OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 25 April 1991 *

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Mr President,
Members of the Court,

A — Facts

1. The joined cases on which the Court is called upon to rule relate once again to the assessment of measures taken by the European Parliament at the boundary between its power to determine its own internal organization on the one hand, and decisions on matters of principle with practical effects prejudging the question of the seat of the institution on the other. The problems concerning the seat and places of work of the European Parliament have repeatedly given rise to cases before the Court. [1]

I — *Case C-213/88*

2. In Case C-213/88 the Luxembourg Government has brought an action for annulment pursuant to Articles 31 and 38 of the ECSC Treaty, 173 of the EEC Treaty and 146 of the EAEC Treaty.

3. The Luxembourg Government challenges the decisions taken by the Bureau of the European Parliament on 1 and 2 June 1988 and 15 June 1988. According to the Parliament, such decisions are not binding until the adoption of the minutes at the next meeting. The decisions in question were adopted at the meetings of the Bureau on 15 June and 6 July 1988.

4. The content of the contested decisions is essentially as follows:

5. (a) In the Decision of 1 and 2 June 1988 the Bureau endorsed a report by the Ad Hoc Working Party on Information, in which measures to improve the information services in Brussels were formulated, and at the same time instructed the Secretary-General to implement the proposals.

6. The Luxembourg Government takes particular objection to the *establishment of the Central Press Office in Brussels* as an

1 — See the judgment in Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255; see also the judgment in Case 108/83 *Luxembourg* v *Parliament* [1984] ECR 1945 and the judgment in Joined Cases 358/85 and 51/86 *France* v *Parliament* [1988] ECR 4821.

autonomous service of Directorate-General III separate from the Information Office for Belgium. It further challenges the expansion of the information service in Brussels through the *transfer of language sectors* of the Publications Division.

7. At that time the transfer of the English-language sector had already taken place, so that this measure is not the subject of the contested decision. On the other hand, the report contained the concrete proposal to transfer the Portuguese-language sector on 1 January 1989. This transfer is directly challenged. Moreover, the intention was expressed in the report to transfer further language sectors to Brussels in future, to which the Luxembourg Government also objects.

8. (b) In the Decision of 15 June 1988 the Bureau opted for specific *building projects in Brussels.* The Bureau 'decided unanimously, with regard to Brussels, for the "Park Léopold Investment" . . . and, by 12 votes to nil with one abstention, for the "Groupement COB — Société Générale" project'. At the same time it empowered the Secretary-General to take all the measures required.

9. The Luxembourg Government considers that the contested decisions were taken outside the limits set by judgments of the Court. It maintains that the European Parliament does not have the power to decide the question of the seat. Nevertheless, in the view of the applicant, the disputed measures would result in the gradual transfer of entire departments of the Parliament to Brussels, ultimately creating conditions incompatible with the legal requirements laid down by the Member States and endorsed by the Court.

II — *Case C-39/89*

10. The action for annulment in Case C-39/89 challenges the Resolution of the European Parliament of 18 January 1989. The contested resolution, known as the 'Prag resolution', is named after the rapporteur Derek Prag.

11. The Luxembourg Government objects to the resolution as a whole, but especially to paragraphs 7, 9, 10, 16 and 17 thereof. The resolution is a comprehensive statement concerning the seat of the institutions and the main place of work of the European Parliament. The paragraphs to which the Luxembourg Government takes particular exception may be regarded as the practical consequence of the Parliament's perception of its working conditions as unsatisfactory. In the passages of the resolution on which particular emphasis is placed, the Parliament:

'7. Resolves in consequence to make more satisfactory arrangements for carrying out its tasks, in accordance with its obligations under Community law and the self-evident right of a Parliament elected by direct universal suffrage;

9. Instructs its Bureau to make arrangements as soon as possible to enable

the Parliament to have available all the staff and infrastructure needed for it to carry out its tasks efficiently and effectively in the places where its plenary sessions and other parliamentary meetings are held, taking account of the considerations set out in paragraphs 2 and 3;

10. Considers in particular that it is indispensable for its proper functioning for the Parliament to have in Brussels the staff dealing with the following activities:

— committees and delegations,

— information and public relations,

— studies and research,

as well as

— other staff whose principal role is to provide services directly to individual Members, and

— those staff whose supervisory or supporting roles require them to be in the same place as those referred to above;

16. Instructs its President, Secretary-General, Bureau, Enlarged Bureau and Quaestors to take speedily all appropriate steps, including staff consultations, to implement the above, notably by leasing or acquiring new premises and terminating the leases of buildings when they are no longer required;

17. Stresses the urgency of its situation and the need to make the changes foreseen in paragraphs 9, 10 and 11 as soon as facilities become available.'

12. The Luxembourg Government regards the adoption of the Prag resolution as confirmation of its opinion which led it to bring an action in Case C-213/88. In its view, the intention to transfer departments based in Luxembourg progressively to Brussels is now expressly confirmed. The applicant perceives a thread of continuity in the measures and decisions taken by the Parliament.

13. By letter of 23 August 1988, the Luxembourg Foreign Minister asked the President of the European Parliament not to implement the disputed measures before judgment was delivered in Case C-213/88. The Bureau of the Parliament rejected that request and instead confirmed the Decisions of 1 and 15 June 1988 at its meeting on 14 September 1988. Since then, the disputed measures have been implemented.

14. Finally, implementing measures have also been taken to put the Prag resolution into effect, such as the Bureau decision on the Parliament's buildings policy concerning the leasing of certain office and conference

rooms, which was adopted by the European Parliament on 5 April 1990. [2] For Brussels alone, the President and the Secretary-General were authorized to lease buildings D1, D2 and D3 in order to ensure the availability of 2 600 offices and 30 conference rooms in a single complex and in addition to secure the use of the large 750-seat conference room in the complex.

15. The European Parliament considers both applications to be inadmissible. In Case C-213/88 it has formally raised an objection of inadmissibility pursuant to Article 91 of the Rules of Procedure. On 6 July 1989 the Court ordered the decision on the objection of inadmissibility to be reserved for the final judgement in the case.

16. In the opinion of the European Parliament, both actions are in any event unfounded since, in so far as they are capable of producing legal effects, the disputed measures relate to the internal organization of the institution.

17. On 4 July 1990 the Court ordered the two cases to be joined for the purposes of the oral procedure and the judgment.

18. The *Luxembourg Government* claims that the Court should declare the applications admissible and well founded and:

— in Case C-213/88: declare null and void the Decision of the Bureau of the European Parliament of 1 and 2 June 1988 entitled 'Information and public relations services in Brussels' and the Decision of the Bureau of 15 June 1988 entitled 'Note on the medium-term forecasts of the activities of the European Parliament in the three normal places of work';

— in Case C-39/89: annul the Resolution of the European Parliament of 18 January 1989 'on the seat of the Institutions and the main place of work of the European Parliament';

— formally declare that the applicant reserves the right to take any further action.

19. The *European Parliament* contends in both Case C-213/88 and Case C-39/89 that the Court should:

— declare the applications inadmissible;

— in the alternative, dismiss them as unfounded;

— order the applicant to pay the costs.

20. Reference is made to the Report for the Hearing for an account of the parties' submissions and pleas in law. The facts are set out hereinafter only in so far as is necessary for the reasoning of the Court.

2 — OJ 1990 C 113, pp. 20, 21 and 138.

B — Opinion

I — *Admissibility of the two applications of the Grand Duchy of Luxembourg*

21. The admissibility of the application was also contested in the earlier proceedings. The Court rejected all the objections raised in that regard. I propose that the Court should do so in these cases as well.

22. The Court has expressly acknowledged in its case-law that measures of the European Parliament may be challenged under Articles 31 and 38 of the ECSC Treaty and Article 173 of the EEC Treaty. [3]

23. Under Article 38 of the ECSC Treaty, a Member State may lodge an application against an act of the European Parliament on grounds of lack of competence or infringement of an essential procedural requirement.

24. Acts of the Parliament capable of producing legal effects in relation to third parties may be challenged pursuant to Article 173 of the EEC Treaty. The first paragraph of that article confers on Member States amongst others a right of action without their having to establish a legitimate interest in bringing proceedings. It is evident that the Member States also enjoy this privileged status in the case of actions against the Parliament.

25. The same grounds as those on which measures of the Parliament may be challenged under Article 173 of the EEC Treaty must also apply to the right of action under Article 146 of the EAEC Treaty, which is couched in identical terms.

1. Case C-213/88

26. The Parliament raises preliminary objections to the *form of the application*. In its view, the complaints should be specified. It contends that the individual pleas are too vague, making a proper defence difficult.

27. In reply, the Luxembourg Government challenges the contested decisions in their entirety. It points to the circumstances which alone enabled it to learn of the contested decisions, and refers to individual passages from the decisions in emphasizing that it wishes the Court to examine all aspects capable of producing legal effects.

28. For an application to be in order, it is sufficient if it sets out the facts, submissions and conclusions of the applicant. [4] The application in Case C-213/88 states the relevant legal grounds and refers to the contested decision. It sets forth both the facts and the legal consequences which, in the view of the applicant, are to be drawn therefrom. Hence there is nothing in the form or the content of the application which stands in the way of its admissibility.

3 — On measures open to challenge under Articles 31 and 38 of the ECSC Treaty, see the judgment in Case 230/81, ibid., and with regard to Article 173 of the EEC Treaty see the judgment in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339.

4 — See the judgment in Joined Cases 7/56 and 3/57 to 7/57 D. *Algera et al.* v *Common Assembly of the European Coal and Steel Community* [1957] ECR 39 at p. 65.

29. In support of its objection of inadmissibility, the Parliament contends that the disputed measures are *not subject to judicial review*, as they relate exclusively to its internal organization. In the defendant's view, such acts, deriving from the exercise of the power to organize its own departments, cannot be the subject of legal proceedings. In support of that view, it relies on the case-law of the Court. [5]

30. It must be acknowledged that in the cases cited by the Parliament the Court dismissed the possibility of legal action against measures concerning the internal organization of the institution. However, the question here can only be whether the disputed measures really are measures of internal organization. In another case, the Court recognized that a resolution of the Parliament produced legal effects and therefore considered that it could be reviewed by the Court. [6]

31. In order to ascertain whether a decision by the Parliament or by one of its bodies is to be considered as falling within its power of internal organization or is a measure producing legal effects in relation to third parties, it is necessary to examine not the form of the measure in question but its content. As the Court has consistently held, the nature of the measure is to be judged by whether it is intended to have legal effects. [7]

32. (a) In the Decision of 1 and 2 June 1988 one of the points at issue to which the Luxembourg Government objects is the establishment of the 'Central Press Office' in Brussels. The Parliament explains that it is simply a question of enlarging the Press Office, which already exists as an autonomous service of Directorate-General III.

33. The parties therefore already disagree as to whether this constitutes the establishment of a new service or only the assignment of additional staff to an existing administrative unit. In neither case is it clear whether the act in question is a measure of internal organization that does not affect the rights of any third party. Instead, in order to answer those questions, it is necessary to examine the content of the contested decisions: the substance of the case must therefore be considered without giving a final decision on the admissibility of the application as regards the Decision of 1 and 2 June 1988. [8]

34. (b) In the Decision of 15 June 1988 the Bureau adopted concrete building projects and entrusted their implementation to the Secretary-General. Even if the delegation of powers can be qualified as an act of internal organization, it cannot determine the legal nature of the contested decision. The essential and hence decisive factor is the definitive vote for the building projects. The manner in which they are implemented is of secondary importance. The granting of authority to the Secretary-General can of itself be regarded as a first step in the implementation of the decision, since

5 — Judgment in Joined Cases 358/85 and 51/86, ibid., and Order in Case 78/85 *Group of the European Right* v *Parliament* [1986] ECR 1753.

6 — Judgment in Case 108/83, ibid.

7 — See the judgments in Case 114/86 *United Kingdom* v *Commission* [1988] ECR 5289, paragraph 12; in Case 230/81, ibid.; and in Joined Cases 358/85 and 51/86, ibid.

8 — See the judgment in Case 230/81, paragraph 30, and in Joined Cases 358/85 and 51/86, paragraph 15.

responsibility for carrying it out has been transferred to a specified body. The decision in favour of the building projects is not simply a declaration of intent by the Bureau that requires further decisions in order to become binding but a decision with a specific and precise content. The Bureau's Decision of 15 June 1988 is therefore in the nature of a decision which produces legal effects and hence actionable. The application in Case C-213/88 is therefore admissible as regards that decision.

2. Case C-39/89

35. In Case C-39/89 a procedural issue concerning the admissibility of the application arose in the course of the written procedure. It was dealt with by the Court which decided to reserve the decision on the formal objection of inadmissibility for the final judgment. The Parliament raises two objections of inadmissibility, one concerning the form of the application and the other the nature of the disputed measures.

36. (a) As in the preliminary remarks regarding Case C-213/88, the Parliament takes the view that *the application does not satisfy the procedural requirements* and is therefore inadmissible on that ground alone. It considers that in order to challenge the legality of the acts of an institution it is not sufficient to rely on lack of competence on the part of the enacting institution or infringement of the Treaty. In the absence of a minimum of substance in support of the application, the defendant would bear the burden of proving that its behaviour did not exceed the limits of legality.

37. The Luxembourg Government maintains that the application more than satisfies the minimum formal requirements of Article 38 of the Rules of Procedure. It points out that the application describes the subject-matter of the dispute, the resolution in its entirety as well as individual paragraphs thereof. It sets out in detail the applicant's arguments, namely transgression of the Parliament's powers and breach of the principle of proportionality. Moreover, in the applicant's view, the Parliament's objection is based on an error of law as it relates to the production of proof, which has nothing to do with the question whether the form of the application is in order.

38. Article 38 of the Rules of Procedure lays down the formal requirements with which an application must comply. The conditions set out in Article 38(1)(a) and (b) are undoubtedly satisfied, as is that in (d), which requires the form of order sought by the applicant to be stated. However, (c), which stipulates that the application must state 'the subject-matter of the proceedings and a summary of the pleas in law on which the application is based', may be problematic. The subject-matter of the proceedings is described in the application as the resolution whereby the Parliament adopted the Prag Report, and is therefore the resolution in its entirety. To the extent that individual paragraphs of the resolution, whose legality is challenged, are cited as the legal grounds on which the action is based, what the applicant seeks is specified and

well founded. The emphasis laid on certain aspects of the contested resolution and their appraisal in relation to the case-law of the Court on the question of the seat is of itself the actual basis for the form of order sought. The applicant thereby substantiates its pleas of lack of competence and lack of proportionality of the disputed measure, and therefore satisfies the requirement to state 'a summary of the pleas in law on which the application is based'.

39. Article 38(1)(e) requires the applicant to state 'where appropriate, the nature of any evidence offered in support'. Evidence needs to be adduced only if questions of fact are at issue. In this case, however, it is simply a matter of reviewing the legality of a measure. As the disputed resolution is attached to the application, the requirements of Article 38(4) of the Rules of Procedure in conjunction with the second paragraph of Article 19(2) of the Statute of the Court of Justice of the EEC and Euratom are met.

40. The issue raised by the Parliament with regard to the burden of proof must be rejected in connection with the examination of the question of admissibility. The Luxembourg Government is right in asserting that consideration of the burden of proof involves a procedural rule regarding the question whether the application is well founded. The issue raised by the Parliament could be interpreted as bearing on the requirements for the submission of the application, which may at least in part also constitute a problem of admissibility.

41. In purely abstract terms, the applicant is required to provide a minimum of substance in order to identify the measures being challenged and the grounds relied upon. The procedural requirement of admissibility is, however, essentially that set out in Article 38(1)(c), which requires the subject-matter of the proceedings and a summary of the pleas in law on which the application is based to be designated. More far-reaching requirements regarding the submission of the application are aspects of the examination of the question whether the application is well founded.

42. As the application in Case C-39/89 satisfies the formal requirements laid down in the Rules of Procedure, the first objection of inadmissibility must be rejected.

43. (b) The second objection of inadmissibility relates to the *nature* of the disputed measure. The Parliament points to the judgment in *Salerno* v *Commission and Council*,[9] in which the Court held that a resolution of the Parliament was not binding. [10] That finding should not be considered out of context, however.

44. In the case cited above, the applicants argued that their legitimate expectations, raised by a resolution of the Parliament, had been frustrated. The resolution in question contained the Parliament's opinion on a proposal for a regulation presented by the Commission of the European Communities

9 — Judgement in Joined Cases 87/77, 130/77, 22/83, 9/84 and 10/84 *Salerno* v *Commission and Council* [1985] ECR 2523.

10 — Ibid., paragraph 59.

to the Council. In that resolution, the Parliament expressed its opinion on the legal position of the applicants in a way which the latter sought to rely upon.

45. While in that case the Court held that a resolution of the Parliament was not binding and could not give rise to a legitimate expectation that the institutions would act in accordance therewith, that cannot in any circumstance serve as a precedent for the present case. The resolution in the *Salerno* case represented a stage in the Community's legislative process. A binding decision as to the content of the legal measure to be adopted was to be taken later by the Council.

As a factor in the consultation procedure, the resolution in question could not have binding force.

46. As frequently stated, determination of the nature of a measure depends not on its form but on its content. That is particularly apparent from the fact that in other cases the Court has acknowledged that resolutions of the Parliament actually produced binding legal effects [11] or were capable of doing so. The Court has always determined whether a resolution of the Parliament is of a decision-making nature on the basis of its content. Where that nature is not clearly recognizable, [12] examination of the question of admissibility entails examining the content of the resolution. [13]

47. According to the Prag resolution, a 'major reorganization' of the work of the Parliament is to be carried out, with all that that entails for the working places and staff. [14] The measures required are specified in the operative part of the resolution, according to which it is indispensable:

'to have in Brussels the staff dealing with the following activities:

— committees and delegations,

— information and public relations,

— studies and research,

as well as

— other staff whose principal role is to provide services directly to individual Members, and

11 — See the judgments in Cases 230/81 and 108/83 and in Joined Cases 358/85 and 51/86, cited in footnotes 1 and 5.

12 — Judgment in Case 108/83, paragraph 23.

13 — Judgment in Case 230/81, paragraph 30, and in Joined Cases 358/85 and 51/86, paragraph 15.

14 — Paragraph 1 of the resolution.

— those staff whose supervisory or supporting roles require them to be in the same place as those referred to above'. [15]

In order to emphasize the seriousness and urgency [16] of the changes, the Parliament's bodies are instructed forthwith:

'to take speedily all appropriate steps, including staff consultations, to implement the above, notably by leasing or acquiring new premises and terminating the leases of buildings when they are no longer required'. [17]

48. Hence, the resolution is so precise in certain respects that it must be deemed to be of a decision-making nature. Even without giving precise figures, the resolution can be implemented in substance, so that its decision-making nature cannot be disputed on the ground that the subject-matter is not sufficiently clear. In particular, the instructions to the Parliament's bodies to carry out specific proposals produce effects which may in certain circumstances violate the legal guarantees given to the Grand Duchy of Luxembourg. The possibility of impairing the legal rights of third parties should be sufficient to establish that the measure in question is actionable.

15 — Paragraph 10 of the resolution.

16 — Paragraph 17 of the resolution.

17 — Paragraph 16 of the resolution.

II — Substance

1. Rules of competence applicable to the question of the seat

49. The legality of the disputed measures is to be assessed against the background of the legal situation created by the Member States and interpreted in the case-law of the Court. The basic legal position has remained unchanged in relation to the previous cases.

(a) Developments up to 1981

50. Pursuant to Articles 77 of the ECSC Treaty, 216 of the EEC Treaty and 189 of the EAEC Treaty the seat of the institutions is to be determined by common accord of the Governments of the Member States. Pursuant to Article 37 of the Treaty establishing a Single Council and a Single Commission of the European Communities (the Merger Treaty), the representatives of the Governments of the Member States took a decision on the provisional location of certain institutions and departments of the Communities. [18] The decision came into force on the same day as the Merger Treaty. According to Article 37 of the Merger Treaty, 'the provisions required in order to settle certain problems peculiar to the Grand Duchy of Luxembourg which arise out of the creation of a single Council and a single Commission of the European Communities' are to be expressly laid down. Article 4 of the implementing decision also states that 'The General Secretariat of the

18 — Decisions 67/447/EEC and 67/30/Euratom, OJ 1967 L 152, p. 18.

Assembly and its departments shall remain in Luxembourg'.

51. In reply to a letter from the President of the Parliament describing the problems affecting the work of the Parliament as a result of the increase in the number of Members following their election by direct universal suffrage, the President of the Council informed the President of the Parliament on 22 September 1977 that the Governments of the Member States saw no reason to change the arrangements then in force with regard to the provisional places of work of the Assembly, either *de jure* or *de facto*; those places were Strasbourg and Luxembourg, where the Secretariat and the departments of the Assembly were to remain, whereas the parliamentary committees were in the habit of meeting in Brussels with the minimum facilities necessary to ensure the smooth conduct of their sittings.

52. At the end of 1980 and the beginning of 1981 the representatives of the Governments of the Member States met in a Conference on the seat of the Community institutions. The conference established that differences of opinion remained and that among the various options, none of which was ideal, the most satisfactory was to retain the status quo, that is to say the designation of a number of provisional places of work. At the European Council in Maastricht the Heads of State and Government of the Member States decided unanimously on 23 and 24 March 1981 'to confirm the *status quo* in regard to the provisional places of work of the European institutions'. The conference on the seat of the institutions ended on 30 June 1981 by taking formal note of that decision. The exclusive power of the Governments of the Member States to determine the seat of the institutions was expressly confirmed. The Conference stated that the decision taken in Maastricht was in the exercise of that power and did not prejudge the determination of the seat of the institutions. [19]

53. Since then, the Governments of the Member States have taken no further decision regarding the seat or provisional places of work of the institutions.

(b) Case 230/81

54. In 1981 the Parliament decided to hold its part-sessions in *Strasbourg* (and no longer in Luxembourg as well), to organize the meetings of its committees and political groups as a general rule in *Brussels* and *to review the operation of the Secretariat to meet the requirements arising out of that division.* This led to an action by the Luxembourg Government for a declaration that the resolution of the Parliament was void, which was dismissed.

55. With regard to the power to determine the seat and the places of work, the Court has held that the Governments of the Member States have power to determine the seat of the institutions pursuant to the Treaties establishing the Communities. At the same time, it has emphasized that the Member States have not only the right but also the duty to exercise that power and that they 'have not yet discharged' [20] that obligation. When taking provisional decisions in the exercise of that power, the

19 — For a summary of these events, see the judgment in Case 230/81, cited in footnote 1 above.

20 — See the judgment in Case 230/81, paragraph 36.

Member States must, in accordance with their duty of sincere cooperation under Article 5 of the EEC Treaty, have due regard to the power of the Parliament to determine its own internal organization, and take care not to impede its proper functioning.

56. The Parliament is entitled, on the basis of the power to determine its own internal organization conferred on it by the Treaties, 'to adopt appropriate measures to ensure the due functioning and conduct of its proceedings'. [21] By the same token, however, the duty of sincere cooperation also requires the Parliament to have regard to the acts and provisional decisions of the Governments of the Member States in relation to the determination of the seat of the institutions. This does not affect the Parliament's power to adopt resolutions on any questions concerning the Community and to call upon the Governments to act.

57. In order to ascertain whether the Parliament acted *ultra vires* in adopting a particular resolution, the Court considers that the content of the operative part of the resolution has to be examined in the light of the respective powers of the Member States and of the Parliament.

58. According to the Court, Article 4 of the Decision of 8 April 1965 must be interpreted as meaning that

'it does not stand in the way of certain measures of the Parliament which are necessary for the purposes of its proper functioning.

In the absence of a seat or even a single place of work, the Parliament must be in a position to maintain in the various places of work outside the place where its Secretariat is established the *infrastructure essential* [22] for ensuring that it may fulfil in all those places the tasks which are entrusted to it by the Treaties.' [23]

59. It should nevertheless be added that the transfers of staff must not exceed the limits set,

'since any decision to transfer the Secretariat of the Parliament or the other departments, wholly or partially, *de jure* or *de facto*, would constitute a breach of Article 4 of the Decision of 8 April 1965 and of the assurances which that decision was intended to give to the Grand Duchy of Luxembourg'. [24]

60. The Grand Duchy of Luxembourg was unsuccessful in its action for the annulment of the resolution adopting the Zagari Report.

(c) Case 108/83

61. Following its success in Case 230/81, [25] the Parliament passed a further resolution

21 — Judgment in Case 230/81, paragraph 38.

22 — Emphasis added.

23 — Judgment in Case 230/81, paragraphs 53 and 54.

24 — Judgment in Case 230/81, paragraph 55.

25 — Judgment in Case 230/81, ibid., footnote 1 above.

which provided for the *permanent division* of the staff of the Secretariat *between Strasbourg and Brussels* and their establishment in those places. As a consequence, the Secretariat would *no longer* be based in *Luxembourg*. The Court held that such a far-reaching decision went beyond the powers of the Parliament, and it therefore annulled the resolution. [26]

(d) Joined Cases 358/85 and 51/86 [27]

62. In 1985 the Parliament adopted a resolution providing for the construction of a building containing a conference room with seating for at least 600 persons with the aim of occasionally holding part-sessions in Brussels. The French Government brought an action against that resolution. The Court held that the decisions of the Governments of the Member States did not prevent

'the Parliament, in exercising its power to determine its own internal organization, from deciding *to hold a part-session away from Strasbourg*, when such a decision remains exceptional in nature, thus respecting *the position of that city as the normal meeting place*, and is justified by objective reasons connected with the proper functioning of the Parliament'. [28]

63. On those grounds the French Government was unsuccessful in its action for the annulment of the resolution at issue.

(e) Summary of the case-law

64. The case-law of the Court can be summarized as follows:

— The Member States are authorized and obliged to determine the places in which the institutions of the Community are to be based provisionally or in the future. They are therefore responsible for supplementing the system of institutional provisions laid down in the Treaties in order to ensure the functioning of the Communities. It follows that the Member States have not only the right but also the duty to exercise that power. It is common ground that the Governments of the Member States have not yet discharged their obligation to determine the seat of the institutions in accordance with the provisions of the Treaties [29] and have not yet even designated a single provisional place of work for the Parliament. [30] This impedes the Parliament's work. [31]

— The Parliament is entitled, on the basis of the power to determine its own internal organization conferred on it by the Treaties, to adopt appropriate measures to ensure its proper functioning and the conduct of its proceedings. Nevertheless, in accordance with the mutual duty of sincere cooperation embodied in Article 5 of the EEC Treaty, the decisions of the Parliament must also have regard to the power of the Governments of the Member States to determine the seat of the institutions and their provisional decisions taken in the meantime [32] and must not call in

26 — Judgment in Case 108/83, ibid., footnote 1 above.

27 — Judgment in Joined Cases 358/85 and 51/86, ibid., footnote 1 above.

28 — Judgment in Joined Cases 358/85 and 51/86, paragraph 36.

29 — Judgment in Case 230/81, paragraphs 35 and 36.

30 — Judgment in Joined Cases 358/85 and 51/86, paragraph 34.

31 — Judgment in Joined Cases 358/85 and 51/86, paragraph 40.

32 — Judgment in Case 230/81, paragraphs 37 and 38; judgment in Joined Cases 358/85 and 51/86, paragraphs 34 and 35.

question the position of Luxembourg as the place of work of the Secretariat of the Parliament. [33]

65. On those grounds the Court has acknowledged the legality of the decision of the Parliament to hold special or additional plenary sessions in Brussels during weeks devoted largely to committee and political group meetings, and the legality of the decision to review the operation of the Secretariat and of the technical services in order to meet the requirements of the Parliament's activities in Strasbourg and Brussels.

66. By contrast, the Court has criticized the decision of the Parliament to *divide* its departments and staff *de facto* between places other than Luxembourg, namely between Strasbourg and Brussels, as the Secretariat would then no longer be based in Luxembourg.

67. The Court accordingly concedes that the Parliament has considerable latitude to decide the measures it deems necessary to ensure its proper functioning, although it may not discard a place of work determined by the Member States' Governments. [34]

68. The contested decisions of the Parliament are to be examined against that background.

33 — Judgment in Case 108/83, paragraphs 25, 28 and 31.

34 — See the submissions of the Grand Duchy of Luxembourg in Case 108/83, ibid.

69. The Luxembourg Government prefers another line of approach, based on the Parliament's right to maintain outside Luxembourg only the infrastructure essential to ensure that it can carry out the tasks assigned to it. In other words, any decision to transfer the Secretariat of the Parliament or the other departments, wholly or partially, *de jure* or *de facto*, which does not satisfy the criterion of essential infrastructure constitutes a breach of Article 4 of the Decision of 8 April 1965 and of the assurances given to Luxembourg at that time.

70. That interpretation is supported by the wording of the 1983 judgment, but ignores the context of that and later judgments. In its decisions the Court has upheld measures of the Parliament that went much further than the measures involved in the present case and has intervened only when the Parliament sought to abandon Luxembourg entirely as the location for its Secretariat.

71. The Court has therefore given the Parliament considerable latitude to assess the measures it considers essential.

72. That principle must constitute the point of departure in examining the present case as well.

2. Case C-213/88

73. (a) In the Decision of 1 and 2 June 1988 the Bureau of the Parliament notes the

report of the Ad Hoc Working Party on Information, agrees with the general guidelines laid down in the report and instructs the Secretary-General to take steps to implement the proposals adopted. The Bureau accordingly endorses the substance of the report, with the result that the considerations set out therein must be taken into account in examining the legality of the contested decision.

74. The proposals listed under the heading 'V. Conclusions' are intended to be implemented. According to those proposals, the Central Press Office based in Brussels is to be an autonomous service of DG III whose tasks, which are similar to those of the Spokesman's Service, are duly specified. As a concrete measure, the report states that 'the Portuguese-language sector of the Publications Division (2 category A and 2 category C officials) will transfer to Brussels with effect from 1 January 1989', and that the intention is to transfer further language sectors. Finally, the proposals, which were also adopted in that form, instruct the Secretary-General to increase the number of staff working in the information services and to reorganize the Publications Division.

75. It is not clear from the report whether the *Central Press Office* is to be newly set up or already exists and is merely to be enlarged. If Chapter V of the report, entitled 'Conclusions', is considered out of context, there is some evidence to suggest that the Central Press Office is to be established. The Office is to be an 'autonomous service', and its tasks are specified for the first time. Elsewhere there is mention of the reorganization of the Publications Division.

76. On the other hand, if the report is considered as a whole, the impression gained is that the Central Press Office has already come into existence. Paragraph II.1 states that the Central Press Office must *remain* separate from the Brussels Information Office which is responsible for Belgium.

77. In the course of the written procedure the Parliament stated that the Central Press Office had already existed since 1980, so that only an increase in the number of staff can be meant.

78. It must be noted, first, that the nature and scale of press activities are a matter for the Parliament. It is therefore not so much a question of whether and to what extent there has been an increase in the Parliament's tasks. Even if a fundamental expansion of publication activities were deemed to call for an explanation, the arguments advanced by the Parliament are such as to justify an extension of those activities.

79. The increase in actual powers can make it necessary to intensify information policy, since the growth in the number of matters which call for deliberation and the wider scope for exerting influence in the legislative process (by means of the cooperation procedure, for example) alone require a greater output of information in order to ensure that such information is comprehensive.

80. Another pertinent argument put forward by the Parliament is the need to publicize its activities and keep in touch with the electorate. The provision of adequate information to the public is an imperative obligation for the directly elected Parliament.

81. It is therefore only logical for the Parliament to make use of the communications media in order to ensure a high degree of transparency in the legislative process and to provide citizens with information.

82. No objection can be raised if the Parliament considers it necessary to increase staff at its Press Office in Brussels in order to carry out those tasks and justifies such a measure on the grounds that a substantial proportion of parliamentary work, that is to say the work of the committees and political groups, takes place in Brussels, accounting for three out of every four session weeks, and that the majority of journalists interested in European politics are accredited in that city.

83. Against that background it is not even of decisive importance whether the Central Press Office already exists and its staff is merely to be increased or is only now to be established with the same number of staff. The Press Office did not previously exist in Luxembourg in the form proposed and with the tasks set out in the report of the Ad Hoc Working Party on Information, so that it cannot have involved the transfer of a department. The Central Press Office's tasks listed in the report are characterized by a predominantly geographical relationship with political activities taking place in Brussels:

— maintaining contacts with accredited representatives of the European press in Brussels can best be achieved only on the spot;

— compiling and disseminating day-to-day information on the work of the parliamentary committees and delegations can be carried out in the most rapid and reliable manner directly in the place where events are taking place, namely in Brussels;

— for the purpose of managing the 'Press Review' service — providing a limited number of clients with a selection of agency dispatches, a brief summary of Member States' press reports and a selection of press cuttings — and the future EPISTEL database, location in Brussels is not mandatory but logical, as the recipients are based there. The transfer of such tasks as are related to work that is in any case tied to the place in which the recipients are established cannot render the establishment of the Press Office illegal;

— cooperating with the information services of the political groups again requires geographical proximity, to the extent that the political groups operate in Brussels;

— the fifth task assigned to the Central Press office consists of 'organizing the facilities and reception services for accredited journalists in the institution's various places of work and managing the Press Rooms in Brussels and Strasbourg'. Brussels is certainly the most convenient location, although perhaps not the only possible one. In transferring this task the Parliament has not exceeded its powers.

84. An assessment of whether it is permissible to establish or enlarge the Central Press Office in Brussels depends not least on the tasks assigned to it. In the form in which they are described in the report of the Ad Hoc Working Party on Information, those tasks give rise to no serious objections.

85. It emerged in the course of the procedure that the situation is different with regard, for example, to the reporting of plenary sessions in Strasbourg. In so far as the reports are not drawn up on the spot, there is no reason why it should be easier to produce them in Brussels than in Luxembourg. If the preparation of general information brochures for the public at large is borne in mind, it becomes even clearer that the Central Press Office does not by any means have to be established in Brussels on account of all the activities assigned to it. There is no perceptible need for such documents to be produced in that city.

86. Conversely, it makes more sense to concentrate all those functions in a single place than to distribute them among several places. The Court has expressly criticized the fact that the Member States have not yet even determined a single place of work for the *Parliament*. The institution was therefore entitled to concentrate one of its services, the Central Press Office, in Brussels.

87. The transfer of the *Portuguese-language sector* of the Publications Division from Luxembourg to Brussels must also be examined against the background of the abovementioned case-law. The Luxembourg Government regards this as an unjustified transfer of an administrative unit. The Parliament defends its action on the grounds that it was necessary to enlarge the Central Press Office in Brussels and that the four officials in question were prepared to move to that city. It was therefore primarily a question of the need to transfer specific officials, and the transfer of the service to which those officials belonged was merely a consequence thereof.

88. I propose that the Court accept the Parliament's explanations and raise no objection to the transfer of the four officials. Any other interpretation would be tantamount to substituting the discretion of the Court for that of the competent authority.

89. As I have already indicated when discussing the tasks assigned to the Press Office in the report of the Ad Hoc Working Party on Information, the transfer of one or other task that could be carried out equally well in other places and almost as an ancillary responsibility cannot lead to the conclusion that the concentration of a service in Brussels is illegal. Such a transfer

falls within the Parliament's discretionary powers.

90. The applicant's criticism of the transfer of staff from the Publications Division on the ground that the Office for Official Publications is situated in Luxembourg has been convincingly rebutted by the Parliament, which points out that the department in question is the Secretariat's internal service for reproducing and distributing documents intended for or drawn up by the political groups and committees. There can be no doubt but that such a service is essential in the place where the committees and political groups meet, in other words in Brussels.

91. Moreover, the decisions in question are not such as to call in question Luxembourg's position as the place of work of the Secretariat in breach of the assurances Luxembourg received in 1965. A comparison between the number of staff employed in the Secretariat in Luxembourg at the time and the number employed there now speaks for itself. [35]

92. I now turn to the applicant's argument that the ratio of officials employed in Luxembourg and Brussels has changed to Luxembourg's detriment. As far as the ratio is concerned, that is indisputable and unavoidable, as Luxembourg, unlike Strasbourg and Brussels, has no parliamentary functions but is the seat of the Secretariat of the Parliament, which in turn exists to provide support for parliamentary activities taking place outside Luxembourg, and indeed three-quarters of which are held in Brussels. This requires officials working directly for Members to be present in Brussels, irrespective of the departments to which they belong. The same applies to officials needed to supervise or provide support for those members of staff. In those circumstances personal contact cannot be replaced by modern means of communication. The presence of those officials in Brussels, which is necessary on objective grounds, inevitably affects the ratio of staff employed in Brussels and Luxembourg.

93. On the other hand, 2 360 staff were employed in Luxembourg on 31 July 1990, compared with 420 in 1965, when it was decided that the Secretariat of the Parliament should remain in Luxembourg. Admittedly since 1988 the number has fallen from 2 428 to the figure of 2 360 mentioned above, but there is no question of Luxembourg being rejected as the seat of the Parliament's Secretariat, as was to be feared in the Court proceedings in which Luxembourg was successful against the Parliament. [36]

94. (b) The Decision of 15 June 1988 in which the Bureau voted in favour of *two building projects in Brussels* must be examined in order to ascertain whether the Parliament exceeded its powers and adversely affected the rights of

35 — In 1965: 398 excluding the staff of the political groups, 420 including such staff; in 1990: 2 297 excluding the staff of the political groups, 2 360 including such staff. Whether the staff of the political groups should be counted as staff of the Secretariat of the Parliament is not relevant to the present case and need not be determined.

36 — Case 108/83, paragraph 61; see point III(c) above.

Luxembourg. In the Note on the medium-term forecasts of the activities of the European Parliament in the three normal places of work, which contains the contested decision of the Bureau, the latter approved a note from the Secretary-General dated 6 June 1988 on the same subject and thereby endorsed its contents. In order to clarify the intentions behind the contested decision, reference may therefore be made to the contents of the note of 6 June.

95. In the Secretary-General's opinion, the following premises are considered necessary to meet requirements:

— approximately 300-350 additional offices;

— two or three conference rooms each with at least 200-250 seats to enable large political groups to meet and, if necessary, several committees to hold joint sessions;

— essential premises for the reproduction and distribution services.

96. The continued use of 130 offices in a building occupied by the Parliament was in doubt at that time, so that alternative premises had to be sought.

97. According to the Secretary-General's note, the two building projects adopted by the Bureau for implementation are adequate to meet the stated requirement. The 'Parc Léopold Investment' project would be able to accommodate the conference rooms and approximately 100-150 offices. The 'Groupement COB — Société Générale' project could house the technical services and a further 200 offices.

98. Both the Secretary-General's note and that of the Bureau state that the Parliament's aim is to provide sufficient offices for Members, the Secretariat and the political groups.

99. If the 130 offices to be vacated are deducted from the 300-350 offices to be provided by the two building projects, the actual increase in the number of offices is around 200. The intention to provide both the Members and the political groups with sufficient offices is not open to criticism.

100. The Parliament points out that the Socialist Group alone has 170 members. That being so, the demand for conference rooms with 200-250 seats is not excessive.

101. The discussion between the parties concerning the meetings of a 'large committee' is in my opinion somewhat beside the point. It may have been triggered by the reference made by the Parliament itself to a 'large committee' both in the contested Decision of the Bureau of 15 June 1988 and in the Note of the Secretary-General of 6 June 1988. In fact, it

is a matter of internal organization of the Parliament whether its Rules of Procedure provide for the possibility of holding joint sessions of several committees and making available the necessary facilities for meetings.

102. The reference to Article 37 of the Rules of Procedure of the Parliament is of only limited significance in the discussion on the need for larger conference rooms. Under Article 37 of the Parliament's Rules of Procedure, the plenary session may delegate certain matters to the 'responsible committee' for debate and for its decision, the results of its deliberations become decisions of the Parliament by simple adoption in plenary session. When that procedure is used, the public is admitted in accordance with Article 37(4). The admission of the public means, however, that seats must be available for them and, where necessary, for representatives of the media.

103. The question arises of the extent to which offices are to be allocated to the Secretariat, but the answer is not to be found in the statistics provided. In contrast to the work of the Members in connection with the meetings of political groups and committees which may be held in Brussels,[37] the Secretariat continues to be based in Luxembourg as before. The allocation of a considerable number of additional offices could be regarded as evidence of an intention to transfer staff. However, it is not possible to ascertain how many additional offices are intended for use by the Secretariat. The mere possibility that a larger number of offices may be occupied is not sufficient to call in question the legality of the buildings policy decisions on principle, especially since any transfer of staff must in practice be consistent with the limits set.

104. In conclusion, the Parliament cannot be held to have exceeded its powers in adapting the Decision of 15 June 1988 on buildings policy.

3. Case C-39/89

105. In paragraph 7 of the resolution, the first paragraph considered illegal by the Luxembourg Government, the Parliament

'Resolves in consequence *to make more satisfactory arrangements for carrying out its tasks*, in accordance with its obligations under Community law and the *self-evident right* of a Parliament elected by direct universal suffrage'.

106. Although that paragraph uses the term 'resolves', it is well established that it is not the wording but the content of a parliamentary decision that determines whether the measure is actionable. In this case the content of the decision is that more satisfactory arrangements must be made for the Parliament to carry out its tasks. The form these arrangements are to take is not stated in paragraph 7, which, for that reason, is not of a decision-making nature.

37 — See Joined Cases 358/85 and 51/86, ibid.

107. In paragraph 9 of the resolution the Parliament

'Instructs its Bureau to make arrangements as soon as possible to enable the Parliament to have available all the staff and infrastructure needed for it to carry out its tasks efficiently and effectively in the places where its plenary sessions and other parliamentary meetings are held . . . '.

108. The paragraph, which contains 'instructions', can be interpreted as a definitive direction to the competent body to increase the staff complement and the equipment in Strasbourg and Brussels. In itself, however, that passage is far too imprecise to serve as the legal basis for specific implementing measures. The intention to carry out the tasks in question efficiently and effectively is a general aim that says nothing about the means whereby it is to be achieved. Consequently, no legally binding effect can be inferred from paragraph 9 on its own.

109. The position is different with regard to paragraph 10. Here the Parliament 'considers'

'that it is indispensable for its proper functioning for the Parliament to have in Brussels the staff dealing with the following activities:

— committees and delegations,

— information and public relations,

— studies and research,

as well as

— other staff whose principal role is to provide services directly to individual Members, and

— those staff whose supervisory or supporting roles require them to be in the same place as those referred to above'.

110. The use of the word 'consider' may convey the impression that the Parliament is expressing an opinion which has no binding force. However, the proposed transfers of staff are so specific that implementation could begin at once. Paragraph 17 of the resolution emphasizes that direct and specific changes are intended, for here the Parliament 'stresses'

'the urgency of its situation and the need to make the changes foreseen in paragraphs 9, 10 and 11 as soon as facilities become available'.

111. Moreover, in paragraph 16 of the resolution, the Parliament's bodies are unequivocally instructed to set in motion the implementation of the changes envisaged, as regards both the premises and the necessary staff decisions.

112. Since, therefore, paragraph 10 of the resolution must be taken to have legal effects, it is necessary to consider whether the decisions fall within the powers of the Parliament or exceed them in breach of the guarantees given to Luxembourg.

113. As far as the staff for committees and delegations is concerned, it is necessary to start from the premise that the parliamentary committees and political groups carry out their work in Brussels in legally unimpeachable conditions. The fundamental division of parliamentary activities among the three places of work was last approved by the Court in Joined Cases 358/85 and 51/86. If the fact that the committees and delegations meet in Brussels is above reproach, then it is self-evident that the necessary staff must also be present.

114. As regards information and public relations staff, I would refer the Court to my observations concerning the Parliament's press activities in connection with Case C-213/88. [38]

115. With regard to 'studies and research', it is certainly in the interest of committee work, which is an important part of parliamentary work, for the necessary resources in terms of relevant literature and research staff to be available. It is possible to follow the Parliament's reasoning when it contends that the reference library should be in Brussels. The essential feature of a reference library is that the literature required is accessible at all times.

116. The claim by the Luxembourg Government that the use of modern computer technology makes such transfers unnecessary is not entirely convincing in this connection. For example, telecommunications technology can be used for storing voluminous documents or for transmitting particular documents from one place to another by fax. On the other hand, there is no substitute for consulting the relevant literature in a particular subject area.

117. The transfer of the studies and research service is also justified on objective grounds. That service is dependent both on the library and on personal contact with those whom it serves, namely the Members of Parliament, if it is to ensure that its work is also to be of use to them.

118. To summarize, it can be stated that the transfer of the said staff does not in principle exceed the authority conferred on the Parliament as part of its organizational powers. Nevertheless, the Parliament will have to ensure that the transfers are not on a scale that calls in question Luxembourg's

38 — See paragraphs 75-89 above.

position as the place of work of the Secretariat, that being the limit set by the Court in Case 108/83.

119. Paragraph 10 of the resolution refers not only to the categories of staff discussed above but also to staff whose principal role is to provide services directly to individual Members. The wording is couched in very general terms, but the emphasis should be on the word 'directly', which delimits the group of persons who may be included in the definition. In this narrow sense, the paragraph refers to staff whose cooperation with Members is characterized by personal contacts and direct instructions. Viewed in those terms, in my opinion, the availability of such staff in the places where sessions are held, including Brussels, does not give rise to any objections.

120. The last category of persons mentioned in paragraph 10 of the resolution comprises 'staff whose supervisory or supporting roles require them to be in the same place as those referred to above'. This wording is also very general. It can be interpreted as an ancillary arrangement for the previously described categories of staff delimited on objective grounds. If the supporting role to which it refers is considered, it could become a catch-all term extending the ambit of the staff categories described. In my view, the emphasis must be placed on the word 'require', which introduces the criterion of essential nature into the staff selection procedure. On the basis of that narrow interpretation, the last indent is of marginal importance and hence unproblematic.

121. A further point, however, is that paragraph 10 does not specify the measures to be taken. Instead, the Parliament's bodies — its President, Secretary-General, Bureau, Enlarged Bureau and Quaestors — are responsible for taking the appropriate implementing measures.

122. The legal effects of the resolution stem from the direct instructions relating to proposals that are clearly defined on objective grounds. It is the Parliament's bodies, however, that are responsible for actual implementation, in accordance with the internal division of the Parliament's powers. In that regard, it is to be assumed, until there is proof to the contrary, that, in accordance with the decision adopted by the Governments in 1965 and the case-law of the Court, the Parliament's bodies must not call in question Luxembourg's position as the place of work of the Secretariat.

123. Finally, the Luxembourg Government has laid particular emphasis on paragraphs 16 and 17 of the resolution and submitted them for review by the Court. As explained when the other paragraphs have examined, paragraphs 16 and 17 gain significance only in conjunction with the other paragraphs of the resolution. The Luxembourg Government has expressly stated that the

building projects are only an ancillary aspect of the staff decisions and that it therefore wishes the building complex to be examined only in connection with staff matters.

124. Consequently, the building plans are unobjectionable if they are intended to create the objective conditions for staff transfers within the limits set forth and in so far as they are necessary for the holding of plenary sessions, which was the subject of the judgment in Joined Cases 358/85 and 51/86.

125. With regard to costs, it should be noted that the Luxembourg Government has made no application in that respect. The Parliament contends that the action should be dismissed and has asked for the applicant to be ordered to pay the costs.

126. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. The Court has ruled along those lines in the last two relevant cases. [39]

C — Conclusion

127. In the light of the foregoing examination, I propose that the Court should:

1. dismiss the applications as unfounded.

2. order the applicant to pay the costs.

39 — Case 108/83 and Joined Cases 358/85 and 51/86, but not in Case 230/81.