ORDER OF THE PRESIDENT OF THE COURT
31 July 2003 *

In Case C-208/03 P-R,

Jean-Marie Le Pen, residing at Saint-Cloud (France), represented by F. Wagner, avocat,

appellant,

APPLICATION for suspension of the operation of the decision in the form of a declaration of the President of the European Parliament of 23 October 2000 on the disqualification of Mr Le Pen from holding office as a Member of the European Parliament, in connection with the appeal brought by Mr Le Pen against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 10 April 2003 in Case T-353/00 *Le Pen* v *Parliament* [2003] ECR II-1729, seeking to have that judgment set aside,

the other parties to the proceedings being:

European Parliament, represented by H. Krück and C. Karamarcos, acting as Agents, with an address for service in Luxembourg,

* Language of the case: French.

defendant at first instance

French Republic, represented by R. Abraham, G. de Bergues and L. Bernheim, acting as Agents,

intervener at first instance

THE PRESIDENT OF THE COURT,

after hearing the Advocate General, F.G. Jacobs

makes the following

Order

1 By application lodged at the Registry of the Court on 10 May 2003, Mr Le Pen brought an appeal pursuant to Article 225 EC and the first paragraph of Article 56 of the Statute of the Court of Justice against the judgment of the Court of First Instance of 10 April 2003 in Case T-353/00 *Le Pen* v *Parliament* [2003] ECR II-1729 ('the contested judgment'), by which the Court of First Instance dismissed as inadmissible his application for the annulment of the decision in the form of a declaration of the President of the European Parliament of 23 October 2000 on the disqualification of Mr Le Pen from holding office as a Member of the European Parliament ('the act in question').

2 By separate document, lodged at the Registry on 10 June 2003, the appellant asked the Court, pursuant to Articles 242 EC and 243 EC, to suspend the operation of the act in question.

3 The Parliament and the French Government lodged their written observations on the application for interim relief on 26 and 30 June 2003 respectively. They ask that the application be dismissed as inadmissible or, in the alternative, as unfounded.

4 Since the parties' written submissions contain all the information necessary for a decision on the application, there is no need to hear oral argument.

Legal background

The Treaties

5 Article 190(4) EC, Article 21(3) CS and Article 108(3) EA provide that the European Parliament is to draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all the Member States, or in accordance with principles common to all the Member States, and that the Council of the European Union, acting unanimously, is to lay down provisions, which it is to recommend to the Member States for adoption.

The 1976 Act

6 On 20 September 1976 the Council adopted Decision 76/787/ECSC, EEC, Euratom relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage (OJ 1976 L 278, p. 1); the Act was contained in the annex to that Decision (hereinafter, in its original version, 'the 1976 Act').

7 Under Article 3(1) of the 1976 Act, the Members of the Parliament 'shall be elected for a term of five years'.

8 Article 6(1) of the 1976 Act sets out the functions with which the office of Member of the Parliament is to be incompatible, and provides, in paragraph 2, that each Member State 'may, in the circumstances provided for in Article 7(2), lay down rules at national level relating to incompatibility'.

9 Article 7(1) of the 1976 Act states that it is to be the responsibility of the Parliament to draw up a uniform electoral procedure, but so far no such procedure has been adopted.

10 Under Article 7(2) of the 1976 Act:

'Pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.'

11 Article 11 of the 1976 Act is worded as follows:

'Pending the entry into force of the uniform electoral procedure referred to in Article 7(1), the [Parliament] shall verify the credentials of representatives. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.'

12 Article 12 of the 1976 Act provides:

'(1) Pending the entry into force of the uniform electoral procedure referred to in Article 7(1) and subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 3 for the remainder of that period.

(2) Where a seat falls vacant pursuant to national provisions in force in a Member State, the latter shall inform the [Parliament], which shall take note of that fact.

In all other cases, the [Parliament] shall establish that there is a vacancy and inform the Member State thereof.'

Parliament's Rules of Procedure

13 Rule 7 of the Rules of Procedure of the European Parliament, in the version in force at the material time (OJ 1999 L 202, p. 1, hereinafter 'the Parliament's Rules of Procedure') is headed 'Verification of credentials'. Point 4 of that Rule provides:

'The committee shall ensure that any information which may affect the performance of the duties of a Member of the European Parliament or the ranking of the substitutes is forwarded without delay to Parliament by the authorities of the Member States or of the Union, with an indication of the date of effect where an appointment is concerned.

Should the competent authorities of the Member States initiate a procedure which might lead to the disqualification of a Member from holding office, the President shall ask them to keep him regularly informed of the stage reached in the procedure. He shall refer the matter to the committee responsible. On a proposal from that committee, Parliament may adopt a position on the matter.'

14 Rule 8(6) of the Parliament's Rules of Procedure provides:

'The following shall be considered as the date of the end of the term of office and the effective date of a vacancy:

— in the event of resignation: the date on which the vacancy is established by Parliament, in accordance with the notification of resignation;

— in the event of appointment to an office incompatible with the office of a Member of the European Parliament, either in respect of national electoral law, or in respect of Article 6 of the [1976 Act]: the date notified by the competent authorities of the Member States or of the Union.'

15 Article 8(9) of the Parliament's Rules of Procedure provides:

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

National law

16 Under Article 5 of Law 77-729 of 7 July 1977 on the election of representatives to the Assembly of the European Communities (JORF of 8 July 1977, p. 3579), in the version applicable to this case ('the 1977 Law'):

'Articles LO 127 to LO 130-1 of the Electoral Code shall apply to the election of [Members of the European Parliament]....

Ineligibility arising during the term of office shall bring that term to an end. Ineligibility will be declared by decree.'

17 Article 25 of the 1977 Law provides:

'The election of [Members of the European Parliament] may, within 10 days of the declaration of the results of the voting and in respect of any matter concerning the application of this law, be challenged by any elector before the Conseil d'État. The decision shall be given in plenary session.

The application will not have suspensory effect.'

Facts giving rise to the dispute

18 The appellant, who was elected as a Member of the European Parliament on 13 June 1999, had previously been found guilty — by a judgment of the Cour d'appel de Versailles (Court of Appeal, Versailles) (France), of 17 November 1998 — of assault on a public officer acting in the course of his duties and when the victim's status was apparent or known to the perpetrator of the assault, an offence contrary to Article 222-13, first paragraph, point 4, of the French Criminal Code. For that offence the appellant received a suspended sentence of three months' imprisonment and a fine of FRF 5 000. By way of further sentence, his rights under Article 131-26 of the Criminal Code, limited to eligibility, were withdrawn for a period of one year.

19 The appellant's appeal against that judgment was dismissed by judgment of 23 November 1999 of the Cour de cassation (Court of Cassation) (France). Pursuant to the second paragraph of Article 5 of the 1977 Law, the French Prime Minister accordingly declared, by decree dated 31 March 2000, that '[the appellant's] ineligibility brought to an end his term of office as a representative in

the European Parliament'. The Secretary General of the French Ministry of Foreign Affairs notified the appellant of that decree by letter dated 5 April 2000. In that letter, it was stated that the appellant could bring proceedings challenging that decree before the Conseil d'État (France) within a period of two months from the date of notification.

20 In the plenary session of 3 May 2000, the President of the Parliament announced to the Members that, on 26 April 2000, she had received a letter from the French authorities dated 20 April 2000 enclosing a dossier concerning the withdrawal of Mr Le Pen's parliamentary mandate. She also announced that she would refer the dossier to the Legal Affairs and Internal Market Committee ('the Legal Affairs Committee') pursuant to Rule 7(4), second subparagraph, of the Parliament's Rules of Procedure.

21 The Legal Affairs Committee verified the appellant's credentials in closed sessions on 4, 15 and 16 May 2000.

22 In the plenary session of 18 May 2000, the President of the Parliament read out a letter received the previous day and addressed to her from the President of the Legal Affairs Committee. That letter was worded as follows:

'The [Legal Affairs Committee] resumed the examination of the position of [the appellant] at its meeting on 16 May 2000.

...

In the light of the decision yesterday not to recommend for the time being that the Parliament take formal note of the decree concerning [the appellant], the Committee considered the possible ways forward. In support of this decision, the case of Mr Tapie was raised as a precedent to be followed, with the effect that the European Parliament should take formal note of the decree of disqualification from holding office only after expiry of the period prescribed for bringing proceedings before the Conseil d'État, or after the decision of that court, as the case may be.'

23 Having read out the letter, the President of the Parliament stated that it was her intention to follow the 'opinion of the Legal Affairs Committee'.

24 In the course of the debate between several Members of the Parliament which followed that statement, the President of the Parliament stated, in particular, 'that it [was] Parliament which [would] take note and not its President'.

25 According to the minutes of that plenary session, the President of the Parliament considered, at the conclusion of the debate, that Mr Barón Crespo, who had asked that the Parliament should adopt a position on the opinion of the Legal Affairs Committee, was finally won over to the position taken by Mr Hänsch, namely that no vote should take place, on the ground, in particular, that there was no formal proposal from that committee. The President of the Parliament concluded that, in the absence of a 'concrete proposal from the Legal Affairs Committee', that course represented the 'best solution all round'.

26 By application to the Conseil d'État dated 5 June 2000, the appellant sought the annulment of the decree of 31 March 2000.

27 On 6 October 2000, the Conseil d'État dismissed Mr Le Pen's application.

28 By letter of 20 October 2000, the President of the Parliament informed the appellant of the receipt, the day before, of the 'official communication from the competent French authorities' of the judgment of the Conseil d'État of 6 October 2000 and that, in accordance with the Parliament's Rules of Procedure and the 1976 Act, '[she] would take note of the decree [of 31 March 2000] in the next plenary session on 23 October' 2000.

29 The appellant replied by letter dated 23 October 2000 to the President of the Parliament, stating that that judgment of the Conseil d'État had only been given by two combined sub-divisions whereas, where such a decision concerned the term of office of a Member of the European Parliament, Article 25 of the 1977 Law required that it be given in plenary session and that consequently he would again be bringing the matter before the Conseil d'État. He also informed the President of the Parliament that a request for clemency to the President of the French Republic and an application to the European Court of Human Rights had been made. Consequently, he requested that there be a further meeting of the Legal Affairs Committee and that he and his lawyers be given a hearing by that committee.

30 At the plenary session of the Parliament on 23 October 2000, the appellant and other representatives belonging to his political party again raised alleged irregularities on the part of the French authorities in the course of the procedure culminating in the judgment of the Conseil d'État of 6 October 2000. They requested that the Parliament should not take note of the disqualification in question, at least until the matter had been referred back to the Legal Affairs Committee.

31 According to the minutes of the debates of the session of 23 October 2000, in the context of the agenda heading 'Announcement of the President', the President of the Parliament announced as follows:

'I must inform you that on 19 October 2000, I received official notification from the relevant authorities of the French Republic of a ruling by the Council of State on 6 October 2000 rejecting the appeal lodged by [the appellant] against the decree of the French Prime Minister on 31 March 2000 terminating his mandate as Member of the European Parliament.

I must also inform you that I have received a copy of a request for clemency for [the appellant] presented to Mr Jacques Chirac, President of the Republic, by Mr Charles de Gaulle, Mr Carl Lang, Mr Jean-Claude Martinez and Mr Bruno Gollnisch.'

32 After that announcement, the President of the Parliament then handed over to the President of the Legal Affairs Committee, who said:

'Madam President, the [Legal Affairs Committee], following its deliberations of 15 and 16 May last, recommended the suspension of the communication in plenary session of the Parliament's declaration of the disqualification of [the appellant] from holding office... until the expiry of the period available to [the appellant] for bringing proceedings before the French Conseil d'État or the resolution of those proceedings....

The Conseil d'État — as you have stated — has dismissed those proceedings and has duly informed us of this fact. Consequently, there are no further grounds for postponing this announcement to the Parliament, which is mandatory as a matter of primary law, specifically under Article 12(2) of the [1976 Act].

The request for clemency... does not alter the situation, because it is not a legal proceeding.... [I]t is the act of a public authority that does not concern the decree of the French Government which, in accordance with the recommendation of the Legal Affairs Committee, must be notified in plenary session.'

33 Following that statement, the President of the Parliament declared:

'Pursuant to Article 12(2) of the [1976 Act], the European Parliament takes note of the notification from the French Government confirming [the appellant's] removal from office.'

34 She therefore invited the appellant to leave the auditorium and suspended the session in order to enable him to do so.

35 In a letter of 27 October 2000, the President of the Parliament wrote to Mr Védrine, the French Minister for Foreign Affairs, informing him that the Parliament had taken note of the decree of 31 March 2000 and requested that he 'inform [her], in accordance with Article 12(1) of the [1976 Act], of the name of the person called upon to fill the seat left vacant by [the appellant]'.

36 Mr Védrine replied in a letter dated 13 November 2000 that 'Ms Marie-France Stirbois [should] succeed [the appellant] on behalf of the list of the Front National for the European elections'.

37 By application lodged at the Registry of the Court of First Instance on 21 November 2000, Mr Le Pen brought an action for the annulment of the act in question.

38 By separate document, lodged at the Registry of the Court of First Instance on the same day, he lodged an application for interim relief seeking suspension of operation of that act.

39 By order of the President of the Court of First Instance of 26 January 2001 in Case T-353/00 R *Le Pen* v *Parliament* [2001] ECR II-125, the operation of 'the decision in the form of a declaration of the President of the European Parliament of 23 October 2000, in so far as it constitutes a decision of the European Parliament taking note of the appellant's disqualification from holding office as a Member of the European Parliament', was suspended and costs were reserved.

40 By the contested judgment, the Court of First Instance dismissed as inadmissible the action for annulment brought by Mr Le Pen against the act in question and ordered him to pay the costs.

41 The Court of First Instance held, *inter alia*, at paragraph 97 of the contested judgment, that, 'in the present case, the decree of 31 March 2000 [was] the measure which produced binding legal effects such as to prejudice the interests of the applicant' and that the 'act [in question] was not intended to produce legal effects of its own, distinct from those of that decree'.

42 It therefore found that 'the... act [in question was] not capable of being the subject of an action for annulment under Article 230 EC' and that the action for annulment had therefore to be dismissed as inadmissible without there being any need to address the other pleas in law and arguments on admissibility.

The application for interim relief

Arguments of the parties

Admissibility of the application for interim relief

43 The French Government expresses doubt, first of all, as to the admissibility of the application for interim relief, in so far as it is seeking suspension of operation of the act which was at issue at first instance rather than of the judgment of the Court of First Instance which is contested in the appeal. It is doubtful that the application for suspension of operation, which is attached to an appeal directed at the judgment of the Court of First Instance rather than the act which that Court examined at first instance, can have any purpose other than suspension of operation of the judgment of the Court of First Instance.

44 Next, if it were accepted that an application for interim relief lodged in the context of an appeal could be directed at the act that was contested at first instance, it would then have to be considered that that application attached to the action for annulment of that act as well as the appeal. That action was held to be inadmissible by the Court of First Instance, which should entail that such an application for interim relief is inadmissible.

45 Lastly, the French Government considers that the application for interim relief should be held inadmissible because the suspension of operation requested would not be provisional as required by the third paragraph of Article 39 of the Statute of the Court of Justice but, on the contrary, would risk bringing about a situation that was in fact irreversible, since the mandate of the Members of the present legislature will expire in May 2004. Grant of the suspension sought would render actual enforcement of a judgment of the Court upholding the contested judgment impossible.

46 The Parliament maintains that the application for interim relief is seeking a result which goes beyond the competence of the Community and the powers of the institutions. It is clear from the 1976 Act that competence to rule on disqualification of a Member of the Parliament from holding office does not lie with the Community but exclusively with the Member States. There is no legal basis allowing the Community court to reestablish the appellant, even temporarily, as a Member of the Parliament, nor may it issue directions to the French Republic to that effect. Those arguments are reiterated, in essence, by the French Government

47 The Parliament also alleges that the 'main proceedings are clearly inadmissible', as is apparent from the contested judgment. The act in question cannot in any way be intended to produce binding legal effects or be treated as a decision of direct and individual concern to the appellant. That manifestly follows from the lack of Community competence as regards the conditions of incompatibility and ineligibility resulting from application of national law.

Prima facie case

48 In order to make out a prima facie case in respect of the application for interim relief, the appellant puts forward, first, arguments concerning the admissibility of the action for annulment of the act in question.

49 According to the appellant, the act in question meets all the conditions required to constitute the subject-matter of an action for annulment. It should be considered to be an act of the Parliament having definitive legal effects outside the purely internal sphere of the Parliament. Disqualification of the appellant from holding office was decided upon or declared in that act, thus changing the appellant's legal position.

50 The reasoning of the Court of First Instance in that connection is said to be contradictory in so far as, at paragraph 97 of the contested judgment, it states that '[t]he act in question was not intended to produce legal effects of its own, distinct from those of [the] decree [of 31 March 2000]', while, at paragraph 91 of the judgment, it had previously recognised the Parliament as having a 'power of verification in that context', even if that power is 'particularly limited'.

51 Secondly the appellant relies on a series of arguments concerning the substance of the dispute, alleging 'external' and 'internal' illegality of the act in question.

52 As regards the external legality of the act in question, he raises, first of all, a plea alleging breach of essential procedural rules. First, the second subparagraph of Rule 7(4) of the Parliament's Rules of Procedure required the Legal Affairs Committee to be convened before his disqualification from holding office was announced at the plenary session of 23 October 2000, which was not done, contrary to the practice followed in the past. Secondly the appellant was not given a hearing at any point in the procedure, which is contrary to the principle of observance of the rights of the defence.

53 Secondly, the appellant alleges that the President of the Parliament was not competent to make an announcement in its name in the absence of any legal basis

authorising her to do so. He considers that he was entitled to a declaration of the Parliament on his disqualification from holding office. The fact that the matter was referred to the Legal Affairs Committee on the basis of Rule 7 on the verification of credentials implies that the Parliament should itself have made the declaration.

54 With regard to the internal legality of the act in question, the appellant alleges, first of all, breach of the Parliamentary immunity provided for in Article 4(2) of the 1976 Act, the lifting of which should have been sought from the Parliament before the steps were taken which led to his conviction.

55 Secondly, the appellant puts forward a series of arguments concerning legal certainty and 'respect for the Community legal order', aimed at establishing that, in the light of the development of Community law, the Parliament should be recognised as have exclusive competence to decide or declare that one of its Members has been disqualified from holding office. Thus Article 10 EC, the 'principle of the Parliament's independence', which is referred to in Rule 2 of its Rules of Procedure, the election of Members of the Parliament by direct universal suffrage, the provisions of the Treaty on European Union concerning citizenship of the Union and the enlargement of the Parliament's powers now preclude recognition of the exclusive competence of a Member State to decide on the possible disqualification of a Member of the European Parliament from holding office. It is, furthermore, contrary to the Community legal order to consider that the competence of the Prime Minister, which he bases on the Law of 1977, suffices by itself, since that Law should be regarded as a measure implementing the Community legal order.

56 The Parliament states that there is no prima facie case supporting the application for interim relief.

57 On the admissibility of the action for annulment, the Parliament makes the preliminary point that the contested judgment gave rise to a presumption that there is no prima facie case which it is for the appellant to dispel; this he has not done.

58 It follows from Article 7(2) of the 1976 Act that the procedure for filling a vacant seat referred to in the first paragraph of Article 12(2) of that Act continues to be governed by the national provisions.

59 Thus the lack of Community competence in the area does not enable the procedure by which formal note was taken of the withdrawal of the appellant's mandate to be characterised as an act changing his legal position for the purposes of Article 230 EC. The change in the legal position of the person concerned results from the national provisions to which the 1976 Act refers. Furthermore, review of the legality of the measures taken by the national authorities of a Member State pursuant to rules of domestic law does not fall within the jurisdiction of the Court.

60 Moreover, the application for interim relief does not indicate precisely the parts of the contested judgment that are challenged. Most of the pleas in law raised by the appellant in support of his appeal are confined to reproducing those argued before the Court of First Instance and are therefore inadmissible. As far as the alleged inconsistency between paragraphs 91 and 97 of the judgment is concerned, there is no inconsistency in recognising that the Parliament has a power of verification limited to precise factual points, while concluding that such verifications of fact are not intended to produce their own legal effects.

61 In the alternative, the Parliament puts forward pleas concerning the substance of the dispute.

62 Thus the action for annulment brought by Mr Le Pen is clearly unfounded, because in reality it is seeking annulment of a legal act emanating from the French national authorities who alone are competent to rule on the disqualification from office of the appellant.

63 The Parliament did not infringe the procedural rules applicable. In particular, the procedure laid down in the second subparagraph of Rule 7(4) of the Parliament's Rules of Procedure does not cover the situation at issue in this case. Moreover, a second convening of the Legal Affairs Committee would have been inappropriate and futile.

64 The plea alleging that the President of the Parliament had no competence to adopt the act in question is unfounded. The question of the appellant's disqualification from holding office was debated at the plenary session of 18 May 2000 and it was the Parliament, not its President, who took formal note of his disqualification at the plenary session of 23 October 2000.

65 With regard to the plea alleging breach of Parliamentary immunity, this takes issue with the conduct of a Member State and is therefore not relevant. In any event, the Parliamentary immunity enjoyed by the appellant was not infringed. Such immunity is limited, under French law, to measures depriving a person of his liberty or restricting his liberty, but does not extend to criminal or penal proceedings.

66 Lastly, the pleas in which the appellant alleges impairment of legal certainty and infringement of the Community legal order do not correspond to the present state of Community law. In that connection, the rules applicable are still those of the 1976 Act.

67 The French Government also considers that the pleas relied on by the appellant are not of a strong enough character to establish a prima facie case.

68 On the question of the admissibility of the action for the annulment of the act in question, the arguments of the French Government are essentially the same as those of the Parliament set out in paragraphs 57 to 60 of this order.

69 With regard to the external legality of the act in question, the French Government maintains that the conditions in which the European Parliament took formal note of the withdrawal of the appellant's mandate are not affected by any procedural irregularity. It emphasises the lack of formality which should surround such an act, in view of the 'circumscribed powers' of the Parliament in the area. As regards the internal legality of the act in question, that Government refers to the Parliament's arguments before the Court of First Instance, from which it is clear that the appellant's pleas cannot be regarded as strong.

Urgency

70 To show the urgent nature of his application for suspension of operation of the act in question, the appellant states that it is impossible for him to continue his elective mandate as a result of it, which constitutes serious and irreparable damage. He points out in that connection that the term of office of Members of the Parliament is limited to five years and he has only one year of that term left.

71 The Parliament contends that urgency has not been established. It is clear that the length of a Parliamentary mandate is limited in time, and it is equally obvious that the fact that he has been disqualified from holding office renders it impossible for him to perform his duties. The importance of a Parliamentary mandate does not suffice as such, and regarded in the abstract, to justify the suspension of operation requested. In a specific context, suspension should be refused at least in cases where the inadmissibility of the action is manifest or where the pleas in law put forward to support it are clearly unfounded.

72 The French Government maintains, essentially, that the interim measure requested cannot bring to an end the damage suffered by the appellant, since that damage does not flow from the act in question, the suspension of operation of which he is seeking, but from the measure disqualifying him by virtue of decisions taken by the French authorities.

Findings

73 It must be pointed out at the outset that, under Article 242 EC, actions brought before the Court have no suspensory effect.

74 Under Articles 242 EC and 243 EC, the Court may, however, if it considers that the circumstances so require, order that application of the act in question be suspended or prescribe, in any cases before it, any necessary interim measures.

75 Under Article 83(1) of the Rules of Procedure of the Court, an application to suspend the operation of any measure adopted by an institution within the meaning of Article 242 EC is admissible only if the applicant is challenging that measure in proceedings before the Court.

76 Article 83(2) of the Rules of Procedure requires applications pursuant to Articles 242 EC or 243 EC to state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for.

77 It is settled case-law that the judge hearing an application for interim relief may order suspension of operation of an act, or other interim measures, if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action. Where appropriate, the judge hearing such an application must also weigh up the interests involved (see, in particular, the orders of 25 July 2000 in Case C-377/98 R *Netherlands* v *Parliament and Council* [2000] ECR I-6229, paragraph 41, and 23 February 2001 in Case C-445/00 R *Austria* v *Council* [2001] ECR I-1461, paragraph 73).

Admissibility of the application for interim relief

78 The application which is the subject of these proceedings for interim relief is made in the context of an appeal against a judgment of the Court of First Instance which held inadmissible the action for annulment brought by the appellant. In seeking, beyond suspension of operation of the contested judgment, provisional suspension of the operation of the act in question, which was the subject-matter of that action, this application certainly oversteps the procedural framework of the appeal onto which it is attached.

79 However, were Article 83(1) of the Rules of Procedure of the Court to be interpreted to the effect that the Court has no competence to order suspension of operation of the act that was challenged at first instance when it is hearing an appeal, that would mean that in a large number of appeals, and in particular when the application to the Court to set aside the judgment of the Court of First Instance is founded on a challenge to the latter's ruling of inadmissibility, the appellant would be deprived of any possibility of obtaining interim protection.

80 Such an interpretation would be incompatible with the right to effective judicial protection, which is a general principle of law which underlies the constitutional

traditions common to the Member States. That principle is also laid down in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 18).

81 The right of individuals to complete and effective judicial protection under Community law implies in particular that interim protection be available to them if it is necessary for the full effectiveness of the definitive future decision (see, *inter alia*, the judgments in Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 21, and in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraphs 16 to 18, and the orders in Case C-399/95 R *Germany* v *Commission* [1996] ECR I-2441, paragraph 46, and Case C-393/96 P(R) *Antonissen* v *Council and Commission* [1997] ECR I-441, paragraph 36).

82 In a situation such as this, grant of suspension of operation of the contested judgment is a measure which, by itself, would be ineffective in preserving the appellant's rights should his claims ultimately succeed.

83 Moreover, the application for interim relief in this case is also founded on Article 243 EC, according to which the Court may in any cases before it prescribe any necessary interim measures.

84 The second subparagraph of Article 83(1) of the Rules of Procedure requires that an application for the adoption of interim measures made pursuant to Article 243 EC be made by a party to a case before the Court and to relate to that case if it is to be admissible. Those conditions are satisfied in this case.

85 Consequently this application for interim relief cannot be held inadmissible on the ground that it is seeking to obtain suspension of operation of the act in question, which was challenged at first instance.

86 As to the argument that the finding of inadmissibility of the action for annulment by the Court of First Instance necessarily entails the inadmissibility of an application for interim relief, that cannot be accepted. Suffice it to point out that such an interpretation would lead to interim protection being systematically denied in all cases where, as here, the judgment which is the subject of the appeal dealt exclusively with the admissibility of the action, and would therefore be incompatible with the general principle of effective judicial protection referred to in paragraphs 80 and 81 of this order.

87 Lastly, the plea that the suspension of operation requested would not be provisional, since it might create a situation that was in fact irreversible, cannot be disassociated from the assessment of urgency and the weighing up of the interests involved. However, it appears to be irrelevant to the assessment of the admissibility of the application for interim relief.

88 It follows from the foregoing that the application for interim relief is admissible.

Prima face case

89 It should be recalled that the contested judgment confined itself to holding the appellant's action for annulment inadmissible, in so far as the act in question, in which the Parliament took formal note of withdrawal of his mandate, was not intended to produce legal effects.

90 It follows that, however solid the pleas and arguments put forward by the appellant against the contested judgment holding the action for annulment inadmissible may be, they cannot suffice to justify prima facie in law suspension of operation of the act in question. In order to establish that the condition relating to a prima facie case is satisfied, the appellant would also have to succeed in showing that the pleas and arguments relied on against the legality of that act in the action for annulment are such as to justify prima facie grant of the suspension of operation sought.

91 As regards the pleas and arguments put forward by the appellant in support of the appeal and concerning the finding of inadmissibility by the Court of First Instance, it should be recalled that according to the first paragraph of Article 230 EC '[t]he Court of Justice shall review the legality of... acts of the European Parliament intended to produce legal effects vis-à-vis third parties'.

92 According to settled case-law, only measures producing binding legal effects affecting the interests of the applicant by bringing about a distinct change in his legal position, are acts and decisions capable of being the subject of an action for annulment within the meaning of Article 230 EC (see, in particular, orders in Joined Cases C-66/91 and C-66/91 R *Emerald Meats* v *Commission* [1991] ECR I-1143, paragraph 26; and Case C-50/90 *Sunzest* v *Commission* [1991] ECR I-2917, paragraph 12; judgments in Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9; Case C-308/95 *Netherlands* v *Commission* [1999] ECR I-6513, paragraph 26; and Case C-147/96 *Netherlands* v *Commission* [2000] I-4723, paragraph 25). By contrast, an act which is neither capable of producing nor intended to produce any legal effects cannot form the basis of an action for annulment (see, *inter alia*, Case 133/79 *Sucrimex and Westzucker* v *Commission* [1980] ECR 1299, paragraphs 17 to 19; the order in Case 151/88 *Italy* v *Commission* [1989] ECR 1255, paragraph 22; and the judgments cited above in Case 308/95 *Netherlands* v *Commission*, paragraph 27, and Case C-147/96 *Netherlands* v *Commission*, paragraph 26).

93 At first sight examination of the various language versions of Article 12(2) of the 1976 Act to which the Parliament refers reveals nothing to indicate that the

expression found therein 'shall take note' should be given a sense other than that which it has in current legal language, where it does not refer in principle to an act intended to produce binding legal effects which could be treated like a decision but rather to an act intended to formalise a fact, that is, the fact of having received information or having acquired knowledge of a decision adopted elsewhere.

94 The distinction established by Article 12(2) of the 1976 Act between the case here, where the vacancy arises from application of the national provisions in force in a Member State, a circumstance in which the latter 'shall inform [the Parliament], which shall take note of that fact' and all other cases in which '[the Parliament] shall establish that there is a vacancy and inform the Member State thereof' reinforces, at first sight, the interpretation that in the first case the vacancy in the seat results not from an act of the Parliament but from the application of national provisions of which the Parliament is informed.

95 Again at first sight, a reading of Article 12(2) of the 1976 Act in conjunction with Rule 8(9) of the Parliament's Rules of Procedure, which provides for the possibility of its refusing 'to establish' the vacancy, indicates that that possibility does not concern cases where such a vacancy is the result of the application of national provisions.

96 It is true that the Court of First Instance held, at paragraph 91 of the contested judgment, that the Parliament has a power of verification in that context, although it is 'essentially confined to verifying whether the seat of the person concerned is in fact vacant'. The appellant's arguments that the exercise of such a power of verification, even restricted, should be subject to judicial review to be undertaken by the Community court cannot be dismissed out of hand. However, the arguments raised by the French Government maintaining that exercise of that power of verification is not intended to produce its own legal effects appear plausible.

97 It follows from the foregoing considerations that the question of the admissibility of the action for annulment, by reason of the actual nature of the act in question, raises legal questions which go beyond the limits of the necessarily summary assessment which the judge hearing an application for interim relief may undertake and which the Court will have to answer in its decision on the appeal. It does not therefore appear, at first sight, that the appeal can be dismissed as clearly unfounded.

98 As regards the pleas and arguments concerning the substance of the dispute put forward by the appellant, it should be pointed out that these were not examined by the Court of First Instance, the Court of Justice is not called upon to examine them in the appeal before it and, if the contested judgment is set aside, they should normally be examined by the Court of First Instance to which the case would be referred back.

99 Examination of all the pleas and arguments as they have been set out by the parties in this application for interim relief enables the conclusion to be drawn that the position of the Parliament and of the French Government appears to be supported by arguments which, on a first analysis, prove to be at least as plausible as those relied on by the appellant.

100 It follows from the foregoing considerations that the appellant cannot rely on a particularly solid prima facie case, although it is not possible to find at this stage of the proceedings that all his pleas and arguments are wholly without legal foundation. Accordingly, the application for suspension of operation of the act in question cannot be dismissed on that ground (see, to that effect, the orders in Case C-345/90 P-R *Parliament* v *Hanning* [1991] ECR I-231, paragraphs 29 and 30; Case C-180/01 P-R *Commission* v *NALOO* [2001] ECR I-5737, paragraphs 49 and 51; Case C-39/03 P-R *Commission* v *Artegodan and Others* [2003] ECR I-4485, paragraph 40; and Case C-156/03 P-R *Commission* v *Laboratoires Servier* [2003] ECR I-6575, paragraph 34).

Urgency and weighing of interests

101 As regards the condition relating to urgency, it is to be remembered that the purpose of the procedure for interim relief is to guarantee the full effectiveness of the definitive future decision, in order to ensure that there is no lacuna in the legal protection provided by the Court of Justice (see, in particular, the orders in Case 27/68 R *Renckens* v *Commission* [1969] ECR 274, at 276, in *Germany* v *Commission*, cited above, paragraph 46; in *Antonissen* v *Council and Commission* cited above, paragraph 36; and in *Commission* v *NALOO*, paragraph 52). For the purpose of attaining that objective, urgency must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim relief (see the order in Case C-65/99 P(R) *Willeme* v *Commission* [1999] ECR I-1857, paragraph 62; and the orders cited above in *Commission* v *NALOO*, paragraph 52; and *Commission* v *Laboratoires Servier*, paragraph 35).

102 In this case, since under Article 3(1) of the 1976 Act, the term of office of Members of the Parliament is limited to five years and disqualification renders it impossible to perform the duties of that office, it clearly appears that the damage suffered by the appellant if the operation of the act in question is not suspended will be of an irreparable nature.

103 The argument regarding the supposed impossibility of bringing an end to the damage alleged by means of the interim measure sought must be rejected in this case. Although it is true that interim measures which would not serve to prevent the serious and irreparable harm feared by the appellant cannot *a fortiori* be necessary for that purpose (orders in Case C-89/97 P(R) *Moccia Irme* v *Commission* [1997] ECR I-2327, paragraph 44; and Case C-399/02 P(R) *Marcuccio* v *Commission* [2003] ECR I-1417, paragraph 26), it is no less certain that such an assessment in the present case would require the judge hearing the application for interim relief to rule on the exact extent of the Parliament's powers with regard to disqualification of its Members from holding office, which would lead him necessarily to prejudge the merits.

104 Consequently it must be concluded that urgency has been established.

105 In order to assess the need for the suspension sought, however, the alleged harm must be examined in the light of all the interests involved (orders in Case C-280/93 R *Germany* v *Council* [1993] ECR I-3667, paragraph 29; Joined Cases C-239/96 R and C-240/96 R *United Kingdom* v *Commission* [1996] ECR I-4475, paragraph 67; and Case C-107/99 R *Italy* v *Commission* [1999] ECR I-4011, paragraph 89).

106 It is settled law that serious and irreparable harm, one of the criteria for establishing urgency, also constitutes the first element in the comparison carried out in assessing the balance of interests (order in Case C-87/94 R *Commission* v *Belgium* [1994] ECR I-1395, paragraph 27). More particularly, that comparison must lead the judge hearing the application to examine whether the possible annulment of the act in question by the Court giving judgment in the main action would make it possible to reverse the situation that would have been brought about by its immediate implementation and conversely whether suspension of the operation of that act would be such as to prevent its being fully effective in the event of the appeal being dismissed on the merits (see, in particular, the orders in Case C-149/95 P(R) *Commission* v *Atlantic Container Line and Others* [1995] ECR I-2165, paragraph 50; and Case C-180/96 R *United Kingdom* v *Commission* [1996] ECR I-3903, paragraph 89).

107 In this case a judgment on the merits in favour of the appellant would not reverse the situation brought about by immediate implementation of the act in question, in so far as such a judgment would be delivered, in all probability at a date after the legislature has been dissolved, at a time when the damage alleged by the appellant — namely his being deprived of his status as a Member of the Parliament — would have materialised in an irreversible way.

108 That damage must be weighed against the risk, if the suspension sought were granted, that the disqualification of the appellant from holding office following a

criminal conviction that has become definitive would be deprived of all its effect. Given the proximity of the next elections to the Parliament, the judgment by the Court on the appeal and, supposing that the appellant's claims were upheld, a judgment on the merits, would not be delivered until after the legislature had been dissolved. Thus, should the application on the merits be dismissed, the suspension of operation would have definitively deprived the act in question of any effect and would have irremediably impaired implementation of the decisions of a Member State's criminal courts. In those circumstances the interest of the Parliament, and more generally, the interest of the Community in the composition of the Parliament being in compliance with the law, and the interest of the French Republic, as the Member State whose legislation constitutes the basis for the disqualification in question, in having the act in question maintained, weigh heavily against grant of the suspension sought.

109 Furthermore, for the purposes of balancing the interests at stake in the present proceedings, there must be taken into consideration the fact that the appellant has already had the benefit of suspension of operation of the act in question for the entire duration of the proceedings before the Court of First Instance, that is for more than two years.

110 Lastly, it must be pointed out that the strength or weakness of the pleas relied on to show a prima facie case may be taken into consideration by the judge in his assessment of urgency and, if appropriate, of the balance of interests (see, to that effect, the orders in *Austria* v *Council*, cited above, paragraph 110; and Case C-481/01 P(R) *NDC Health* v *IMS Health and Commission* [2002] ECR I-3401, paragraph 63).

111 In those circumstances, in the absence of pleas or arguments that are so strong that they make out a prima facie case of a particularly robust nature, there is no call to grant suspension of operation of the act in question.

112 Consequently the application for interim relief must be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. **The application for interim relief is dismissed.**

2. **Costs are reserved.**

Luxembourg, 31 July 2003.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President