ORDER OF THE COURT
26 SEPTEMBER 1984 [1]

Parti Écologiste "Les Verts" v Commission and Council of the European Communities

Case 216/83

Action for a declaration that a measure is void — Natural or legal persons — Measures of direct and individual concern to them — Measures forming part of the budget procedure

(EEC Treaty, Art. 173; Financial Regulation of 21 December 1977, Art. 1 (1))

As is clear from Article 1 (1) of the Financial Regulation, which defines the budget as the instrument which sets out forecasts of, and authorizes in advance, the expected revenue and expenditure of the Communities for each year, the procedure for the approval of the budget leads only to the authorization of the commitment of expenditure. Consequently, a natural or legal person cannot under any circumstances be directly concerned by the steps in that procedure. Such a person may be directly concerned only by the measures taken to implement the budget.

In Case 216/83

PARTI ÉCOLOGISTE [Ecologist Party] "LES VERTS", a non-profit-making association,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES

and

COUNCIL OF THE EUROPEAN COMMUNITIES,

defendants,

1 — Language of the Case: French.

supported by the

EUROPEAN PARLIAMENT,

intervener,

APPLICATION for a declaration of the nullity of:

The Commission Decision of 20 June 1983 establishing and adopting the preliminary draft general budget of the European Communities for the financial year 1984;

The Commission Decision establishing and adopting the preliminary draft of the supplementary general budget of the European Communities for the financial year 1983;

The Council Decision of 22 July 1983 establishing and adopting the draft general budget of the European Communities for the financial year 1984;

The Council Decision of 22 July 1983 establishing and adopting the draft supplementary general budget of the European Communities for the financial year 1983;

And all other related decisions.

1. By application lodged at the Court Registry on 27 September 1983, the Parti Écologiste "Les Verts", a non-profit-making association, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration of the nullity of the Commission Decision of 20 June 1983 establishing and adopting the preliminary draft general budget of the European Communities for the financial year 1984, the Commission Decision establishing and adopting the preliminary draft of the supplementary general budget of the European Communities for the financial year 1983, the Council Decision of 22 July 1983 establishing and adopting the draft general budget of the European Communities for the financial year 1984, the Council Decision of 22 July 1983 establishing and adopting the draft supplementary general budget of the European Communities for 1983, and all other related decisions.

2. The applicant contests the aforementioned measures, which form an integral part of the procedure for the approval of the budget, inasmuch as they provide for a budget heading allocating appropriations to "the costs of preparations for the next European elections". The heading at issue is Item 3708 of the preliminary draft and draft general budget for 1984. Item 3708 falls within the section of the budget relating to the European Parliament. It first appeared in the budget for 1982. It is accompanied by a remark to the effect that "this appropriation is to cover a contribution to the cost of preparations for the information campaign leading up to the second direct elections in 1984 pursuant to the decision [of the European Parliament's Bureau] of 12 October 1982".

3. By virtue of Article 18 of the Financial Regulation of 21 December 1977 (Official Journal 1977, L 356, p. 8), the European Parliament has the power to implement the section of the budget relating to it. The applicant fears that it will use that power to benefit the parties represented in the Parliament elected in 1979 to the detriment of those not so represented when it comes to reimburse their expenses in the 1984 election campaign. That apprehension is based on a decision of the European Parliament's Bureau dated 13 October 1982 adopting rules governing the use of the appropriations entered under Item 3708 of the general budget of the European Communities. Under those rules, 7% of the appropriations are to be distributed to the seven political groupings. The remaining 93% are to be allocated as follows: two-thirds on the basis of the number of seats obtained in 1979, and one-third on the basis of the number of votes received in 1984.

4. By an application on a procedural issue made pursuant to Article 91 of the Rules of Procedure, the Commission and the Council, and also the Parliament, which intervened in the proceedings, raised an objection of inadmissibility and requested the Court to decide on that objection without examining the substance of the case.

5. The Commission argues, in the first place, that the preliminary draft of the supplementary general budget for 1983 does not alter the section relating to the Parliament's budget and therefore cannot be contested; in the second place, the preliminary draft general budget for 1984 is a preparatory measure which is not open to challenge by way of an action for a declaration of nullity. The Council takes the view that only the finally adopted budget and the decision of the President of the Parliament formally recording its final adoption are definitive measures capable of being the subject of an action for a declaration of nullity. Finally, the Parliament's view is that the action is inadmissible on two grounds. First of all, the contested measures are preparatory measures. In the second place, by virtue of an agreement between the institutions (Official Journal 1982, C 194, p. 1), the Parliament

has the sole power of decision in respect of its own budget. The applicant has therefore not brought its action against the institution actually responsible for Item 3708 of the general budget.

6. The applicant submits that it is necessary to analyse the procedure for the adoption of the general budget. Such an analysis shows that the measures adopted at each stage of the procedure have the effect of fettering the discretion of the institution which is next called upon to take a decision. Furthermore, if that institution does not object to it, the measure adopted at the earlier stage becomes the final budget. Consequently, either because they influence the subsequent decision, or because definite legal effects may attach to them in the future, the steps in the budgetary procedure cannot be treated as preparatory measures.

7. By virtue of Article 92 (2) of the Rules of Procedure, the Court may at any time of its own motion consider whether there exists an absolute bar to proceeding with a case. In this instance, one of the conditions laid down by the first paragraph of Article 173 of the EEC Treaty is clearly not fulfilled. Article 1 (1) of the Financial Regulation of 21 December 1977 defines the budget as "the instrument which sets out forecasts of, and authorizes in advance, the expected revenue and expenditure of the Communities for each year". The procedure for the approval of the budget leads only to the authorization of the commitment of expenditure. Therefore a natural or legal person cannot under any circumstances be directly concerned by the steps in that procedure. Such a person may be directly concerned only by the measures taken to implement the budget.

8. Since the documents before the Court contain all the information required in order to give a decision on the application, it has not been considered necessary to hear the oral argument of the parties. In consequence, it must be held, pursuant to Article 173 of the EEC Treaty and Article 92 (2) of the Rules of Procedure, that the application has been made by a legal person not directly concerned by the contested measures and is therefore inadmissible.

On those grounds,

after hearing the report of the Judge-Rapporteur and the views of the Advocate General,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), A. O'Keeffe, G. Bosco, O. Due, U. Everling and R. Joliet, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

hereby orders as follows:

1. **The application is dismissed as inadmissible.**

2. **The applicant is ordered to pay the costs.**

Luxembourg, 26 September 1984.

J. A. Pompe
Deputy Registrar

A. J. Mackenzie Stuart
President