JUDGMENT OF THE COURT
22 September 1988 *

In Joined Cases 358/85 and 51/86

French Republic, represented by Mr G. Guillaume, Director of Legal Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Mrs E. Belliard, Adviser in the same ministry, and Mr B. Botte, Attaché in the same ministry, with an address for service in Luxembourg at the French Embassy, 9 boulevard Prince Henri,

applicant,

v

European Parliament, represented by Mr F. Pasetti Bombardella, Jurisconsult of the European Parliament, assisted by Mr C. Pennera, Principal Administrator, acting as Agents, with an address for service in Luxembourg at the seat of the European Parliament,

defendant,

APPLICATION for the annulment of the resolution of the European Parliament of 24 October 1985 on meeting facilities in Brussels,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 14 January 1988 at which the applicant was represented by J. P. Puissochet, Director of Legal Affairs at the Ministry of Foreign Affairs, and E. Belliard, acting as

* Language of the Case: French.

Agents, and the defendant by F. Pasetti Bombardella and C. Pennera, acting as Agents, assisted by M. Waelbroeck, of the Brussels Bar,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 June 1988,

gives the following

Judgment

1 By two successive applications lodged at the Court Registry on 20 November 1985 (Case 358/85) and 20 February 1986 (Case 51/86) respectively, the French Republic brought two actions under Article 38 of the ECSC Treaty, Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty for the annulment of the Resolution of the European Parliament of 24 October 1985 on meeting facilities in Brussels (Official Journal C 343, 31.12.1985, p. 84). By an order of 8 July 1987 the Court joined the two cases for the purposes of the oral procedure and the judgment.

2 In the contested resolution, adopted during a topical and urgent debate pursuant to the procedure laid down in Rule 48 of its Rules of Procedure, the European Parliament,

'A. noting that the largest meeting room of the Parliament in Brussels contains only 187 seats . . . and that no significantly larger conference room with full simultaneous interpretation facilities for all the Community languages exists in Brussels . . .

B. concerned that, following enlargement of the Community, the Parliament's existing meeting rooms in Brussels will be too small for a political group to meet under normal conditions and that, as a result of future elections or the amalgamation of groups, the facilities could become inadequate for another political group,

C. observing that it is already impossible for two or more of the larger political groups to meet together in the Parliament building or other permanent facilities in Brussels,

D. concerned also that the Parliament's own working pattern is inflexible because there are no permanent facilities in Brussels for a special or additional plenary session to be held there during a week largely devoted to committee or group meetings,

E. conscious of the European Parliament's role as the institution closest to the citizens of European and wishing to improve the facilities for citizens having common interests to meet together through Community-wide organizations,

F. noting that an increasing number of such organizations are establishing headquarters in Brussels,

G. aware that the same room could meet all these needs,

. . .

(1) Decides to have a building constructed, with a room providing seating for not less than 600 people, a visitors' gallery and ancillary facilities suitable for the above purposes and as close as possible to the Parliament's building in rue Belliard;

(2) Instructs its Bureau and Quaestors to prepare plans for this purpose, to engage all necessary professional assistance and to ensure the earliest possible completion of this project, at the latest by 31 August 1988; and authorizes its President, Bureau and Quaestors to negotiate and conclude all necessary contracts to this end;

(3) Agrees to make the appropriate budgetary provisions and instructs its President, Bureau and Secretary-General to make all necessary proposals for this purpose . . . '.

3 The French Government disputes the competence of the European Parliament to decide on the construction in Brussels of a conference room to seat 600 or more persons with the aim of holding certain part-sessions therein.

4 In its first application (Case 358/85) the French Government puts forward two submissions, namely infringement of essential procedural requirements, since the resolution could not be adopted under the urgent procedure, and lack of competence of the Parliament, on the ground that determining the seat of the institutions is a matter which, pursuant to the Treaties, falls within the exclusive competence of the governments of the Member States. In its second application (Case 51/86), it repeats the same submissions and argues further that the resolution infringes the principle of proportionality since the facilities envisaged are far in excess of those necessary for the Parliament's work in Brussels. This argument is also put forward in the reply in Case 358/85.

5 Reference is made to the Report for the Hearing for a fuller account of the facts and background to the dispute, the course of the procedure before the Court and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

6 The Parliament raises two objections of inadmissibility. The first, regarding the action in Case 51/86, is based on the fact that this action is identical to that in Case 358/85, previously brought by the same applicant. The second objection, raised against each of the actions, is based on the fact that the contested resolution does not constitute an act which may be challenged before the Court.

(a) *Lis pendens*

7 Parliament contends that the two actions are identical in terms of the parties and subject-matter, and also the submissions, since the submission of breach of the principle of proportionality in the second action (Case 51/86) is also made, at the reply stage, by the applicant government in the first case (358/85). As far as the admissibility of this third submission in the context of this case is concerned, the Parliament defers to the wisdom of the Court.

8 The French Government raises no objection to the second action being declared inadmissible, unless the Court considers the argument based on the principle of proportionality as a new submission which is inadmissible in the context of the first action. In that case there would be no *lis pendens* as defined in the case-law of the Court (see, in particular, the judgment of 19 September 1985 in Joined Cases 172 and 226/83 *Hoogovens Groep BV* v *Commission* [1985] ECR 2831), which presupposes that the two actions are identical in all respects, including the submissions.

9 In this connection, it should be noted that the submission of lack of competence of the Parliament is, in substance, tantamount to saying that the purpose of the resolution concerned is to enable Parliament to hold part-sessions in Brussels, which would exceed Parliament's competence since the governments of the Member States are alone competent to determine the venue of the Parliament's meetings.

10 As pointed out by the Agent of the French Government at the hearing, the reference to the principle of proportionality is intended solely to underline the fact that the facilities which are to be built pursuant to the resolution are out of proportion to the other uses referred to in that resolution, that is to say, amongst others, the meetings of political groups, that those uses cannot justify the construction of such a building and that the decision to proceed therewith cannot therefore properly have any purpose other than the holding of part-sessions in Brussels.

11 That reasoning, as expounded above, cannot be regarded as constituting a different submission from that made in respect of lack of competence, since its purpose is to demonstrate that the resolution at issue can only be intended to put the relevant facilities to a use which Parliament, according to the applicant government, has no competence to decide upon.

12 It must therefore be held that action in Case 51/86, which was brought subsequently, is between the same parties and seeks the annulment of the same resolution on the basis of the same submissions as the action in Case 358/85. The application in Case 51/86 must therefore be dismissed as inadmissible.

(b) *The question whether the resolution is an act open to challenge*

13 The Parliament contends that the resolution does not constitute an act which is open to challenge. It claims that, in accordance with recent decisions of the Court, only those of the Parliament's acts which may have legal consequences for third parties can be the subject of an action brought before the Court. The resolution at issue does not have such consequences, particularly in so far as it implies the acquisition of immovable property, since the Parliament cannot independently decide on such acquisition which, pursuant to Article 211 of the EEC Treaty, requires, at the very least, the agreement of the Commission.

14 It should be pointed out in that connection that the objections raised by the French Government to the resolution at issue do not concern the acquisition by the Parliament of immovable property or even the constitution of facilities in Brussels, but the intention expressed by the Parliament in the resolution to hold part-sessions in Brussels and to provide itself with the facilities necessary for this purpose. According to the French Government, the Parliament is seeking in this way to substitute its own action, in the matter of the seat of the institutions, for that of the governments of the Member States, which alone have the power to act in that respect.

15 Since a decision on the admissibility of the application thus requires an analysis of the content and scope of the resolution, the substance of the application in Case 358/85 must now be examined.

Substance

(a) *Infringement of an essential procedural requirement*

16 The French Government claims that the resolution at issue could not legally be adopted in accordance with the urgent procedure provided for in Rule 48 of the Parliament's internal Rules of Procedure. It claims that this procedure concerns only requests for debates and motions for resolutions and topical and urgent subjects. The resolution at issue was not topical and urgent and could therefore not have been adopted in accordance with that procedure.

17 In this connection it suffices to point out that the Parliament's decision to hold in plenary a topical and urgent debate on a motion for a resolution on a given subject relates to the internal organization of its work and cannot, therefore, be the subject of judicial review.

18 The French Government's first submission must therefore be rejected.

(b) *Lack of competence*

19 Before examining the arguments put forward by the parties on this matter, the Court should recount, so far as may be necessary, the provisions of the Treaties and the decisions of the governments of the Member States concerning the seat and provisional places of work of the Community institutions.

20 By virtue of Article 77 of the ECSC Treaty, Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty, the seat of the institutions is to be determined by common accord of the governments of the Member States.

21 On 25 July 1952, on the occasion of the entry into force of the ECSC Treaty, the Foreign Ministers of the Member States decided, *inter alia*, that the Assembly would hold its first part-session in Strasbourg and that a final decision on the seat would be taken at a later date.

22 On 7 January 1958, on the occasion of the entry into force of the EEC and EAEC Treaties, the Foreign Ministers of the Member States agreed, as stated in a press release issued at the end of their meeting, to group all the European organizations of the six countries together in a single place as soon as this became practically feasible and in accordance with the provisions of the Treaties, and decided, *inter alia*, that 'the Assembly shall meet in Strasbourg'.

23 Article 37 of the Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965 provided that, without prejudice to the

application of the abovementioned provisions of the Treaties on the seat of the institutions, the representatives of the governments of the Member States would lay down the provisions required in order to settle certain problems peculiar to the Grand Duchy of Luxembourg which arose from the creation of a single Council and a single Commission.

24 On 8 April 1965, when that Treaty was signed, the representatives of the governments of the Member States adopted, pursuant to the abovementioned Article 37, a decision (*Journal Officiel* 1967, L 152, p. 18), Article 1 of which states that 'Luxembourg, Brussels and Strasbourg shall remain the provisional places of work of the institutions of the Communities' and Article 4 of which states that 'the General Secretariat of the Assembly and its departments shall remain in Luxembourg'. It was stated in Article 12 of the decision that, subject to the planned modifications concerning the Council and the Commission, the decision was not to affect the provisional places of work of the institutions as determined by previous decisions of the governments.

25 On 22 September 1977, in reply to a letter from the President of the Parliament concerning the operational difficulties which the institution would face following its election by universal suffrage and the increase in the number of Members, the President of the Council stated that the governments of the Member States felt that there was no cause to amend, either *de jure* or *de facto*, the existing provisions on the Parliament's provisional places of work, that is, Strasbourg and Luxembourg. The Secretariat of the Parliament and its departments continued to be established in Luxembourg, the parliamentary committees being accustomed to meet in Brussels with the minimum infrastructure required to hold such meetings.

26 In 1980, on the initiative of the French Government, the governments of the Member States began discussions, in the context of a conference on the seat of the Community institutions, aimed at finding a definitive solution. However, having noted that the differences of opinion between the governments persisted, the conference felt that, of the various imperfect solutions available, the most satisfactory was to retain the status quo, that is, the various provisional places of work. At the European Council meeting in Maastricht of 23 and 24 March 1981, the Heads of State or Government of the Member States decided unanimously 'to confirm the status quo in regard to the provisional places of work of the European institutions'.

27 On 30 June 1981 the Conference on the seat of the Community institutions, noting the above decision by the Heads of State or Government, concluded with the adoption of the following decision:

'(1) The governments of the Member States note that, pursuant to Article 216 of the Treaty, the decision on the seat of the institutions of the Community falls within their exclusive competence.

(2) The decision of the governments of the Member States, meeting in Maastricht on 23 and 24 March 1981, to retain the status quo in regard to the provisional places of work, falls within the exercise of this competence. It shall be without prejudice to the decision fixing the seat of the institutions.'

28 Since then, no further decision has been taken by the governments of the Member States on the seat or the provisional places of work of the institutions.

29 In the light of the above, it is necessary first to point out, as the Court has already done in its judgment of 10 February 1983 in Case 230/81 (*Grand Duchy of Luxembourg* v *European Parliament* [1983] ECR 255), that the governments of the Member States have not yet fulfilled the obligation to determine the seat of the institutions laid down in Article 77 of the ECSC Treaty, Article 216 of the EEC Treaty and Article 189 of the EAEC Treaty, but that on various occasions they have taken decisions establishing provisional places of work for the institutions based on this same competence and, in respect of the decision of 8 April 1965, on the competence expressly provided for in Article 37 of the abovementioned Treaty establishing a Single Council and a Single Commission of the European Communities.

30 Although the statements made in 1952 and 1958 by the Foreign Ministers of the six founding Member States may raise doubts as to the significance of the decisions taken regarding the Parliament's meeting place, the same is not true of the decision of 8 April 1965 according to which 'Luxembourg, Brussels and Strasbourg shall remain the provisional places of work of the institutions of the Communities'. As the Court noted in its judgment of 10 February 1983 referred to above, the only activities in the Community institutions taking place regularly in Strasbourg at that time were the plenary sittings of the Parliament.

31 As also noted in the above judgment, the decisions taken by the governments of the Member States in 1981 to 'maintain the status quo' can only be understood as the expression of their intention not to change the existing legal position. The same interpretation applies, moreover, to the letter of 22 September 1977 from the President of the Council to the President of the Parliament. It must therefore be concluded that Strasbourg has in fact been designated as a provisional meeting place for the plenary sittings of the Parliament.

32 However, the designation of a provisional meeting place of an institution does not necessarily mean that the members of that institution may never hold meetings elsewhere. It must therefore be considered whether the decisions taken by the governments of the Member States are to be understood as preventing the Parliament from deciding, by virtue of the power conferred on it by Article 25 of ECSC Treaty, Article 142 of the EEC Treaty and Article 112 of the EAEC Treaty to determine its own internal organization, to hold a part-session away from Strasbourg.

33 In that connection it should be noted that, at the time of the relevant decisions by the governments, the Parliament had in fact held part-sessions in Rome, Brussels and in particular in Luxembourg. The Parliament had actually held a substantial number of its part-sessions in the latter city, particularly the short ones. It is true that on several occasions the French Government had protested against the holding of such sessions, but these protests were not reflected in the decisions by the governments. Those decisions do not contain any sign of a judgment, favourable or unfavourable, on the practice followed by the Parliament at the time, or any provision designed to prevent part-sessions from being held in future away from Strasbourg.

34 With a view to determining the significance of the decisions of the governments of the Member States, attention should also be drawn to the rule imposing reciprocal obligations of bona fide cooperation on the Member States and the Community institutions, as embodied in particular in Article 5 of the EEC Treaty. As regards the working conditions of the Parliament, that rule is of particular importance in a situation where the governments of the Member States have not yet fulfilled their obligation to establish the seat of the institutions or even decided on a single provisional working place for the Parliament.

35 In its judgment of 10 February 1983 referred to above, the Court deduced from this rule, first, a duty incumbent on the Parliament, in exercising its power to determine its own internal organization, to have regard to the powers of the governments of the Member States to establish the seat of the institutions and to the decisions taken provisionally in the mean time, and secondly, the duty of the Member States, in taking these decisions, to respect the aforesaid power of the Parliament and to ensure that such decisions did not stand in the way of the proper functioning of that institution.

36 On the basis of those considerations it must be concluded that the decisions of the governments of the Member States do 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.

37 It is in the light of those considerations and that conclusion that the resolution in dispute must be appraised.

38 According to paragraph (1) of the resolution, Parliament 'decides to have a building constructed . . . suitable for the above purposes'. Among the purposes mentioned in the recitals, recital D refers to facilities 'for a special or additional plenary session to be held there during a week largely devoted to committee or group meetings'. It is only that use of the building which the French Government considers as being contrary to the decisions taken by the governments of the Member States and as exceeding the powers of the Parliament.

39 At the hearing, the Agent for the Parliament justified that need by the necessity to be able to organize short sessions at short notice, in particular as part of the budgetary procedure and the cooperation procedure between the Council and the Parliament provided for in Article 149 (2) of the EEC Treaty, as amended by the Single European Act. When these short sessions have to take place during a week which, according to the calendar adopted by the Parliament, is reserved for committee or political group meetings, which are normally held in Brussels, the

Parliament considers it unreasonable to expect its Members who are in Brussels attending these meetings to travel to Strasbourg for a short part-session, even assuming that the Chamber in Strasbourg is available during the week in question.

40 It should be noted, first, that the actual wording of the resolution, in using the expression 'special or additional plenary session', emphasizes the exceptional nature of the intended use and, secondly, that the need referred to in the resolution, as explained by the Parliament at the hearing, constitutes an objective reason connected with the proper functioning of the Parliament. That need is to be traced to the obstacles to such proper functioning which result from the lack of a decision on the seat of the institutions which the Member States are required to take under the Treaties. The intended use therefore falls within the limits, indicated above, of the Parliament's power to determine its own internal organization.

41 In those circumstances it must be concluded that the resolution in dispute, inasmuch as it expresses the intention to organize special or additional part-sessions in Brussels during the weeks largely devoted to committee or group meetings, does not go beyond the measures which the Parliament is authorized to take in the organization of its work and does not infringe the decisions taken by the governments of the Member States concerning the provisional working places of the institutions of the Community or encroach on the competence of the Member States in this matter.

42 The French Government's second submission must be rejected and the application must as a result be dismissed in its entirety.

Costs

43 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application in Case 51/86 as inadmissible;

(2) Dismisses the application in Case 358/85 as unfounded;

(3) Orders the French Republic to pay the costs.

Mackenzie Stuart Bosco Due Moitinho de Almeida

Rodríguez Iglesias Koopmans Everling Bahlmann

Galmot Kakouris Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 22 September 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President