Judgment of the Court of Justice, Luxembourg/Parliament, Case 108/83 (10 April 1984)

Caption: Following the action for annulment brought by the Luxembourg Government v the European Parliament on 10 June 1983, the Court of Justice of the European Communities (CJEC) delivers a judgment declaring that the resolution of the European Parliament of 20 May 1983 'on the consequences to be drawn from the European Parliament's adoption, on 7 July 1981, of the Zagari Report' is void. The European Parliament would have infringed Article 4 of the Decision of 8 April 1965 on the provisional location of certain institutions and departments of the Communities which provides that 'the General Secretariat of the Assembly and its departments shall remain in Luxembourg'.

Source: Reports of Cases before the Court. 1984. [s.l.]. "Judgment of 10 April 1984, Grand Duchy of Luxembourg v European Parliament, Case 108/83", auteur:Court of Justice of the European Communities (CJEC) , p. 1945.

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Judgment of the Court 10 April 19841
Grand Duchy of Luxembourg v European Parliament

(Place of work of the Parliament — Staff assigned thereto)

Case 108/83

1. Action for a declaration that a measure is void — Measures in respect of which such an action may be brought — Resolution of the Parliament — Requirement that it be of a decision-making character (ECSC Treaty, Art. 38)

2. Parliament — Internal organization — Power to determine the location of its departments — Limits (Decision of the Member States of 8 April 1965, Art. 4; Resolution of the Parliament of 20 May 1983)

1. A resolution of the Parliament which is of a specific and precise decision-making character, producing legal effects, may be the subject of an application for a declaration that it is void.

2. When, in the exercise of its powers of internal organization, the Parliament adopts measures concerning the location of its departments, it must respect the limits laid down by the decision of the Member States of 8 April 1965.

In Case 108/83

GRAND DUCHY OF LUXEMBOURG, represented by its Agent, Julien Alex, Director of International Economic Relations at the Ministry of Foreign Affairs, assisted by André Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's chambers,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Director General, Francesco Pasetti-Bombardella, and its Legal Adviser, Roland Bieber, acting as Agents, with an address for service in Luxembourg at the office of the Secretary General of the European Parliament, Kirchberg,

defendant,

APPLICATION for a declaration that the resolution of the European Parliament dated 20 May 1983 on the consequences to be drawn from the European Parliament's adoption, on 7 July 1981, of the Zagari Report (Official Journal, C 151, p. 155) is void,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini

Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the

parties may be summarized as follows:

I — Facts

1. On 9 March 1983, a motion for a resolution proposed by Mr von Hassel, Member of the European Parliament, on the consequences to be drawn from the European Parliament's adoption, on 7 July 1981, of the Zagari Report, was forwarded to the President of the European Parliament bearing 238 signatures, that is to say those of more than half the Members of the Parliament.

The motion for a resolution is couched in the following terms:

“The European Parliament,

A. having regard to its experience in the course of nearly three years as regards its places of work,

B. having regard to the decisions taken on 7 July 1981 on the basis of the Zagari Report,

C. whereas it is entitled to take, as regards the organization of its work, all necessary decisions that do not require the participation or approval of the Council,

D. whereas, in implementation of the decisions of 7 July 1981, all part sessions are held in Strasbourg, an official place of work of the European Parliament,

E. whereas the meetings of the committees and political groups are normally held in Brussels,

F. whereas Luxembourg is dedicated to remaining the seat of the judicial and financial institutions,

1. Has decided:

a) To draw, in the 1983 budget and in subsequent budgets, the consequences of the decisions of 7 July 1981;

b) To proceed to divide up staff of, the secretariat in the most rational manner between the places of work

by arranging for services that are mainly concerned with the functioning of part sessions to be based permanently in the place where Parliament holds its sessions, namely Strasbourg,

by arranging for services that are mainly concerned with the functioning of the committees to be based in Brussels;

c) To taken account in future of this division of staff when recruiting new staff;

d) To take account of the legitimate interests of staff by applying as broadly as possible the principle of voluntary transfer and by fully involving staff representatives in working out the measures to be taken in implementation of this resolution;

2. Instructs the Bureau to institute within the administration structural changes that will permit greater flexibility in the work rate, for instance where the rapid organization of special part sessions is concerned;

3. Instructs the Secretary General to prepare without delay the reorganization measures required by this resolution.”

2. Rule 49 of the Rules of Procedure provides for the adoption of resolutions without debate and without vote, by a written procedure consisting essentially of the entry of the motion for the resolution in a register in which Members may add their signature to the motion.

3. At the sitting of 10 March 1983, the President of the Parliament made the following statement:

“I inform Parliament that the motion for a resolution by Mr von Hassel and others on the consequences to be drawn from the European Parliament's adoption, on 7 July 1981, of the Zagari Report (Document 1-15/83) has been signed by more than half the Members of Parliament.

Since, however, this motion for a resolution has been tabled with all the signatures, it has not been possible to apply the procedure laid down in paragraphs (2) and (3) of Rule 49, particularly as regards Members' rights to table amendments.

I feel that under these circumstances the motion for a resolution should be posted on the notice boards for at least 30 days, and possibly, subsequently forwarded to the relevant parliamentary bodies who would consider the action to be taken on this text with specific reference to the judgment of the Court of Justice of the European Communities in Case 230/81 between the Government of the Grand Duchy of Luxembourg and the European Parliament and to the provisions of the Staff Regulations” (Official Journal C 96, p. 45).

The resolution was accordingly posted on the notice boards. As a result, one signature was withdrawn and four others were added.

4. Since reservations had been expressed about the admissibility of entering the motion for a resolution by means of the written procedure, the President of the European Parliament, on 21 and 23 March 1983, asked the Committee on the Rules of Procedure and Petitions to give an opinion on the meaning of Rule 49 of the Rules of Procedure.

5. At the sitting of 20 May 1983, before the committee had transmitted its opinion, the President of the Plenary Sitting, Lady Elles, Vice-President, informed the Parliament that:

“In accordance with the statement made by the President at the sitting of 10 March 1983, the motion for a resolution by Mr von Hassel on the consequences to be drawn from the European Parliament's adoption, on 7 July 1981, of the Zagari Report (Document 1-15/83), which had been signed by 238 Members as at 9 March 1983, had been forwarded to the Members of the Bureau and the Secretary General on the understanding that this could in no way prejudice the outcome of the deliberations of the Committee on the Rules of Procedure and Petitions” (Official Journal C 161, p. 154).

The motion for a resolution had been forwarded in accordance with Paragraphs (2) and (3) of the Resolution and pursuant to Rule 49 (5) of the Rules of Procedure of the European Parliament.

6. On 2 June 1983 the reply to the President's request was forwarded to the President by the Committee on the Rules of Procedure and Petitions, pursuant to Rule 111 (3) of the Rules of Procedure. The opinion (Document PE 84.980) interpreted Rule 49 (3) of the Rules of Procedure as meaning that the motion for a resolution was not admissible.

7. At the sitting on 10 October 1983, the President of the Parliament made the following statement:

“... I consider that the reservations concerning the admissibility of Mr von Hassel's resolution no longer hold.

With regard to the substance and content of the resolution, I would remind you of the statement I made at the sitting of 10 March 1983, according to which the relevant parliamentary bodies would consider the action to be taken on this text with specific reference to the judgment of the Court of Justice of the European

Communities in Case 230/81 between the Government of the Grand Duchy of Luxembourg and the European Parliament and to the provisions of the Staff Regulations” (Official Journal, C 307, 14. 11. 1983, p. 3).

8. The opinion of the Committee on the Rules of Procedure and Petitions was forwarded to the Bureau and the Secretary General and it seems that neither has yet taken any measures on the basis of the resolution.

II — Written procedure

1. By an application lodged on 10 June 1983, the Grand Duchy of Luxembourg instituted proceedings against the resolution in question, relying principally upon Articles 31 and 38 of the ECSC Treaty and, in the alternative, and in so far as necessary, upon Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty.

2. The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. The Court did however invite the Parliament to reply in writing to a question before the hearing.

III — Conclusions of the parties

1. The *Grand Duchy of Luxembourg* claims that the Court should:

“Admit this application as regards its form;

Declare it admissible;

Declare that it is justified in substance;

Take note that the applicant is content to defer to the judgment of the Court as regards the legality of the contested resolution;

Declare null and void for lack of competence the resolution of the European Parliament on the consequences to be drawn from the adoption by the European Parliament, on 7 July 1981, of the Zagari Report, which was the subject of a statement by the President of the sitting of the European Parliament on 20 May 1983, according to which that resolution was sent to the Members of the Bureau and to the Secretary General;

Take formal note that the applicant reserves all other rights and actions.

2. The *European Parliament* contends that the Court should:

Dismiss the application;

Order the applicant to pay the costs.

IV — Submissions and arguments of the parties

A — The definitive character of the resolution

In its defence, the *Parliament* raises objections concerning the definitive character of the resolution, in view of the fact that the question of the applicability of Rule 49 was referred to the Committee on the Rules of Procedure and Petitions.

In its reply the *Luxembourg Government* devotes considerable attention in its arguments to the definitive character of the resolution at issue, which, however, is no longer in doubt, because the Parliament, in its *rejoinder*, states that it withdraws its objection.

B — The decision-making character of the resolution

The *Parliament* contends that the resolution does not have any binding effect and that it is not directly applicable. It is only a non-binding statement of the position of the Assembly on the organization of its General Secretariat, a question which lies within the competence of the Bureau, under Rules 22 and 113 (2) of the Rules of Procedure. Since the contested resolution does not involve a modification of the powers of the Bureau (such a modification could be made only in accordance with the procedure laid down in Rule 112), the resolution cannot be regarded as having, of itself, legal effects. It is thus a simple invitation to act, as was the resolution of 7 July 1981 regarding the organization of the General Secretariat, which was the subject of the Court's judgment of 10 February 1983 in Case 230/81 (*Grand Duchy of Luxembourg v European Parliament*, [1983] ECR 255). Consequently, that decision of the Court also applies to the present case.

The *Luxembourg Government* observes that the Parliament seems to be admitting the irregularity of the procedure followed. On that question, the applicant repeats that it is content to defer to the judgment of the Court. It states, however, that this does not mean that it recognizes that the enlarged Bureau of the Parliament has any competence as regards the seat and the provisional places of work of the institutions.

The Luxembourg Government also considers that the contested resolution is not a simple invitation to act, but an undoubted decision — as can be seen from the terms of the resolution which (Point 1) uses the verb “decide” — to proceed (Point 1 (b)) to “divide up staff of the secretariat ... between the places of work”, that is to say “the place where Parliament holds its sessions, namely Strasbourg”, and, for “services that are mainly concerned with the functioning of the committees”, Brussels.

It could not be more clearly stated or decided in more direct terms that the staff of the secretariat were to be divided up between two places of work only, namely Strasbourg and Brussels. Even without the statement that Luxembourg was dedicated solely to remaining the seat of the judicial and financial institutions, there could not have been a more deliberate and open infringement of Article 4 of the Decision of 8 April 1965, which states that “the general secretariat of the Assembly and its departments shall remain in Luxembourg”. The flagrant incompatibility of these two “decisions”, that of the governments of the Member States in 1965 and that of the Parliament which is at issue here, is of itself enough to demonstrate that they are both of an identical decision-making character.

Furthermore, the “decision” provides for implementing measures: the abovementioned division of staff is to be taken into account “when recruiting new staff” (1 (c)) and the staff representatives will be fully involved “in working out the measures to be taken in implementation of this resolution” (1 (d)). Moreover the Secretary General is requested “to prepare without delay the reorganization measures required by this resolution”.

What other significance, asks the Luxembourg Government, could the forwarding of the resolution to the members of the Bureau, as referred to at the sitting of 20 May 1983, have other than the implementation of the decision which had been taken? There is no need for the applicant to take a position on the question whether or not the competence of the Bureau is “specific”, as is contended in the defence, or on the legal significance of such specific competence; it should be noted that both the Bureau and the enlarged Bureau are to carry out, among other duties assigned to them (Rule 22 (1) and Rule 24 (1)), those relating to the Parliament's internal organization (Rule 22 (2) and Rule 24 (2)).

It cannot therefore seriously be disputed that the resolution is in the nature of a decision.

4. In its *rejoinder*, the Parliament emphasizes that the resolution is concerned only with general measures

regarding the organization of the General Secretariat and that decisions of this kind are solely within the powers of the Bureau of the Parliament.

Under the Staff Regulations (Articles 1, 2, 7 and 20), the appointing authority alone has the power to determine the place of work of officials.

Since the power to determine the place of work of officials clearly belongs to the internal organs of the Parliament, a resolution adopted by a plenary session of the Assembly can only propose and, if necessary, give a political orientation to any decision which the competent organs of the Parliament may take, without the content of their decisions being in any way circumscribed by the resolution.

Under those circumstances, the Parliament considers that the resolution cannot be contested before the Court (see the judgment of the Court in Case 60/81, *IBM*, [1981] ECR 2639 and Case 122/83 R, *De Compte*, [1983] ECR 2151). To decide otherwise would be to permit external intervention in the relations between the internal organs of Parliament, and this would both undermine the autonomy of an institution of the European Community and constitute an infringement of the obligations set out in Article 5 of the EEC Treaty.

The Parliament concludes that the resolution can have no legal effect on the assignment of officials of the General Secretariat of the Parliament.

In fact, since the adoption of the resolution, the Bureau has not taken any decision concerning the assignment of officials on the basis thereof. The resolution is under consideration by the Bureau, which will examine in the first place, as the President announced at the sitting of 10 October 1983, whether or not it is compatible with the judgment of the Court of Justice of 10 February 1983 in Case 230/81.

C — Substance

The *Luxembourg Government* observes that the resolution at issue seems to have been adopted under the written procedure provided for in Rule 49 of the Rules of Procedure of the Parliament, a procedure which was considered inapplicable by the Herman Report, which was approved by the Committee on the Rules of Procedure and Petitions. It is content to rely on the wisdom of the court in regard to the Court in regard to these questions.

D — The power of the Parliament to take the measures contained in the contested resolution

1. The *Luxembourg Government* contends that, as the Court confirmed in its judgment of 10 February 1983 in Case 230/81 (cited above), it is for the governments of the Member States to determine the seat of the institutions, including the determination of the provisional places of work of the institutions. Although it is true that the Parliament is entitled, by virtue of the power of internal organization conferred upon it by the Treaty, to take appropriate measures to ensure the smooth functioning and conduct of its proceedings, those measures must nevertheless, as the Court also confirmed in the same judgment, respect the power of the governments of the Member States to determine the seat of the institutions and respect the decisions taken provisionally in the meantime.

By a decision of 8 April 1965 on the provisional location of certain institutions and departments of the Communities, and in particular by Article 4 of that decision, the governments of the Member States decided that "the General Secretariat of the Assembly and its departments shall remain in Luxembourg". Moreover, the Court, in the aforementioned judgment, decided that any decision to transfer, totally or partially, the General Secretariat of the Parliament or its departments would constitute an infringement of the said Article 4 of the decision of 8 April 1965 and of the assurances which that decision was intended to give to the Grand Duchy of Luxembourg pursuant to Article 37 of the Treaty establishing a single Council and a single Commission of the European Communities.

The Luxembourg Government accepts that in the same judgment the Court decided that the Parliament, in

the absence of a seat or even a single place of work, must be in a position to maintain, in the various places of work outside the place where its secretariat is established, the infrastructure essential for ensuring that it can fulfil in all those places the tasks which are entrusted to it by the Treaties.

However, the contested resolution does not respect the limits placed upon this power of the Parliament.

The Luxembourg Government considers that the resolution decides purely and simply to “proceed to divide up the staff of the secretariat in the most rational manner between the places of work”. It can be seen moreover from the preamble to the resolution that, in the view of the Parliament, the expression “places of work” means Strasbourg and Brussels; Luxembourg is therefore clearly excluded, being “dedicated to remaining the seat of the judicial and financial institutions”. It is also clear from Point 1 (b) of the decision that the division affects the whole of the Secretariat, because it is based on whether the services are “mainly concerned with the functioning of part-sessions” or with “the functioning of the committees”.

In the applicant's opinion, the contested resolution goes beyond the powers of the Parliament and infringes the above-mentioned provisions, which, as the Court confirmed in its aforementioned judgment of 10 February 1982, reserves to the Member States the power to determine the seat of the institutions and the places of work.

2. The *Parliament* contends that it has, independently of the powers of the governments of the Member States, the power, as the Court confirmed in the same judgment, “to discuss any question concerning the Communities, to adopt resolutions on such questions ...”

Consequently, the mere fact that it adopts a resolution on a matter which may interest the Member states cannot constitute an infringement of the powers of the Member States.

Furthermore, it points out that the President of the Parliament stated, before the Assembly, that the Bureau would consider the action to be taken on the contested resolution “with specific reference to the judgment of the Court of Justice of the European Communities in Case 230/81 between the Government of the Grand Duchy of Luxembourg and the European Parliament and to the provisions of the Staff Regulations”.

It is clear from the foregoing that, with the agreement of the Plenary Assembly, the Bureau of the European Parliament intended to take such action with regard to the contested resolution as was in conformity with Community law and in particular with the case-law of the Court of Justice.

Since no decision has yet been taken by the Bureau, the application is unfounded.

3. The *Luxembourg Government replies* on the latter point that, in view of the fact that the contested resolution is in itself contrary to the judgment of the Court in Case 230/81, any action which the Bureau might take with regard to it could not possibly be in conformity with Community law.

As regards the question whether or not the resolution constitutes a deliberation on a question upon which the Court of Justice has recognized the Parliament's right to deliberate, the arguments of the Luxembourg Government have been summarized above at page 1949.

V — Oral procedure

The Government of the Grand Duchy of Luxembourg, represented by its Agent, A. Elvinger of the Luxembourg Bar, and the European Parliament, represented by its Director General, F. Pasetti-Bombardella, and its Legal Adviser, R. Bieber, presented oral argument at the sitting on 17 January 1984.

The Advocate General delivered his opinion at the sitting on 22 February 1984.

Decision

1 By an application lodged at the Court Registry on 10 June 1983, the Grand Duchy of Luxembourg brought proceedings pursuant to Articles 31 and 38 of the ECSC Treaty and, in the alternative, pursuant to Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty seeking a declaration that the resolution on the consequences to be drawn from the European Parliament's adoption, on 7 July 1981, of the Zagari Report, published in the minutes of the sitting of the European Parliament on 20 May 1983 (Official Journal 1983, C 161, 20. 6. 1983, p. 155), is void.

2 It should be recalled that the resolution of the Parliament of 7 July 1981, adopting the Zagari Report, was the subject of an application for a declaration of nullity brought by the Grand Duchy of Luxembourg, which led to the judgment of the Court of 10 February 1983 (Case 230/81 *Luxembourg v Parliament* [1983] ECR 255).

3 According to the resolution at issue, the Parliament, considering that “it is entitled to take, as regards the organization of its work, all necessary decisions that do not require the participation or approval of the Council”, that, “in implementation of the decisions of 7 July 1981, all part-sessions are held in Strasbourg, an official place of work of the European Parliament”, that “the meetings of the committees and political groups are normally held in Brussels” and that “Luxembourg is dedicated to remaining the seat of the judicial and financial institutions”,

“1. Has decided:

a) To draw, in the 1983 budget and in subsequent budgets, the consequences of the decisions of 7 July 1981;

b) To proceed to divide up staff of the Secretariat in the most rational manner between the places of work

by arranging for services that are mainly concerned with the functioning of part-sessions to be based permanently in the place where Parliament holds its sessions, namely Strasbourg,

by arranging for services that are mainly concerned with the functioning of the committees to be based in Brussels;

c) To take account in future of this division of staff when recruiting new staff;

d) To take account of the legitimate interests of staff by applying as broadly as possible the principle of voluntary transfer and by fully involving staff representatives in working out the measures to be taken in implementation of this resolution;

2. Instructs the Bureau to institute within the administration structural changes that will permit greater flexibility in the work rate, for instance where the rapid organization of special part-sessions is concerned;

3. Instructs the Secretary General to prepare without delay the reorganization measures required by this resolution.”

The conduct of parliamentary proceedings

4 The contested resolution was adopted without debate and without vote by the written procedure provided for in Rule 49 of the Rules of Procedure of the Parliament, as it was worded at the time of the facts.

5 As can be seen from the minutes of the sitting on 10 March 1983 (Official Journal C 96, 11. 4. 1983, p. 45), the President of the Parliament informed the Plenary Assembly that the motion for the resolution at issue “had been signed by more than half the Members of Parliament”. He also stated that, “since ... this motion for a resolution had been tabled with all the signatures, it had not been possible to apply the procedure laid down in paragraphs 2 and 3 of Rule 49, particularly as regards Members' rights to table amendments”. The President considered that “under these circumstances the motion for a resolution should be posted on the notice boards for at least 30 days, and possibly, subsequently forwarded to the relevant

parliamentary bodies who would consider the action to be taken on this text with specific reference to the judgment of the Court of Justice of the European Communities in Case 230/81 between the Government of the Grand Duchy of Luxembourg and the European Parliament and to the provisions of the Staff Regulations".

6 The President of the Parliament, in a letter of 21 March 1983, requested the Committee on the Rules of Procedure and Petitions to give an opinion on whether Rule 49 was applicable to matters relating to the internal organization of the European Parliament and, if so, how this affected the mandate given to the Bureau by the Resolution of 7 July 1981 (Working Document of the Committee, PE 84.980, of 18. 5. 1983).

7 By a letter of 23 March 1983, a second question was submitted to the Committee concerning the possibility of amendments and the deadline for tabling them (same document, No PE 84.980).

8 After it had been announced that the resolution had been tabled, one signature was withdrawn and four others were added (Minutes of the sitting of 20. 5. 1983, Official Journal C 161, 20. 6. 1983, p. 155).

9 At the sitting on 20 May 1983, the President of the sitting informed the Plenary Assembly that, "in accordance with the statement made by the President at the sitting on 10 March 1983, the motion for a resolution ... had been forwarded to the members of the Bureau and to the Secretary General on the understanding that this could in no way prejudice the outcome of the deliberations of the Committee on the Rules of Procedure and Petitions". That declaration was followed in the minutes by the text of the resolution at issue and the list of signatories (Point 5 of the minutes).

10 The opinion of the Committee on the Rules of Procedure and Petitions, dated 18 May 1983, was forwarded to the President on 2 June 1983. In that opinion, the Committee states that, since the motion for the resolution at issue has obtained the signature of more than half of the members, it "has ... become a resolution of Parliament like any other". The opinion concludes that the procedure under Rule 49 does not apply where "Parliament has been consulted ... or is required to exercise a specific duty relating to arrangements for its internal organization" (Document PE 84.980 of 18 May 1983, cited above).

11 An objection to that interpretation having been submitted under Rule 111 (4) of the Rules of Procedure (Minutes of the sitting on 7. 6. 1983, Document PE 85.065, Official Journal C 184, 11. 7. 1983, p. 17), the Parliament, at the sitting on 9 June 1983, approved "the request for referral back to Committee of this interpretation" (Minutes of the sitting on 9. 6. 1983, Document PE 85.067, Official Journal C 184, 11. 7. 1983, p. 104).

12 On the following day, 10 June 1983, the Grand Duchy of Luxembourg instituted the present proceedings for a declaration that the resolution in question was void.

13 At the sitting on 10 October 1983, the President informed Parliament that the Chairman of the Committee on the Rules of Procedure and Petitions had forwarded an opinion, in which it was stated that, "following Parliament's rejection on 9 June 1983 of an interpretation proposed by the Committee ..., the Committee considered that an amendment to Rule 49 of the Rules of Procedure should be submitted to Parliament in the near future. ... At all events, such an amendment to Rule 49 would not be retroactive". The President therefore considered "that the reservations concerning the admissibility of the resolution no longer held". With regard to "the substance and content of the resolution", he reminded Parliament "of the statement which he had made at the sitting of 10 March 1983, according to which 'the relevant parliamentary bodies would consider the action to be taken on this text with specific reference to the judgment of the Court of Justice of the European Communities in Case 230/81 between the Government of the Grand Duchy of Luxembourg and the European Parliament and to the provisions of the Staff Regulations'" (Official Journal C 307, 14. 11. 1983, p. 3).

14 In its report of 28 October 1983 (Working Document No 1-975 of 9 November 1983, PE 86.280/fin.) the Committee on the Rules of Procedure and Petitions stated, as regards its interpretation of Rule 49, that "at the plenary sitting of 9 June 1983, the European Parliament rejected this interpretation" and it proposed an

amendment to the said rule.

15 It appears that, up to the present moment, neither the Bureau nor the General Secretariat have taken any measures on the basis of the resolution at issue.

Admissibility

16 The Parliament puts forward two submissions in support of its claim that the application is inadmissible: the first is that the application is premature and the second is that the contested resolution is not in the nature of a decision.

17 As regards the first submission, the Parliament contends in its defence that the resolution at issue could not be the subject of an application to the Court because it was not, at the date of the application, a definitive act.

18 However, it appears both from the rejoinder and from the defendant's statements during the oral procedure that this submission has been abandoned. There is thus no need to consider it.

19 As regards the second submission, the contested resolution constitutes, in the Parliament's view, a simple invitation to act addressed to the competent organs, in this case the Bureau and the Secretary General of Parliament, the only purpose of which is to make proposals and, if necessary, to give a political orientation to any decisions which those organs may take; the resolution is not intended to determine the content of those decisions. It is thus an administrative measure relating to the internal organization of Parliament, and does not of itself produce legal effects; it is therefore of the same nature as the resolution which was the subject of the application in Case 230/81.

20 The Luxembourg Government contends that the fact that the resolution is in the nature of a decision is demonstrated both its wording and its content, inasmuch as it contains specific provisions dealing in particular with the division of staff and providing for precise implementing measures.

21 It should be pointed out, without attaching excessive importance to the use of the verb “decide” in the text of the resolution, that it is clear from its very terms that the resolution provides for specific measures, consisting in the permanent division of the services and staff of the Secretariat between Strasbourg and Brussels.

22 Whilst it is true that the Parliament, in Points 2 and 3 of the resolution at issue, instructs the Bureau and the Secretary General to institute structural changes and prepare re-organization measures, it does so because it has decided upon the changes and the re-organization and requires that the division decided upon should be followed by implementing measures.

23 Consideration of the content of the resolution at issue shows that it is of a specific and precise decision-making character, producing legal effects.

24 Consequently, the second submission must be rejected.

Substance

25 The Luxembourg Government contends that the Parliament, by adopting the resolution at issue, exceeded the powers conferred upon it by the Treaty. It argues that, whilst the Parliament has the right to take appropriate measures to ensure the smooth functioning of its departments, it must none the less respect the Member States' right to fix the seat of the institutions, which has been exercised by decisions taken provisionally, as the Court recognized in its judgment of 10 February 1983 in Case 230/81, cited above. In that judgment, the Court ruled that the Parliament could only maintain in the various places of work the infrastructure essential for ensuring that it was able to fulfil the tasks which were entrusted to it; any other decision to transfer its General Secretariat, in whole or in part, constituted an infringement of Article 4 of the

decision of the Member States of 8 April 1965 on the provisional location of certain institutions and departments of the Communities. However, by deciding to “divide up staff of the Secretariat in the most rational manner” between Strasbourg and Brussels alone, to the exclusion of Luxembourg, a measure which affects the Secretariat in its entirety, the Parliament has not respected the limits laid down by the abovementioned judgment of the Court.

26 In the Parliament's view, it has, “as the Court confirmed in Case 230/81 (at paragraph 39 of its decision) ..., an inherent right, independent of the powers of the Governments of the Member States, to discuss any question concerning the Communities, to adopt resolutions on such questions ... Consequently, the mere fact that it adopts a resolution on a question which might concern the Member States cannot constitute an infringement of the powers of the Member States”.

27 The Parliament emphasizes furthermore that the content of the resolution at issue must be evaluated in the light of the statements made by its President on 10 March and 10 October 1983, according to which the Bureau and the General Secretariat were to consider the action to be taken with regard to that resolution with specific reference to the judgment of the Court in the abovementioned case and to the provisions of the Staff Regulations; it maintains that in the light of those statements, which the Parliament has adopted, it is clear that the resolution at issue is not intended to modify the existing situation in a way which is contrary to the judgment of the Court.

28 It should be pointed out in the first place that, whilst it is true that the resolution in dispute was, after its adoption, to be forwarded to the Bureau and that the President of the Parliament had stated that the competent organs of the Parliament “would consider the action to be taken on this text with specific reference to the judgment of the Court of Justice of the European Communities in Case 230/81”, the fact remains that the Parliament, by adopting the resolution, on the one hand, asserted its authority to take the measures at issue and, on the other, intended to give effect to its wish to divide up its services and its staff between places other than Luxembourg. In those circumstances, the compatibility of the resolution with the decision of the Member States of 8 April 1965 must be judged on its own merits.

29 In the second place, it should be borne in mind that Article 4 of the Decision of 8 April 1965 on the provisional location of certain institutions and departments of the Communities (Journal Officiel No 152, 13. 7. 1967, p. 18) provides that “the General Secretariat of the Assembly and its departments shall remain in Luxembourg”. It must also be emphasized that the Court, in the judgment cited above, stated that the Parliament “must be in a position to maintain in the various places of work outside the place where its Secretariat is established the infrastructure essential for ensuring that it may fulfil in all those places the tasks which are entrusted to it by the Treaties”.

30 The Court added however that the transfers of staff must not exceed the limits mentioned, since any decision to transfer the General Secretariat of the Parliament or other departments, wholly or partially, *de jure* or *de facto*, would constitute an infringement of Article 4 of the Decision of 8 April 1965 and of the assurances which that decision was intended to give to the Grand Duchy of Luxembourg pursuant to Article 37 of the Treaty establishing a Single Council and a Single Commission of the European Communities.

31 Consideration of the content of the resolution at issue shows that those limits have not been respected. The resolution expressly provides for the division of the staff of the General Secretariat between Strasbourg and Brussels and for its permanent establishment in those places. In its last recital it refers to Luxembourg as being “dedicated to remaining the seat of the judicial and financial institutions”. The Secretariat would therefore no longer be based in Luxembourg.

32 It must be concluded therefore that the Parliament has exceeded the limits of its powers and that, consequently, the resolution at issue must be declared void.

Costs

33 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

34 Since the Parliament has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that the resolution of the European Parliament on the consequences to be drawn from the European Parliament's adoption, on 7 July 1981, of the Zagari Report (Official Journal C 161, 20. 6. 1983, p. 155) is void;

2. Orders the European Parliament to pay the costs.

Mertens de Wilmars
Koopmans
Bahlmann
Galmot
Pescatore
Mackenzie Stuart
O'Keeffe
Bosco
Due
Everling
Kakouris

Delivered in open court in Luxembourg on 10 April 1984.

Registrar
P. Heim

President
J. Mertens de Wilmars

1 - Language of the Case: French