JUDGMENT OF THE COURT (First Chamber)

19 February 2009 *

In Case C-308/07 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 2 July 2007,

Koldo Gorostiaga Atxalandabaso, former Member of the European Parliament, residing in Saint-Pierre-d'Irube (France), represented by D. Rouget, avocat,

applicant,

the other party to the proceedings being:

European Parliament, represented initially by C. Karamarcos, H. Krück and D. Moore, then by the latter two and A. Padowska, acting as Agents,

defendant at first instance,

* Language of the case: French.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Tizzano (Rapporteur), A. Borg Barthet, E. Levits and J.-J. Kasel, Judges,

Advocate General: V. Trstenjak,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 June 2008,

after hearing the Opinion of the Advocate General at the sitting on 11 September 2008,

gives the following

Judgment

1 By his appeal, Mr Gorostiaga Atxalandabaso asks the Court to set aside the order of the Court of First Instance of European Communities of 24 April 2007, Case T-132/06 *Gorostiaga Atxalandabaso* v *Parliament*, ('the order under appeal'), dismissing as, in part, manifestly inadmissible and, in part, manifestly unfounded, his application for annulment of the decision of the Secretary General of the European Parliament of

22 March 2006 regularising the procedure for recovery of certain sums received by the applicant in respect of parliamentary expenses and allowances ('the contested decision').

Legal background

2 Article 27(3) and (4) of the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament ('the EAM Rules') provide:

'3. Where the Secretary-General, in consultation with the Quaestors, is satisfied that undue sums have been paid by way of allowances provided for Members [of the European Parliament] by these Rules, he shall give instructions for the recovery of such sums from the Member concerned.

4. In exceptional cases, and on a proposal submitted by the Secretary-General after consulting the Quaestors, the Bureau may, in accordance with Article 73 of the Financial Regulation and its implementing rules, instruct the Secretary-General temporarily to suspend the payment of parliamentary allowances until the Member has repaid the sums improperly used.

The Bureau's decision shall be taken with due regard for the effective exercise of the Member's duties and the proper functioning of the Institution, the views of the Member concerned having been heard before the adoption of the said decision.'

3 Article 71(2) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1) ('the Financial Regulation') is worded as follows:

'The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.'

4 According to the second subparagraph of Article 73(1):

'The accounting officer shall recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself/herself has a claim on the Communities that is certain, of a fixed amount and due.'

5 Article 83 of laying down detailed rules for the implementation of Commission Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Regulation No 1605/2002 (OJ 2002 L 357, p. 1), provides:

'At any point in the procedure the accounting officer shall, after informing the authorising officer responsible and the debtor, recover established amounts receivable

by offsetting in cases where the debtor also has a claim on the Communities that is certain, of a fixed amount and due relating to a sum established by a payment order.'

6 Article 5(3) and (4) of the Internal Rules on the Implementation of the European Parliament's Budget, which were adopted by the Bureau of the Parliament ('the Bureau') on 27 April 2005, provide:

'3. By delegation decision of the Institution, represented by its President, the Secretary-General shall be appointed principal authorising officer by delegation. None the less, decisions to waive recovery of an established amount receivable within the meaning of Article 87(4)(a) of the implementing rules shall come under the President's responsibility.

4. The delegation of powers to authorising officers by delegation shall be performed by the principal authorising officer by delegation. The subdelegation of powers to authorising officers by subdelegation shall be performed by authorising officers by delegation.'

Facts

7 The appellant is a former Member of the European Parliament who was a member during the fifth parliamentary term (1999-2004). Following an audit concerning the existence of supporting documents relating to the use of sums the appellant had received for secretarial expenses, the Secretary-General of the Parliament ('the Secretary-General') established, by decision of 24 February 2004, that he had been

improperly paid EUR 176 576. The Secretary-General also set the amount to be repaid to the Parliament at EUR 118 360.18, as the appellant had already begun to repay part of the debt.

8 By the same decision of 24 February 2004, the Secretary-General indicated that, on the basis of Articles 16(2) and 27(3) of the EAM Rules, the sum of EUR 118 360.18 was to be recovered by means of offsetting it against the parliamentary allowances least necessary to the exercise of the appellant's duties, namely part of the general expenditure allowance and the subsistence allowance. The decision also stated that if the appellant's mandate came to an end, the outstanding sums would be recovered from the transitional end-of-service allowance and all other payments due to him.

9 On 20 April 2004, the appellant brought an action before the Court of First Instance for annulment of the decision of 24 February 2004.

10 By its judgment of 22 December 2005 in Case T-146/04 *Gorostiaga Atxalandabaso* v *Parliament* [2005] ECR II-5989 ('the *Gorostiaga* judgment'), the Court partially annulled the decision of 24 February 2004.

11 First of all, in paragraph 84 of the judgment, the Court noted that the decision of 24 February 2004 contained essentially two parts, namely the Secretary-General's

finding that the sums mentioned in that decision had been improperly paid to the applicant and that they were to be recovered, and the decision to effect recovery of the sums by offsetting against allowances payable to him.

12 The Court then dismissed all the pleas against the first part of the decision of 24 February 2004, specifically the pleas concerning the existence and the extent of the applicant's obligation to repay the Parliament the sum indicated in that decision.

13 Finally, as regards the second part of the decision of 24 February 2004, the Court, in paragraph 97 of the *Gorostiaga* judgment, held as follows:

'… since the Secretary-General was not competent to order the offsetting in question without having been instructed to do so by the Bureau in accordance with the procedure laid down in [Article 27(4) of the EAM Rules], the … decision [of 24 February 2004] must be annulled in so far as it orders such offsetting.'

14 No appeal was brought against the *Gorostiaga* judgment.

15 In accordance with that judgment, the Bureau, by decision of 1 February 2006 instructed the Secretary-General, in accordance with Article 27(4) of the EAM Rules, to proceed to the recovery of the sums improperly paid to the applicant.

16 By letter of 22 March 2006, the Secretary-General transmitted the contested decision to the applicant, which essentially repeats the content of the decision of 24 February 2004.

17 According to point 1 of the enacting terms of the contested decision, the accounting officer of the Parliament is instructed, in accordance with Article 73 of the Financial Regulation to recover EUR 118 360.18 owed by the applicant to the Parliament. Points 1 and 2 of the enacting terms state that the recovery of the sums improperly paid to the applicant may be made by offsetting various allowances and other payments due to him.

The procedure before the Court of First Instance and the order under appeal

18 By application lodged at the Registry of the Court of First Instance on 12 May 2006, the applicant brought an action seeking annulment of the contested decision and an order for the Parliament to pay the costs.

19 In support of his action, the applicant put forward 11 pleas which were all dismissed by the Court. Only the pleas whose dismissal is challenged in this appeal will be examined in the following paragraphs.

20 By his first plea, alleging failure to comply with the principle of *res judicata*, the applicant argued essentially that the contested decision could not legitimately regularise a procedure that the Court of First Instance had considered unlawful on the ground of lack of competence.

21 In that regard, in paragraphs 30 and 32 of the order under appeal, the Court held:

'30 … [T]he Secretary-General could legitimately, in the light of Article 27(4) of the EAM Rules as interpreted by paragraphs 86 to 97 of the *Gorostiaga* judgment, take the contested decision after the Bureau had instructed him to recover the sums concerned in accordance with that provision …

…

32 As regards the deduction of EUR 40 398.80… it is true that it has lost its legal basis after the *Gorostiaga* judgment. However, that fact does not have the effect of erasing the applicant's debt to the Parliament of EUR 118 360.18, since the question whether that debt could be partially paid off by offsetting … is separate. …'

22 Accordingly, the Court dismissed the first plea put forward by the applicant in support of his application as manifestly unfounded.

23 By the third plea, the applicant relied on the existence of a case of *force majeure* to explain why it was impossible to submit supporting documents relating to certain expenses he had incurred.

24 The Court dismissed the plea as manifestly inadmissible in that it challenged the force of *res judicata* deriving from the *Gorostiaga* judgment (paragraphs 49 to 54 of the order under appeal). According to that judgment, the Secretary-General was entitled to find that the sums concerned had been improperly paid to the applicant and therefore had to be recovered.

25 Finally, by the first part of the seventh plea relied on in support of his action, the applicant complained that the Parliament had not notified him of the Bureau's decision of 1 February 2006. The Parliament had thereby infringed Article 20 of its Code of Good Administrative Behaviour adopted on 6 September 2001 ('the Code of Good Behaviour'), which lays down an obligation to notify in writing decisions affecting the rights or interests of individual persons.

26 The Court dismissed that plea by holding as follows in paragraphs 72 and 73 of the order under appeal:

'72 As regards the notification of the Bureau's decision of 1 February 2006, it is sufficient to note that it does not constitute the final decision adversely affecting the applicant. …

73 As to the allegation concerning the Code of Good Behaviour, it need only be observed that the document to which the applicant refers is only a resolution of the Parliament amending a draft which had been submitted to it by the European Ombudsman and calling on the Commission to submit a legislative proposal in that

respect on the basis of Article 308 EC. Therefore, regardless of whether a provision such as that [in Article 20 of the Code] also refers to decisions other than those having adverse effect, it must be made clear that it is not a legal provision. Therefore, this complaint must be dismissed as manifestly unfounded.'

Forms of order sought

27 By his appeal, the appellant claims that the Court should:

— set aside the order under appeal and annul the contested decision, and

— order the Parliament to pay the costs.

28 The Parliament asks the Court to dismiss the appeal as manifestly unfounded and to order the appellant to pay the costs.

The application to reopen the written procedure

29 By document lodged at the Court Registry on 31 October 2007, the appellant requested the Court to order the reopening of the written procedure. In support of that request, he relies on the existence of new evidence consisting of a letter from the Parliament, dated 17 October 2007, ordering him to pay EUR 77 961 following the dismissal by the order under appeal of his action before the Court of First Instance.

30 In that connection, it must be recalled that, in accordance with Article 42(2) in conjunction with Article 118 of the Rules of Procedure, the introduction of new pleas in the course of proceedings is prohibited unless those pleas are based on matters of law or of fact which come to light in the course of the procedure.

31 That is not the case here. It suffices to state that the supposedly new matters of fact relied on by the appellant cannot be related to any plea raised for the first time or previously raised by the appellant in his appeal. In any event, that matter of fact appears completely irrelevant to this judgment. By requesting, by the letter of 17 October 2007, payment of the outstanding sums the Parliament merely gave effect to the adoption of the order under appeal, which, moreover, has not been the subject of any application for interim measures or stay of execution. Furthermore, according to the first paragraph of Article 60 of the Statute of the Court of Justice, the appeal brought by the appellant does not have any suspensory effect with respect to such an order.

32 In those circumstances, the appellant's request for the reopening of the written procedure must be dismissed.

The appeal

33 In support of his appeal, the appellant raises six grounds of appeal, alleging, first, infringement of the rights of the defence, breach of the *audi alteram partem* rule and infringement of the right to a fair trial; second, infringement of the fundamental right to an impartial tribunal; third, an incorrect assessment of the scope of the *Gorostiaga* judgment; fourth, systematic and automatic refusal of the Court of First Instance to take account of his arguments seeking annulment of the contested decision; fifth, refusal of the Court of First Instance to examine the plea alleging *force majeure*; and, sixth and lastly, refusal by the Court of First Instance to ensure respect for the principle of sound administration.

The first ground of appeal

Arguments of the parties

34 By his first ground of appeal, the appellant submits that the decision of the Court of First Instance to adjudicate on the action by order, in accordance with Article 111 of its Rules of Procedure, deprived him of the opportunity to reply to the Parliament's arguments and to be heard. Furthermore, by failing to communicate such a decision prior to judgment of the case by order, the Court of First Instance deprived him of the

opportunity to challenge that decision. Therefore, the Court of First Instance infringed the rights of the defence, the *audi alterm partem* rule and the right to a fair trial.

35 The Parliament replies that the Court of First Instance applied Article 111 of its Rules of Procedure correctly and in no way infringed the appellant's rights of defence.

Findings of the Court

36 It must be recalled, as the Court has already had occasion to state, that the application of the procedure provided for in Article 111 of the Rules of Procedure of the Court of First Instance does not in itself prejudice the right to a proper and effective judicial process, since that provision is applicable only where it is clear that the Court of First Instance has no jurisdiction over the action, or where the action is manifestly inadmissible or manifestly lacking any foundation in law. Accordingly, if an applicant takes the view that the Court of First Instance has incorrectly applied Article 111, he must challenge the assessment by the court of first instance of the conditions to which the application of that provision is subject (see, to that effect, order in Case C-396/03 P *Killinger* v *Germany and Others* [2005] ECR I-4967, paragraph 9).

37 In this case, it is sufficient to state that the appellant merely criticises the fact that the Court of First Instance had recourse to a reasoned order without referring to the conditions governing the applicability of Article 111 or questioning the Court's interpretation of that article in the order under appeal.

38 In those circumstances, the first ground put forward by the appellant in support of his appeal must be dismissed as unfounded.

The second ground of appeal

Arguments of the parties

39 By his second ground of appeal, the appellant relies on infringement of his right to an impartial tribunal, as enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and Article 47 of the Charter of Fundamental Rights of the European Union, proclaimed at Nice on 7 December 2000 (OJ 2000 C 364, p. 1). Such an infringement arises from the allocation of the case giving rise to the order under appeal to a formation consisting of judges, including those carrying out the functions of President and Judge-Rapporteur, who had already sat on the bench which delivered the *Gorostiaga* judgment. Respect for the principle of impartiality requires that the same judge cannot, including where the same level of jurisdiction is concerned, hear and determine a case based on facts identical or sufficiently connected to those of a case that he has previously decided.

40 The Parliament replies that the appellant's argument is lacking any legal basis and has no support in the case-law of the Court. It submits, moreover, that the case related essentially to whether the Parliament had complied with its obligations under the *Gorostiaga* judgment. There is therefore nothing to criticize in the fact that the same judges heard both cases.

Findings of the Court

41 The right to a fair trial, which derives inter alia from Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitutes a fundamental right which the European Union respects as a general principle under Article 6(2) EU (Case C-305/05 *Ordre des barreaux francophones et germanophone and Others* [2007] ECR I-5305, paragraph 29, and Joined Cases C-341/06 P and C-342/06 P *Chronopost and La Post* v *UFEX and Others* [2008] ECR I-4777, paragraph 44).

42 Such a right necessarily implies access for every person to an independent and impartial tribunal. Thus, as the Court has had occasion to state, the existence of guarantees concerning the composition of the tribunal are the corner stone of the right to a fair trial, compliance with which must in particular be verified by the Community judicature if an infringement of that right is complained of and the challenge on that point does not appear from the outset manifestly devoid of merit (see, to that effect, *Chronopost and La Poste* v *UFEX and Others*, paragraphs 46 to 48).

43 However, it is also clear from the case-law of the Court that the fact that the judges who heard and determined a case initially may sit in another formation hearing and determining the same case again is not in itself incompatible with the requirements of a fair trial (see, to that effect, *Chronopost and La Poste* v *UFEX and Others*, paragraphs 58 and 59, and the case-law of the European Court of Human Rights cited).

44 In particular, the fact that one or more of the judges were present in two successive formations and exercised the same functions, such as president or judge-rapporteur, is

in itself irrelevant to the assessment of compliance with the requirement of impartiality, since those duties are performed in a collegiate formation of the court (see, to that effect, *Chronopost and La Poste* v *UFEX and Others*, paragraph 53).

45 Such considerations are even more relevant where the two successive formations do not have to hear and determine the same case, as was the case in the proceedings in *Chronopost and La Poste* v *UFEX and Others*, which concerned the referral of a case back to the Court of First Instance following the annulment of the judgment at first instance by the Court, but, as in this case, two separate cases which are related to some extent.

46 Furthermore, it must be observed that there are two aspects to the requirement of impartiality. In the first place, the tribunal must be subjectively impartial, that is, none of its members must show bias or personal prejudice, there being a presumption of personal impartiality in the absence of evidence to the contrary. In the second place, the tribunal must be objectively impartial, that is to say, it must offer guarantees sufficient to exclude any legitimate doubt in this respect (*Chronopost and La Poste* v *UFEX and Others*, paragraph 54, and to that effect, Eur. Court HR, *Fey v. Austria*, judgment of 24 February 1993, Series A No 255-A, p. 12, § 28; *Findlay v. United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 281, § 73; and *Forum Maritime S.A. v. Romania*, judgment of 4 October 2007, not yet published in the *Reports of Judgments and Decisions,* § 116).

47 In this case, it must be observed, first, that the appellant, as he confirmed at the hearing, does not advance any argument liable to call into question the personal impartiality of members of the Court of First Instance.

48 Moreover, it must be recalled that the appellant did not appeal against the *Gorostiaga* judgment and that, for the rest, that judgment partially upheld his action.

49 Second, the appellant does not put forward any objective evidence capable of raising any doubt as to the impartiality of the Court of First Instance. In that regard, he in fact merely points to the presence of the same judges in the two formations in question, which is a fact which, as it is clear from paragraphs 43 to 45 of this judgment, is not in itself incompatible with the legal requirements for a fair trial.

50 The second ground of appeal must therefore be dismissed as unfounded.

The third and fourth grounds of appeal

Arguments of the parties

51 By his third and fourth grounds of appeal, which it is appropriate to examine together, the appellant essentially criticises the Court of First Instance for having wrongly held that the arguments he raised at first instance challenging the lawfulness of the contested decision were manifestly inadmissible in that they disregarded the force of *res judicata* issuing from the *Gorostiaga* judgment. Following the annulment by that judgment of the decision of 24 February 2004, it should have been considered as null and void in its entirety, and the procedure which led to its adoption could not be regularised. In those circumstances, the contested decision constituted a new decision distinct from that of

24 February 2004, so that all the pleas raised by the appellant against that decision should have been examined by the Court of First Instance.

52 The Parliament rejects those claims, submitting principally that, in the *Gorostiaga* judgment, the Court of First Instance held that the Parliament had correctly established that certain parliamentary allowances had been improperly paid to the appellant. Therefore the procedure which led to the adoption of decision of 24 February 2004 could legitimately be regularised.

Findings of the Court

53 First of all, it must be observed that, as stated in paragraph 11 of this judgment, the decision of 24 February 2004 contained essentially two parts, namely, first, the finding that the sums mentioned in the decision had been improperly paid to the appellant and that they were to be recovered and, second, the decision to proceed to recovery, in so far as possible, by offsetting against allowances still to be paid to the appellant.

54 The annulment of that decision by the *Gorostiaga* judgment concerns, as expressly appears in paragraph 169 and paragraph 1 of the operative part of that judgment, only the second part, since the court at first instance held that the Secretary-General was not competent to order recovery by offsetting sums due by the applicant unless he had been instructed to do so by the Bureau in accordance with the procedure laid down in

Article 27(4) of the EAM Rules. However, all the pleas in the application on the lawfulness of the first part of the decision of 24 February 2004 were dismissed by the Court of First Instance.

55 Therefore, the Court of First Instance annulled the decision of 24 February 2004 only in so far as it provided that the recovery of the sums due by the applicant was to be effected by offsetting, thereby dismissing the action for the remainder.

56 Therefore, contrary to the appellant's contentions, such a partial annulment of the decision of 24 February 2004 did not preclude the Secretary-General from resuming the procedure for the recovery of sums due after having been duly empowered by the Bureau, in accordance with Article 27(4) of the EAM Rules as interpreted by the *Gorostiaga* judgment. As the Court of First Instance correctly held in paragraph 30 of the order under appeal, the procedure for replacing an annulled measure may be resumed at the very point at which the illegality occurred without necessarily affecting the preparatory acts (see, to that effect, Case C-415/96 *Spain* v *Commission* [1998] ECR I-6993, paragraphs 31 and 32).

57 Next, it must be observed that no appeal was brought against the *Gorostiaga* judgment before the Court and that consequently its operative part and *ratio decidendi* became final (Joined Cases C-442/03 P and C-471/03 P *P & O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission* [2006] ECR I-4845, paragraphs 44 and 47 and the case-law cited). Therefore, whether the sums to be recovered were undue sums and whether the appellant was obliged to reimburse them could not be referred back to the Court of First Instance and examined by it without disregarding the force of *res judicata* which now applies to the *Gorostiaga* judgment.

58 Finally, it is clear from the case-law of the Court that an act benefits from the *res judicata* attached to an earlier act in so far as it is a mere repetition of the part of that act which was not annulled (see, to that effect, Case 14/64 *Gualco (née Barge)* v *High Authority* [1965] ECR 51, paragraph 11).

59 In those circumstances, since the contested decision found, in exactly the same terms as that of 24 February 2004, that EUR 118 360.18 had been improperly paid to the appellant and had to be recovered, the Court of First Instance rightly held, in paragraph 53 of the order under appeal, that any complaint challenging the lawfulness of the contested decision in that respect had to be dismissed as manifestly inadmissible.

60 It follows that the third and fourth grounds relied on by the appellant in support of his appeal must be dismissed as unfounded.

The fifth ground of appeal

Arguments of the parties

61 By his fifth ground of appeal, the appellant submits that the Court of First Instance wrongly failed to examine the plea alleging the existence of *force majeure* on the ground that the decision of 24 February 2004 benefited from *res judicata* arising from the *Gorostiaga* judgment.

62 The Court of First Instance wrongly held that it was a plea which had already been examined in the *Gorostiaga* judgment, whereas, in reality, that plea was based on facts subsequent to the judgment, namely the absence of a response from the Spanish Minister of Justice to a letter addressed to him by the appellant on 15 April 2006 to obtain a copy of accounting documents related to the exercise of his mandate as a Member of the European Parliament.

63 The Parliament replies that, in the order under appeal, the Court of First Instance correctly interpreted the principle of *res judicata* since the appellant had already put forward a plea which was essentially identical, relying on the same arguments in the proceedings which gave rise to the *Gorostiaga* judgment.

64 As regards specifically the failure to reply to the letter of 15 April 2006, the Parliament points out that that argument was relied on before the Court of First Instance not in the context of the plea of *force majeure*, but in support of another plea which was dismissed by the order under appeal, the assessment of which is not challenged by the appellant in this appeal. In any event, it concerns facts subsequent to the contested decision, which are therefore irrelevant for the purposes of the annulment of the decision.

Findings of the Court

65 It must be observed, first, that the facts relied on at first instance by the appellant in support of his plea of *force majeure*, in order to justify the fact that he was unable to provide certain items of his accounts, are identical to those on which one of the pleas in the action against the decision of 24 February 2004 was based, which was dismissed by the Court of First Instance in the *Gorostiaga* judgment.

66 Therefore, for the reasons set out in paragraphs 57 to 59 of this judgment, the Court of First Instance rightly held, in paragraphs 53 and 54 of the order under appeal, that the plea alleging *force majeure* was manifestly inadmissible.

67 Second, as regards the argument alleging that the Spanish Minister of Justice failed to reply to the appellant's letter of 15 April 2006, it suffices to state that, even if such evidence may constitute a case of *force majeure* for the purposes of the case-law of the Court, it is, as the Advocate General rightly observes in point 87 of her Opinion, a fact subsequent to the date of adoption of the contested decision which, in any event, cannot have any effect on the content of that decision.

68 Having regard to the foregoing considerations, the fifth ground of appeal must be dismissed as unfounded.

Sixth ground of appeal

Arguments of the parties

69 By his sixth ground of appeal the appellant claims that the Court of First Instance wrongly refused to examine the issue of whether the Parliament, by failing to notify him of the Bureau's decision of 1 February 2006, had infringed the principle of sound administration, as set out in Article 41 of the Charter of Fundamental Rights of the European Union and the Code of Good Administrative Behaviour. In that connection,

he states that, even if such instruments did not exist, the right to sound administration is part of the general principles of law with which the institutions are bound to comply.

70 The Parliament replies in that respect that the Court of First Instance merely held that the Code of Good Behaviour was a preparatory act, not a legislative measure.

Findings of the Court

71 It must be held from the outset that the sixth ground of appeal derives from an incorrect interpretation of the order under appeal.

72 At first instance, the plea raised by the appellant was based exclusively on an infringement of Article 20 of the Code of Good Behaviour, pursuant to which, first, the institution is to ensure that decisions which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned and, second, that it must abstain from communicating the decision to other sources until the person or persons concerned have been informed.

73 Contrary to the appellant's submissions, the Court of First Instance did not fail to examine whether the failure to communicate the Bureau's decision of 1 February 2006 had led to an infringement of the appellant's rights. Thus, in paragraph 72 of the order

under appeal, the Court of First Instance, before ruling on the nature of the Code of Good Behaviour, observed that that decision did not constitute the final decision adversely affecting the appellant and that the fact that it was not communicated to him could not therefore harm the appellant's rights, an assessment which is not challenged in this appeal.

74 It follows that the sixth ground of appeal must also be dismissed.

75 Since none of the six grounds of appeal put forward by the appellant in support of his appeal may be accepted, it must be dismissed.

Costs

76 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament has applied for costs and the appellant has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. Dismisses the appeal;

2. Orders Mr Gorostiaga Atxalandabaso to pay the costs.

[Signatures]