recital 4 of the Statute for Members provides that 'the freedom and independence of Members, which are enshrined in Article 2 … should receive statutory protection' since they 'are not mentioned in any provision of primary law' and recital 5 thereof states that Article 3(1) of the Statute reproduces in full the provisions of Article 6(1) of the 1976 Act. It follows that Article 2 of the Statute for Members does not constitute a codification of Article 6 of the 1976 Act (see, to that effect, order in *Occhetto and Parliament* v *Donnici*, paragraph 44).

47 In addition, pursuant to the principle of the hierarchy of norms, the Parliament may not rely on a provision of its Rules of Procedure and its alleged practice in this area to interpret Article 6 of the 1976 Act in a manner which is *contra legem* (see, to that effect, the order in *Occhetto and Parliament* v *Donnici*, paragraph 45).

48 It is clear that the Rules of Procedure are rules of internal organisation and cannot grant powers to the Parliament which are not expressly acknowledged by a legislative measure, in this case by the 1976 Act (see Joined Cases C-200/07 and C-201/07 *Marra* [2008] ECR I-7929, paragraph 38). It follows a fortiori that the alleged institutional practice cannot derogate from Article 6 of that act.

49 It follows from the foregoing that the withdrawal declared by Mr Occhetto from his position on the list of substitutes does not fall within the scope of Article 6 of the 1976 Act, so that that article could not provide a basis for a dispute concerning the verification of the credentials of Members of Parliament under Article 12 of that act and that, consequently, the Parliament was not entitled to base the contested decision on a breach of Article 6.

— Breach of Article 12 of the 1976 Act

50 Since it has been held that Article 6 of the 1976 Act could not provide a basis for the contested decision, the question arises whether that decision can be based on a breach of the principles of universal and proportional suffrage enshrined in Articles 1 and 2 of the 1976 Act, as the Parliament claims. By referring to a breach of those principles, the Parliament claimed for itself the power to verify whether the official declaration of Mr Donnici as Member of Parliament was conducted in compliance with those requirements. It is therefore necessary to examine whether Article 12 of that act confers on Parliament such a power when it verifies the mandates of its members.

51 Article 12 of the 1976 Act provides that, for the purposes of verifying the credentials of its members, the Parliament is to take note of the results declared officially by the Member States and rule on any disputes which may arise out of the provisions of that act other than those arising out of the national provisions to which the act refers.

52 The wording of Article 12 shows that the Parliament's power of verification is subject, pursuant to the first sentence of that article, to two significant restrictions which are set out in the second sentence thereof (see, to that effect, order of 15 November 2007 in *Donnici* v *Parliament*, paragraph 71, and order in *Occhetto and Parliament* v *Donnici*, paragraphs 31 and 32).

53 The first part of the second sentence of Article 12 of the 1976 Act provides that the Parliament 'shall take note of the results declared officially by the Member States'. In addition, the Parliament's specific power to settle disputes brought before it, which is set out in the second part of the second sentence of that article, is also limited *ratione materiae* only to disputes 'which may arise out of the provisions of [the 1976 Act] other than those arising out of the national provisions to which the act refers'.

54 First, contrary to what the Parliament submits, it is clear from the wording itself of Article 12 of the 1976 Act that that article does not confer on the Parliament the power to settle disputes which arise out of Community law as a whole. According to the clear wording of that article, it applies only to 'disputes which … arise out of the provisions of this act' (see, to that effect, order in *Occhetto and Parliament* v *Donnici*, paragraph 32).

55 Second, 'tak[ing] note of the results declared officially' means that the Parliament was required, for the purposes of its own decision when verifying the credentials of its members, to rely on the declaration made on 29 March 2007 by the National Electoral Office following the judgment of the Consiglio di Stato of 6 December 2006. That declaration is the result of a decision-making process which complies with the national procedures by which the legal issues pertaining to that declaration were definitively settled and therefore constitutes a pre-existing legal situation. The Court has already held that the use of the expression 'take note' in the context of the 1976 Act must be interpreted as indicating the Parliament's complete lack of discretion in the matter (see, to that effect, Case C-208/03 P *Le Pen* v *Parliament* [2005] ECR I–6051, paragraph 50).

56 That interpretation of the expression 'take note' in Article 12(2) of the 1976 Act in its original version, whereby the Member States were to inform the Parliament, which was to take note thereof, of a vacant seat resulting from the application of national provisions, also applies to the same expression in Article 12 of the 1976 Act in its current version. If Article 12(2) of the 1976 Act in its original version excluded any discretion by the Parliament even in the event of withdrawal of the mandate of one of its members resulting from the application of national provisions which have an effect on the existing composition of that institution, that absence of power of decision applies a fortiori in respect of the verification, pursuant to Article 12 of the 1976 Act, of the credentials of Members of Parliament declared officially by the Member States. In this context, what is at issue is the appointment by the national authorities of the future Members of the Parliament in accordance with the electoral procedure; as Article 8 of the 1976 Act expressly states, that procedure is governed by national provisions.

57 It follows that the Parliament cannot call in question the validity itself of the declaration made by the National Electoral Office. Nor does Article 12 of the 1976 Act allow the Parliament to refuse to take note of that declaration if it considers that there is an irregularity (see, to that effect, order in Case T-215/07 *Donnici* v *Parliament*, paragraph 75).

58 That interpretation of Article 12 of the 1976 Act is supported by a reading of that article in the light of the relevant provisions of the EC Treaty and by the legislative framework in which that article operates.

59 In this respect, the Court observes that, under the first paragraph of Article 5 EC, the second subparagraph of Article 7(1) EC and the first paragraph of Article 189 EC, the Parliament is to exercise the powers conferred upon it by the Treaties and to act within the limits of those powers.

60 In addition, Article 8 of the 1976 Act provides that 'the electoral procedure shall be governed in each Member State by its national provisions', subject to the provisions of the 1976 Act. Therefore, although the Member States are required to comply with the provisions of the 1976 Act in so far as they lay down certain electoral procedures, the fact none the less remains that, in the end, they have the task of organising the elections, in accordance with the procedure laid down by their national provisions, and also, in that connection, of counting the votes and making the official declaration of the electoral results (order in Case T-215/07 *Donnici* v *Parliament*, paragraph 74).

61 Lastly, Article 13(2) of the 1976 Act provides that each Member State is to lay down appropriate procedures for filling seats which fall vacant.

62 Accordingly, under that legislative framework, the electoral procedure for electing Members of the Parliament which took place on 12 and 13 June 2004, and for appointing substitutes for seats which fall vacant, was still governed in each Member State by the relevant national provisions, in the present case the Law of 24 January 1979 (see, to that effect, order of 15 November 2007 in *Donnici* v *Parliament*, paragraph 66).

63 Moreover, in the absence of Community rules in this field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, first, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, to that effect, Case C-300/04 *Eman and Sevinger* [2006] ECR I-8055, paragraph 67).

64 The Parliament has not claimed that the Italian procedural provisions would conflict with those principles of equivalence and effectiveness. Moreover, even if that were the case, it would not follow from this that the Parliament would be entitled to substitute its own assessments for acts falling within the purview of the competent national authorities.

65 By contrast, responsibility for ensuring that the Member States comply with the provisions of the Treaty and the measures adopted by the institutions pursuant thereto lies in particular with the Commission, which is authorised under Article 226 EC to bring infringement proceedings before the Court if it considers that a Member State has failed to fulfil its obligations. The monitoring of compliance with those provisions and measures is also ensured by the procedure under Article 234 EC, which applies to electoral disputes at the national level.

66 That legislative framework does not suggest that the Parliament has a general power to assess the compliance of Member States' electoral procedures and their application to the present case with regard to Community law. It follows that the Parliament's powers are limited, in the context of the verification of the credentials of its Members, to the rights and powers that are clearly set out in the relevant provisions of the 1976 Act (see, to that effect, order in *Occhetto and Parliament* v *Donnici*, paragraph 32).

67 It follows that an interpretation of Article 12 of the 1976 Act which would establish for the benefit of the Parliament a general power to review the official declaration made by the Member States' authorities would not only be contrary to the wording of that article, but would also be incompatible with the principle embodied in Articles 5 EC and 7 EC that the powers of the Community and its institutions are limited to those specifically conferred on it (see, to that effect, Case C-376/98 *Germany* v *Parliament and Council* [2000] ECR I-8419, paragraph 83, and Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraph 203 and the case-law cited).

68 The arguments put forward by the Parliament and supported by Mr Occhetto, which are outlined in paragraphs 35 to 37 of this judgment, cannot call in question that interpretation of Article 12 of the 1976 Act, which excludes any power of the Parliament to depart from the official declaration made by the National Electoral Office.

69 The Court must reject the argument put forward first that, in the absence of any power of the Parliament under Community law to review the results declared by the Member States, the Parliament's powers of verification under Article 12 of the 1976 Act would be devoid of content. It must be pointed out that the Parliament has full power to rule, pursuant to Article 12 of the 1976 Act, on the position of an elected candidate possessing one of the qualities incompatible with being a Member of the Parliament, as listed in Article 7 of the 1976 Act (see order in *Occhetto and Parliament* v *Donnici*, paragraph 33).

70 In the second place, as regards the argument that the Parliament must be able, in order to ensure a minimum standard regarding the appointment of its members, to disregard the official declaration made by the national authorities if that declaration is in clear breach of the fundamental principles of the 1976 Act, it must be pointed out that it is for the national courts, where appropriate after obtaining a preliminary ruling from the Court of Justice, pursuant to Article 234 EC, to rule on the lawfulness of the national electoral provisions and procedures (order in Case T-215/07 *Donnici* v *Parliament*, paragraph 93).

71 In the present case, such judicial review did indeed take place before the Italian courts having jurisdiction in the matter pursuant to the Law of 24 January 1979. The legal issues connected with the official declaration of the electoral results were definitively settled at the national level by the judgment of the Consiglio di Stato of 6 December 2006 which became *res judicata*.

72 Lastly, the clear wording of Article 12 of the 1976 Act and the relevant division of powers effected by that article preclude a finding that there was a lacuna in the protection of the electoral rights of the candidates for the elections to the Parliament.

73 For that reason, the Court must also reject the Parliament's argument that its decision on the verification of credentials would itself be vitiated by unlawfulness if it were obliged to base its own decision on an unlawful national measure, in this case the declaration that Mr Donnici had been elected by the National Electoral Office.

74 In the present case, the respective powers of the Parliament and of the national authorities when they verify the credentials of Members of the Parliament are clearly divided between the Community institutions and the national authorities, in contrast to what the Parliament claims by referring to the judgment in Case C-64/05 P *Sweden* v *Commission* [2007] ECR I-11389. Under Article 12 of the 1976 Act, the Parliament has the power to rule only in relation to disputes which may arise out of the provisions of that act other than those arising out of the national provisions to which the act refers, whilst it is the responsibility of the national authorities to declare the results drawn up pursuant to national provisions that are in accordance with Community law.

75 It is apparent from the foregoing that, by virtue of Article 12 of the 1976 Act, the Parliament was required to take note of the declaration made by the National Electoral Office and did not have the power to depart from it on account of the alleged irregularities affecting that national measure. By declaring — contrary to that declaration — Mr Donnici's mandate invalid and by ratifying Mr Occhetto's mandate, the contested decision infringed Article 12 of that act.

76 In the light of all the foregoing the contested decision must be annulled. In those circumstances, there is no need for the Court to rule on the other pleas put forward by

the Italian Republic and Mr Donnici in support of their actions. Mr Donnici's requests put forward in the alternative have therefore become devoid of purpose.

Costs

77 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Italian Republic and Mr Donnici have applied for costs to be awarded against the Parliament and the latter has been unsuccessful, it must be ordered to pay the costs of these proceedings. Pursuant to the first subparagraph of Article 69(4) of the Rules of Procedure, the Member States which have intervened in the proceedings must bear their own costs and, pursuant to the third subparagraph of Article 69(4), the Court may order an intervener other than those mentioned in the preceding subparagraphs to bear its own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Annuls Decision 2007/2121(REG) of the European Parliament of 24 May 2007 on the verification of credentials of Mr Beniamino Donnici;**

2. **Orders the European Parliament to pay Mr Donnici's costs and those incurred by the Italian Republic as applicant;**

3. **Orders the Italian Republic as intervener, the Republic of Latvia and Mr Occhetto to bear their own costs.**

[Signatures]