# OPINION OF ADVOCATE GENERAL VAN GERVEN
delivered on 13 January 1993 *

*Mr President,*
*Members of the Court,*

1. This dispute between Beate Weber and the European Parliament is concerned with the rules on the creation of a transitional end-of-service allowance for Members of the European Parliament or MEPs (to which I shall refer as 'the Rules'). [1] Beate Weber sat as an MEP from 1979 onwards and was last re-elected in 1989. With effect from 14 December 1990, she gave up her parliamentary seat to become Oberbürgermeister (mayor) of Heidelberg. The Parliament refused to grant her a transitional end-of-service allowance under the Rules. Beate Weber is now seeking the annulment of that decision refusing to grant her the allowance and asks that the Parliament be ordered to pay her it. [2] She also seeks an order for costs against the Parliament.

For a full account of the facts and the legal background, I would refer to the Report for the Hearing.

## Admissibility

2. Before considering the substance, I shall deal with the question of the admissibility of the application. The Parliament argues that the application is inadmissible on the ground that the contested measure relates to the internal organization of the Parliament and does not have legal effects *vis-à-vis* third parties. To this end, the Parliament relies on the judgment in *Les Verts* v *European Parliament*, [3] according to which only applications brought against measures of the Parliament which are intended to have legal effects *vis-à-vis* third parties — which, according to the Parliament, means simply persons outside the institution — are admissible. It argues that since the contested decision relates to the legal relationship between the Parliament and its Members, Beate Weber's application is inadmissible. I cannot agree with that reasoning.

3. The starting point and basic principle of the judgment in *Les Verts* v *European Parliament* is that 'the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty'. [4] The Treaty established a complete system of legal remedies and procedures designed to permit the

* Original language: Dutch.

1 — Approved by the Bureau of the European Parliament on 18 May 1988, EP 121 917/BUR/rev. II.

2 — As counsel for Mrs Weber conceded at the hearing, the second head of claim is inadmissible. 'Article 176 of the EEC Treaty provides that an institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court of Justice. The Court cannot, without exceeding its powers, address orders to the Community institutions regarding the implementation of its judgments' (Case 141/84 *De Compte* v *Parliament* [1985] ECR 1951, paragraph 22).

3 — Case 294/83 *Les Verts* v *European Parliament* [1986] ECR 1339.

4 — *Les Verts* v *European Parliament*, paragraph 23.

Court of Justice to review the legality of measures adopted by the institutions. [5] This means that an action will lie to the Court against any measures taken by the institutions which are capable of having legal effects. [6]

4. In the orders in *Group of the European Right* and *Blot and Front National*, the Court held that measures which relate only to the internal organization of the work of the European Parliament cannot be challenged in an action for annulment. [7] Such measures either (a) are not capable of having legal effects or (b) have legal effects only within the Parliament with regard to its work. Consequently, case (b) constitutes an exception to the principle that an action will lie to the Court against any measure of a Community institution which is capable of having legal effects. That exception relates to the powers conferred on the Parliament in the matter of its internal organization by the first paragraph of Article 25 of the ECSC Treaty, the first paragraph of Article 142 of the EEC Treaty and the first paragraph of Article 112 of the EAEC Treaty. It is, however, a very limited exception. In order not to be amenable to review by the Court, a measure of the Parliament has to fulfil all of the following three conditions: it must have been adopted in connection with the internal organization of the Parliament's work, have legal effects only within the Parliament as regards its work and be capable of review under procedures laid down in the Parliament's Rules of Procedure. [8]

5. If we now turn specifically to the action brought by Beate Weber, the rules in question and the contested decision of the European Parliament are manifestly capable of having legal effects, in particular with regard to Beate Weber. [9] What is more, the decision does not relate to the internal organization of the Parliament's work. Financial provision for departing MEPs is not directly connected with the organization of the Parliament or its work. I therefore consider that the application is admissible.

6. For completeness' sake, I would add that, in dealing with the question of admissibility, I have not employed the criterion of 'third parties'. According to the Parliament, the judgment in the *Les Verts* case held that only applications against measures of the Parliament intended to have effects in relation to third parties, by which it means persons outside the institution, are admissible. I do not consider that that judgment can be interpreted in that way. The judgment revolves around the principle that a direct action can be brought against all measures which are

5 — *Les Verts* v *European Parliament*, paragraph 23; this passage has been taken up in the judgment in Case 314/85 *Foto-Frost* [1987] ECR 4199, at paragraph 16, and the order in Case C-2/88 *Zwartfeld* [1990] ECR I-3365, at paragraph 16.

6 — *Les Verts* v *European Parliament*, paragraph 24, in which reference is made to Case 22/70 *Commission* v *Council* (the AETR case) [1971] ECR 263, paragraph 42; Case 302/87 *Parliament* v *Council* [1988] ECR 5615, paragraph 20. I have used the expression 'capable of having legal effects' used in the case last cited, rather than the words 'intended to have legal effects' used in the *Les Verts* case so as to void giving the possible impression that whether a measure has legal effects depends on the intention of its originator. Whether a right is created by a measure depends on the nature and scope of the measure considered as a whole.

7 — Case 78/85 *Group of the European Right* v *European Parliament* [1986] ECR 1753, paragraph 11, and Case C-68/90 *Blot and Front National* v *European Parliament* [1990] ECR I-2101, paragraph 12.

8 — I have taken those three conditions from the European Parliament's resolution of 9 October 1986 on the position of the European Parliament in the context of actions for annulment brought before the Court of Justice under Article 173 of the EEC Treaty (OJ 1986 C 283, p. 85). For clarity's sake, I have replaced the words 'internal organization' by 'internal organization of the work', reflecting the wording used in the orders in *Group of the European Right* v *European Parliament* and *Blot and Front National* v *European Parliament*.

9 — There is no disputing that Mrs Weber has *locus standi* within the meaning of the second paragraph of Article 173 of the EEC Treaty.

capable of having legal effects. This is true, in particular, of measures having legal effects on persons outside the institution, as in the context of the *Les Verts* case itself, but not only of such measures. Meeting the 'third-party' criterion therefore is not a *sine qua non* for admissibility. In later decisions, moreover, the criterion was used solely in cases in which it was held that the application was admissible. [10] In the cases in which the application was dismissed as inadmissible, namely *Group of the European Right* v *European Parliament No 1* and *Blot and Front National* v *European Parliament*, it was held to be inadmissible, not because the applicant was or was not a third party, but because the contested measures related to the internal organization of the work of the European Parliament. [11]

## The question of interpretation

7. I shall now turn to the substance of the case. Beate Weber and the European Parliament disagree as to the interpretation which should be given to the Rules as adopted by the Parliament's Bureau on 18 May 1988. The dispute is about whether the Rules are applicable to situations such as that of Beate Weber, in which a Member ceases to sit at some time during a five-year term in order to do something else. In the Parliament's contention, the Rules apply only to the end of the parliamentary term on the expiry of the five-year term, that is to say, if the MEP is not re-elected. Beate Weber argues that the Rules apply without distinction to anybody leaving the Parliament.

8. According to Article 1 of the Rules, MEPs who apply for a transitional allowance are entitled to receive one *with effect from the end of their term of office*. In the German version (German is the language of the case), the words used are 'nach dem Erlöschen ihres Mandats'. The dispute turns on the interpretation of the word 'Erlöschen' used in that provision.

The Rules embody no definition or more precise description of that term, or any reference to other provisions of Community law. In the absence of such a definition, the term has to be interpreted by considering its general context and its usual meaning in everyday language. [12]

9. I shall begin by investigating what is meant by *usual meaning*. The question is whether 'Erlöschen' (when used with reference to a term of office) is a general, neutral term or whether it has connotations of expiry, that is to say, of passive, automatic termination, not attributable to action or choice on the part of the person serving the term of office. In its reply, the Parliament maintains that the word 'Erlöschen' is capable of applying only to passive, automatic termination (the end of the five-year term) in contradistinction to the word 'Beendigung'. I do not find that argument convincing. It appears to me that 'Erlöschen' can be equated as well to neutral terms such as

10 — Judgment in Case 34/86 *Council* v *Parliament* [1986] ECR 2155, paragraphs 5 and 6; order in Case 221/86 R *Group of the European Right and National Front Party* v *European Parliament* [1986] ECR 2969, paragraph 19.

11 — Case 78/85 *Group of the European Right* v *European Parliament* [1986] ECR 1753, paragraph 11, and Case C-68/90 *Blot and Front National* v *European Parliament* [1991] ECR I-2101, paragraphs 11 and 12.

12 — Judgment in Case 349/85 *Denmark* v *Commission* [1988] ECR 169, paragraph 9.

'Beendigung' or 'Ende' as it can to an exclusively passive word, such as 'Ablauf'. [13]

The contrast which the Parliament makes with 'Beendigung' is certainly not convincing if the Dutch version of the Rules are taken, since it employs the corresponding word 'beëndiging' (and not, for example, 'afloop'). However, according to that which the Court has consistently held, a text drawn up in more than one language has to be interpreted in the light of all the language versions. [14] It appears, moreover, from a comparison with the other versions that a neutral, general formulation is used, not only in the Dutch, but also in the French ('à partir de la fin de leur mandat'), the English ('from the end of their term of office'; the words 'end of service' are used in the title of the Rules), the Italian ('a partire del termine del loro mandato'; the word 'fine' is used in the title) and the Spanish ('a partir del fin de su mandato') versions. The French and Italian versions are particularly significant, since it appears from the documents produced by the Parliament that the Rules were adopted by the Bureau in the French version on the basis of an earlier draft drawn up in Italian.

I conclude from this that the wording used in the Rules does not bear out the restrictive interpretation argued for by the European Parliament, but instead points to the general meaning advocated by Beate Weber. I shall now consider whether the Parliament's interpretation might nevertheless be followed on the basis of the general context of the Rules.

13 — Mrs Weber's counsel observed at the hearing that the word 'Erlöschen' is also used in Rule 7 of the Rules of Procedure of the European Parliament and that voluntarily ceasing to serve as an MEP is unambiguously mentioned therein as a form of 'Erlöschen'.

14 — Judgment in *Moksel* v *BALM* 1988] ECR 3845, paragraph 15.

In that connection, I shall consider first the aim pursued by the Rules and secondly the context of the text as a whole.

10. The Rules contain little by way of indication of the *aim* which they pursue or at least embody no aspects capable of resolving this question of interpretation. There is no preamble to the Rules and neither the title nor the various articles contain anything other than that which may be gleaned from the words 'transitional allowance'.

According to the Parliament, the aim of the Rules is to safeguard the means of existence of MEPs who are not re-elected and this problem does not arise where an MEP leaves in order to take up some other occupation. In contrast, Beate Weber argues that the purpose of the allowance is to cover the expenses incurred on any departure from the Parliament and in making the transition to another occupation. Both *rationes legis* are plausible and equally consistent with the wording of the Rules.

Neither do the origins of the Rules hold the key. Of the documents produced by the Parliament, only some date from before 18 May 1988 when the Rules were adopted by the Bureau. [15] Those documents contain no useful indications other than the formulations taken over in the Rules themselves.

15 — These are excerpts from the minutes of the meetings held by the College of Quaestors held on 21-22 March 1988 and 26 April 1988 and the preliminary draft Rules drawn up in Italian (PE 117.147/QUEST).

In answer to a question put by the Court in this connection, the Parliament confirmed that, in drafting the Rules, it had drawn on the rules of the national parliaments. However, it could not produce any preparatory document in that connection. In fact, it produced two later internal memoranda comparing the national rules. Those memoranda provide no support for the Parliament's present interpretation. If anything the opposite is true: the memoranda indicate that in some countries, namely the Netherlands and the Federal Republic of Germany, the transitional allowance is reduced if the former Member of Parliament is in receipt of income from other sources. I assume, by contrary inference, that in the five other countries in which a transitional allowance is granted, no reduction is made. In the first two countries I mentioned, and perhaps also in others, the transitional allowance is payable also to Members of Parliament who give up their seats to take up some other occupation, although it may in some cases be reduced.

11. As far as the *context* of the Rules taken as a whole is concerned, Beate Weber refers to Articles 1 and 2 of the Rules. They indicate that account is also taken of incomplete parliamentary terms, that is to say, terms of office of less than five years. The Parliament's response is that the Rules may indeed be applied to incomplete terms of office which start at a point during the five-year parliamentary term, but not to terms of office which end in the course of the parliamentary term. However, the Parliament has not provided the slightest evidence in support of that interpretation. Although the articles in question contemplate a term of office of less than five years, they draw no distinction of the type argued for by the Parliament. I am therefore also unable to accept that interpretation.

The Parliament also refers to the second paragraph of Article 2 of the Rules, which states that 'Entitlement to the transitional allowance shall cease if the former Member is appointed to a paid office in one of the Community institutions or is elected to a national parliament, or in the event of his death'. In the Parliament's view, that list is given by way of example and expresses the general principle that an allowance is not granted to an MEP who leaves the Parliament to take up another occupation. I cannot accept that interpretation either: there is nothing to suggest that the list is not exhaustive. If a more all-embracing exclusion clause was intended, it could have been formulated in clear terms.

12. Lastly, I shall consider the Parliament's argument that its Bureau gave a binding interpretation of the Rules on 12 December 1990 and that, as a result, Beate Weber is not entitled to a transitional allowance.

The initial version of the Rules was adopted by the Bureau of the European Parliament on 18 May 1988. Of course, the Bureau does have the power to amend the Rules, as it did on 24 June 1992, that is to say, at a time which is not relevant to this case. [16] Yet the decision of 12 December 1990 is of a

16 — It appears, however, from those amendments that a transitional allowance is *also* payable to an MEP who resigns of his own motion, provided that he has served at least three years of his term of office. It is provided that income from a public office in one of the Member States or in a Community institution is to be deducted.

completely different kind. The documents produced to the Court by the Parliament, more specifically the excerpts from the minutes of the meetings of the College of Quaestors held on 18 October and 8 November 1990, also show that, among other matters, the question whether the Rules of 18 May 1988 also applied to MEPs voluntarily leaving the Parliament during a five-year term was considered. Following that consideration of actual cases, the Parliament's Bureau declared on 12 December 1990 (two days before Beate Weber gave up her seat) that the transitional allowance had to be 'considered' an end-of-legislature allowance, but that the College of Quaestors would nevertheless investigate sufficiently reasoned requests on a case-by-case basis and then report to the Bureau. [17]

In its defence, the Parliament maintains that this interpretation given by its Bureau constitutes an authentic — and hence binding — interpretation because it was given by the organ which actually adopted the Rules. I am not persuaded by that argument at all. A cautious approach should be taken to the technique of the 'authentic interpretation' of texts, since it entails giving retroactive effect to the 'newly' interpreted text. Such retroactive effect, which departs from the normal manner of rule-making and is at odds with the principle of legal certainty, can, to my mind, be applied only very exceptionally and must be duly reasoned. It cannot — as in this case — be imposed incidentally when applying the existing Rules to actual cases. In addition, the Bureau's interpretation of 12 December 1990 conflicts with the principle of legal certainty in another respect too. After laying down the principle that the Rules only apply where an MEP's term of office comes to end at the end of a parliamentary term, the interpretation adopted goes on to authorize exceptions in individual cases without indicating what criteria to be applied in that regard. I find it difficult to square that interpretation with the principle of legal certainty, compliance with which, according to the Court, constitutes a binding requirement in the case of rules entailing financial consequences. [18] Applied to the present case, this means that interested parties must be able to foresee with certainty in what cases they may or may not be precluded from being granted a financial benefit such as the transitional allowance.

13. In view of the foregoing, I consider that the wording of the Rules does not provide the answer to the question whether MEPs who leave the Parliament voluntarily during a five-year term are precluded from being granted the transitional allowance. That answer cannot be inferred from the aim and

17 — It appears from the minutes of the College of Quaestors' meeting of 8 November 1990 that the College recommended that a transitional allowance should be paid to MEPs voluntarily giving up their seats. It seems that the Bureau's decision of 12 December 1990 contemplated that case in referring to individual consideration.

18 — Judgment in Case 325/85 *Ireland* v *Commission* [1987] ECR 5041. Paragraph 18 of that judgment reads as follows: 'Moreover, as the Court has repeated held, Community legislation must be certain and its application foreseeable by those subject to it. That requirement of legal certainty must be observed all the more strictly in the case of rules liable to entail financial consequences, in order that those concerned may know precisely the extent of the obligations which they impose on them.'

origins of the Rules or from their general context either. In my view, the interpretation adopted by the Parliament's Bureau on 12 December 1990 cannot be regarded as binding, since it is not consistent with the principle of legal certainty.

14. Consequently, I propose that the Court should declare Beate Weber's application admissible, annul the Parliament's decision of 2 October 1991 refusing to grant her the allowance and order the Parliament to pay the costs.