Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

13 December 2012*

(Actions for annulment — Law governing the institutions — Calendar of plenary part-sessions of the European Parliament for 2012 and 2013 — Protocols on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union)

In Joined Cases C-237/11 and C-238/11,

TWO ACTIONS for annulment under Article 263 TFEU, brought on 17 May 2011,

French Republic, represented by E. Belliard, G. de Bergues and A. Adam, acting as Agents,

applicant,

supported by:

Grand Duchy of Luxembourg, represented by C. Schiltz, acting as Agent,

intervener,

v

European Parliament, represented by C. Pennera, N. Lorenz and E. Waldherr, acting as Agents, with an address for service in Luxembourg,

defendant,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts, G. Arestis, T. von Danwitz (Rapporteur) and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 5 June 2012,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2012

gives the following

* Language of the case: French.

Judgment

1 By its applications in Cases C-237/11 and C-238/11, the French Republic seeks the annulment of the votes of the European Parliament of 9 March 2011 concerning the Parliament's calendar of part-sessions for 2012 and for 2013, respectively ('the contested votes').

Legal framework

2 On 12 December 1992, the Governments of the Member States adopted, on the basis of Articles 216 EEC, 77 ECSC and 189 EAEC, a decision taken by common agreement on the location of the seats of the institutions and of certain bodies and departments of the European Communities (OJ 1992 C 341, p. 1; 'the Edinburgh Decision').

3 At the intergovernmental conference which led to the adoption of the Treaty of Amsterdam, it was decided to append the Edinburgh Decision to the EU, EC, ECSC and EAEC Treaties as Protocol No 12.

4 At present, Protocol No 6, annexed to the EU Treaty and to the Treaty on the Functioning of the European Union (TFEU), and Protocol No 3, annexed to the EAEC Treaty, concerning the location of the seats of the institutions and of certain bodies and departments of the European Communities ('the protocols concerning the seats of the institutions'), provide, in a sole article, under point (a) and in identical terms to Article 1(a) of the Edinburgh Decision, that:

'The European Parliament shall have its seat in Strasbourg where the 12 … monthly plenary [part-]sessions, including the budget session, shall be held … [A]dditional plenary sessions shall be held in Brussels. The Committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.'

Background to the dispute

5 On 3 March 2011, the Conference of Presidents adopted two draft calendars of part-sessions, one for 2012 and one for 2013. In relation to October 2012, the draft provided for two plenary part-sessions to be held, the first from 1 to 4 October, and the second from 22 to 25 October. In respect of October 2013, the draft also provided for two plenary part-sessions to be held, the first from 30 September to 3 October, and the second from 21 to 24 October.

6 On 7 March 2011, Mr Fox, Member of the European Parliament (MEP), tabled two amendments to the draft calendars adopted by the Conference of Presidents.

7 The first amendment, relating to 2012, read:

'The calendar of part-sessions for 2012 should be amended as follows, by:

— cancelling the part-session in week 40 (from 1 to 4 October);

— splitting October part-session II (from 22 October to 25 October) into two separate part-sessions:

  — part-session 1: 22 and 23 October;

  — part-session 2: 25 and 26 October.'

8 The second amendment, relating to 2013, was drafted as follows:

‘The calendar of part-sessions for 2013 should be amended as follows, by:

— cancelling the part-session in week 40 (from 30 September to 3 October);

— splitting October part-session II (from 21 October to 24 October) into two separate part-sessions:

— part session 1: 21 and 22 October;

— part session 2: 24 and 25 October.’

9 The first amendment, relating to the calendar of part-sessions for 2012, was adopted by 357 votes in favour, 255 votes against and 41 abstentions.

10 Accordingly, the calendar of part-sessions for 2012, as thus amended, provided for two plenary part-sessions to be held in October during the same week: on 22 and 23 October, then on 25 and 26 October.

11 The second amendment, relating to the calendar of part-sessions for 2013, was adopted by 356 votes in favour, 253 votes against and 35 abstentions.

12 Accordingly, the calendar of part-sessions for 2013, as thus amended, provides that two plenary part-sessions are to be held in October during the same week: on 21 and 22 October, then on 24 and 25 October.

13 On the view that the votes adopted, following those amendments, during the Parliament’s sitting of 9 March 2011 are contrary to the protocols concerning the seats of the institutions, the French Republic brought the present actions.

Procedure before the Court and the forms of order sought by the parties

14 By order of the President of the Court of 21 September 2011, the Grand Duchy of Luxembourg was granted leave to intervene in Cases C-237/11 and C-238/11 in support of the form of order sought by the French Republic.

15 By order of the President of the Court of 9 January 2012, Cases C-237/11 and C-238/11 were joined for the purposes of the oral procedure and the judgment.

16 The French Government claims that the Court should:

— annul the contested votes;

— order the Parliament to pay the costs.

17 The Parliament contends that the Court should:

— dismiss the actions as inadmissible;

— in the alternative, dismiss the actions as unfounded; and

— order the applicant to pay the costs.

18 The Grand Duchy of Luxembourg claims that the Court should:

— annul the contested votes;

— order the Parliament to pay the costs.

The actions

Admissibility

19 The Parliament calls into question the admissibility of the actions on the ground that the vote on its calendar constitutes a measure of internal organisation which is not 'challengeable' under Article 263 TFEU.

20 In that regard, it is sufficient to note that, in accordance with settled case-law, the question whether the contested votes relate exclusively to the internal organisation of the Parliament or whether they produce legal effects vis-à-vis third parties is an issue inseparably associated with consideration of the content of those votes and that, in consequence, it is necessary to consider the merits of the actions (Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255, paragraph 30; Joined Cases 358/85 and 51/86 *France* v *Parliament* [1988] ECR 4821, paragraph 15; and Joined Cases C-213/88 and C-39/89 *Luxembourg* v *Parliament* [1991] ECR I-5643, paragraph 16).

Substance

Arguments of the parties

21 The French Republic raises a single ground for annulment, alleging that the contested votes infringe the protocols concerning the seats of the institutions and, consequently, fail to comply with the judgment in Case C-345/95 *France* v *Parliament* [1997] ECR I-5215 (the judgment in *France* v *Parliament*). By those votes, the French Republic submits, the Parliament cancelled 1 of the 12 monthly plenary part-sessions to be held in Strasbourg (France) each year.

22 First, according to the French Republic, the Parliament is bound by its practice concerning the duration of its part-sessions, as laid down in the protocols concerning the seats of the institutions. Moreover, by providing that two of the 12 monthly plenary part-sessions are to be reduced from 4 to 2 days and are to take place during the same week in October, the Parliament is treating part of the substantive content of those protocols as being redundant.

23 Secondly, the French Republic submits that the part-sessions scheduled for October disrupt the 'regular basis' on which the 12 plenary part-sessions must take place in accordance with paragraph 29 of the judgment in *France* v *Parliament*.

24 Thirdly, the French Republic submits that, in that judgment, the Court held that additional plenary part-sessions cannot be scheduled for any other place of work unless the Parliament holds the 12 ordinary plenary part-sessions in Strasbourg.

25 Lastly, the French Republic argues that the Parliament cannot rely on arguments related to the internal organisation of its work in order to justify the contested votes.

26 In response, the Parliament contends, first of all, that the protocols concerning the seats of the institutions do not determine the duration of a monthly plenary part-session.

27 The Parliament argues that, on the contrary, it is apparent from paragraphs 15 and 16 of the judgment in Case 149/85 *Wybot* [1986] ECR 2391 that the determination of the duration of its part-sessions falls within the Parliament's power to adopt rules for its own internal organisation. Although it is true that that judgment relates to the duration of the annual session, there is no reason for a different conclusion to be drawn as regards the determination of the duration of monthly plenary part-sessions. Thus, in the absence of an express determination of the duration of a plenary part-session, the Parliament is free to determine the duration of its plenary part-sessions, in accordance with Article 232 TFEU.

28 Next, the Parliament contends that Article 341 TFEU – which provides that only '[t]he seat of the institutions of the Union shall be determined by common accord of the governments of the Member States' – must be interpreted strictly.

29 On that basis, the Court acknowledged, in paragraph 32 of its judgment in *France* v *Parliament*, that the Member States did not encroach on the Parliament's power to determine its own internal organisation by placing certain constraints on it as regards the organisation of its work, since such constraints are inherent in the need to determine the Parliament's seat while maintaining several places of work for the institution.

30 However, it is not necessary – the Parliament argues – to determine the duration of the Parliament's monthly plenary part-sessions in order to determine its seat, with the result that that determination falls exclusively within the Parliament's remit. In those circumstances, it is not for the governments of the Member States to determine the duration of plenary part-sessions in the protocols concerning the seats of the institutions, since the Parliament is at liberty to determine the duration of those sessions in accordance with Article 232 TFEU.

31 Lastly, the Parliament contends that the protocols concerning the seats of the institutions must be construed in such a way as to give useful effect to the Parliament's power to determine its own internal organisation.

32 In that regard, the Parliament invokes, first of all, the fact that its earlier practice in relation to the duration of its plenary part-sessions cannot bind it in its future decision making. The Parliament cannot be required, in the light of the fundamental changes which have taken place since 1992 in relation to its powers, composition and functioning, to continue the practice that it had followed prior to the adoption of the Edinburgh Decision. In that context, the Parliament points out that the number of additional plenary part-sessions held in Brussels has diminished continually and considerably. Although, between 1999 and 2004, the number of additional plenary part-sessions per year varied between six and eight, it was reduced to six per year between 2004 and 2009, five in 2010 and 2011 and four in 2012 and 2013. That reduction in the number of plenary part-sessions reflects – as do the contested votes – the changes in the functioning of the Parliament. The institution has in fact seen a steady increase in the number of its committee meetings, since its activities are now carried out increasingly within committees rather than at plenary sittings.

33 Secondly, by the contested votes, the Parliament seeks to reduce the impact on its activities of the place where its seat has been determined. Thus, in order to put its powers to determine its own internal organisation to useful effect, it needs to be in a position to limit the inconveniences arising as a result of having numerous places of work. Accordingly, it is for the Parliament to minimise the restrictions – of an economic or environmental nature, or relating to transport – brought about by that situation, by organising two plenary part-sessions during the same week. In that regard, the Parliament states that the costs resulting from the geographical dispersion of its places of work are in the region of EUR 160 million and that holding two sessions in Brussels instead of in Strasbourg in September 2008 enabled it to save approximately EUR 2.5 million.

34 Thirdly, the Parliament points out that, in relation to the 2 years at issue, the contested votes concern only 2 plenary part-sessions out of 12. In addition, since no plenary part-session is held in August, two sessions have to take place in October, in any event. In that regard, the Parliament notes – as regards the budget session which is also held in October – that, although the exercise of budgetary powers at plenary sitting is neither unnecessary nor redundant, account should none the less be taken of the fact that the budgetary procedure takes up only a few hours of a part-session. Lastly, the Parliament argues that the fear, expressed by the French Republic, that the reduction in the duration of monthly plenary part-sessions will become the general rule is purely hypothetical.

35 In its statements in intervention, the Grand Duchy of Luxembourg submits, first, that, by adopting the contested votes, the Parliament was not exercising its power to determine its own internal organisation with a view to improving its functioning, but was seeking in reality to determine the place of its seat itself. Second, that Member State points out the distinction between monthly plenary part-sessions which take place in Strasbourg and additional plenary part-sessions which the Parliament is authorised to hold in Brussels. Those different types of part-session, which are also distinguishable in terms of duration in that those held in Brussels have to be shorter, are not interchangeable. In the view of the Grand Duchy of Luxembourg, the two plenary part-sessions scheduled for October 2012 and October 2013 by the contested votes must be regarded as constituting just 1 monthly part-session in each case. The number of monthly plenary part-sessions held in Strasbourg is accordingly reduced to 11, in infringement of the protocols concerning the seats of the institutions.

Findings of the Court

36 It is appropriate to recall at the outset the guidance offered by the judgment in *France* v *Parliament*. Even though that judgment concerns the interpretation of the Edinburgh Decision, that decision has been incorporated without amendment into the protocols concerning the seats of the institutions. In addition, not only do the parties agree on the relevance of that judgment for the present cases, but they also rely on it to support their divergent points of view.

37 The judgment in *France* v *Parliament* is based on considerations regarding the relationship between, on the one hand, the competence of the Member States to determine the Parliament's seat and, on the other, the Parliament's power to determine its own internal organisation.

38 In relation to the competence of the Member States to determine the location of the Parliament's seat, the Court has held that, given a plurality of working places, the exercise of that competence involved not only the obligation to determine the location of the seat of the Parliament but also the implied power to give precision to that term by indicating the activities which must take place there (see the judgment in *France* v *Parliament*, paragraph 24).

39 In that regard, the Court has held that the intention of the Member States was to make provision for the seat of the Parliament, in Strasbourg, to be the principal place where it meets in ordinary plenary sitting, and to that end to specify the mandatory number of part-sessions which must be held there, and for the Parliament to exercise its budgetary powers in plenary sitting during one of the ordinary plenary part-sessions held at the seat of the institution (see the judgment in *France* v *Parliament*, paragraphs 25 and 28).

40 In the light of those considerations, the Court concluded that the Edinburgh Decision must be interpreted as defining the seat of the Parliament as the place where 12 ordinary plenary part-sessions must take place on a regular basis, including those during which the Parliament is to exercise the budgetary powers conferred upon it by the Treaty. By the same token, the Court held that additional plenary part-sessions cannot be scheduled for any other place of work unless the Parliament holds the 12 ordinary plenary part-sessions in Strasbourg, where it has its seat (see the judgment in *France* v *Parliament*, paragraph 29).

41 In addition, the Court held that, by so defining the Parliament's seat, the Member States have not encroached upon the power of the Parliament to determine its own internal organisation. Whilst the Parliament is authorised, under that power of internal organisation, to take appropriate measures to ensure the proper functioning and conduct of its proceedings, its decisions in that regard must respect the competence of the Member States to determine the seat of the institutions (see the judgment in *France* v *Parliament*, paragraphs 30 and 31).

42 However, the Member States have the duty, in exercising their competence to determine the seat of the institutions, to respect the Parliament's power to determine its own internal organisation and to ensure that such decisions do not stand in the way of the proper functioning of that institution. In that regard, the Court has held that the constraints imposed on the Parliament by the Edinburgh Decision are inherent in the need to determine its seat while maintaining several places of work for the institution, and do not conflict with the practice generally followed by the Parliament (see the judgment in *France* v *Parliament*, paragraph 32 and the case-law cited).

43 In the light of that guidance, it must be determined whether, as the French Republic submits, the Parliament infringed the protocols concerning the seats of the institutions by fixing, for 2012 and 2013, 2 two-day plenary part-sessions in the same week of October, in addition to the 10 monthly plenary part-sessions which take place every month except in August and October.

44 In that regard, it is not disputed that, following the amendments tabled by Mr Fox MEP, the Parliament – through the contested votes – departed from the draft calendars adopted by the Conference of Presidents as regards the monthly plenary part-sessions scheduled for October 2012 and October 2013.

45 The draft calendars adopted by the Conference of Presidents provided for a plenary part-session to be held in Strasbourg every month, except in August, for which no sessions were scheduled, and in October, for which two part-sessions were scheduled. Thus, in 2012, those part-sessions were to take place from 1 to 4 October and from 22 to 25 October and, in 2013, from 30 September to 3 October and from 21 October to 24 October.

46 Those draft calendars were consistent with the Parliament's practice, both as regards not holding a plenary part-session in August – and accordingly having to hold that part-session in a different month of the year, in addition to the part-session already scheduled for the given month – and as regards the duration of the monthly plenary part-sessions. As the parties agreed at the hearing, such part-sessions take place, in line with the Parliament's general practice, over four days, namely from Monday at 17h00 to Thursday at 17h00.

47 As emerges from the contested votes, the monthly plenary sessions scheduled for 2012, previously scheduled from 1 to 4 October and from 22 to 25 October, were replaced by two part-sessions to take place during the same week (on 22 and 23 October and on 25 and 26 October). Similarly, for 2013, the monthly plenary part-sessions previously scheduled from 30 September to 3 October and from 21 October to 24 October, were replaced by part-sessions to take place during the same week (on 21 and 22 October and on 24 and 25 October).

48 The Court finds that the plenary part-sessions as thus provided for in the contested votes for October 2012 and October 2013 do not satisfy the requirements under the protocols concerning the seats of the institutions.

49 First of all, it is necessary to examine the background to the contested votes; the wording of the amendments leading to those votes; and the Parliament's general practice.

50 It is apparent, first, on reading the drafts of the Conference of Presidents, referred to in paragraphs 5 and 45 above, that the draft calendar of plenary part-sessions for October 2012 and 2013 differs clearly from that set out in the contested votes.

51 Next, it is clear from the actual wording of the amendments which led to the contested votes that their purpose was to 'cancel' the first period of plenary part-sessions proposed for October 2012 and 2013 and 'to split [the second period] into two'.

52 Thus, according to the wording of those amendments, one of the two four-day part-sessions scheduled for October in the two years at issue had to be cancelled, whereas the other part-session, which was split into two, was converted into two two-day part-sessions.

53 Lastly, that reading of the contested votes is borne out by the Parliament's own practice, as is apparent from the agenda for the part-sessions of 22 and 23 October and 25 and 26 October 2012.

54 It can be seen from the agenda for those part-sessions that the first took place on Monday 22 October from 17h00 to 23h00 and on Tuesday from 08h30 to 23h00, whereas the second took place on Thursday 25 October from 09h00 to 23h00 and on Friday 26 October from 09h00 to 13h30.

55 Thus, the two newly created plenary part-sessions for 2012 do not correspond to the duration of a single period of ordinary plenary part-sessions as scheduled for the other months of 2012. As a general rule, those part-sessions start on Monday at 17.00 and end at 23.00, then continue on Tuesday from 09.00 to 23.00, on Wednesday from 09.00 to 23.00 and on Thursday from 09.00 to 17.00, when they end.

56 It is clear from that comparison of the calendars that the contested votes objectively entail a significant reduction in the time available to the Parliament for its debates or deliberations in October 2012 and October 2013. As compared with the ordinary plenary part-sessions, the actual time available for the part-sessions during October is reduced by more than half.

57 Second, it is apparent from paragraph 29 of the judgment in *France* v *Parliament* that the seat of the Parliament is the place where '12 ordinary plenary part-sessions' of that institution must take place on a regular basis, and that those 12 part-sessions must be distinguished from the 'additional plenary part-sessions' which cannot be scheduled unless the Parliament actually holds the 12 ordinary plenary part-sessions.

58 That distinction presupposes that, for a part-session to fall in the category of 'ordinary plenary part-session', it must be equivalent to the other ordinary monthly part-sessions scheduled in accordance with the protocols concerning the seats of the institutions, in particular in terms of the actual duration of the part-sessions.

59 However, as can be seen from the findings made in paragraphs 54 to 56 above, the part-sessions in October 2012 and 2013 are not equivalent in terms of duration to the other periods of ordinary monthly part-sessions scheduled by the same votes.

60 Third, as regards the Parliament's argument relating to its power to determine its own internal organisation, although it is indisputable that the Parliament holds such a power, that institution must, as noted in paragraph 41 above, in exercising that power, respect the competence of the Member States to determine its seat, since the protocols concerning the seats of the institutions are predicated on mutual respect on the part of the Member States and the Parliament for each other's areas of competence.

61 In any event, the Court notes that, during the proceedings before the Court, the Parliament did not give any reasons, related to the exercise of its power to determine its own internal organisation, justifying the fact that, in spite of the constant expansion of the Parliament's areas of competence, the duration of the 2 plenary part-sessions for October 2012 and October 2013 had been reduced as compared with the other 10 monthly plenary part-sessions and in contrast to the Parliament's general practice.

62 So far as concerns the argument relating to the increase in the number of meetings of the Parliament's committees and in the activities now assigned to those committees, the Court points out that, although that increase is to a large extent attributable to the constant expansion of the Parliament's areas of competence, it does not explain how the work to be carried out in a plenary part-session would be any less; nor does it explain the reasons why such an increase in the work carried out by the committees would have repercussions specifically on the plenary part-sessions to be held in October.

63 First, the Parliament has not been able to explain the reasons why the duration of the second period of plenary part-sessions to be held in October 2012, as provided for in the draft calendars adopted by the Conference of Presidents, was reduced to just one and a half days.

64 As stated by the Advocate General in point 69 of his Opinion, the Parliament's representative, who was questioned on that point at the hearing, did not explain why the agenda for the other part-session scheduled for October would be lighter, and went so far as to acknowledge that it is not possible for the Parliament to anticipate, when it votes on its calendar, the content of the agenda for the various part-sessions.

65 Second, the reduction in the duration of the first period of plenary part-sessions to one and a half days, motivated by the consideration that the budget session could from now on, in practice, be dealt with quickly, is not consonant with the importance of the budget session.

66 The importance of the budget session is highlighted by the fact that the protocols concerning the seats of the institutions expressly refer to that session. As is apparent from paragraph 28 of the judgment in *France* v *Parliament*, in specifying that the budget session is to be held in Strasbourg, the Governments of the Member States intended the Parliament to exercise its budgetary powers in plenary sitting during one of the ordinary plenary part-sessions held at the seat of the institution.

67 Suffice it to note in that regard that, since the delivery of that judgment, the budgetary powers vested in the Parliament have continually increased.

68 Consequently, the exercise by the Parliament of its budgetary powers in plenary sitting constitutes, as the Parliament recognises, a fundamental event in the democratic life of the European Union and must therefore be carried out with all the attention, rigour and commitment which such a responsibility demands. The exercise of that power requires, inter alia, a public debate in plenary sitting enabling the citizens of the European Union to acquaint themselves with the various political orientations expressed and, as a result, to form a political opinion on the European Union's actions.

69 In those circumstances, the Parliament's argument based on the judgment in *Wybot* cannot succeed, since the scheduling of the plenary part-sessions for October 2012 and October 2013 cannot be attributed to the exercise of its powers to determine its own internal organisation, under which it may determine the duration of monthly plenary part-sessions. It also follows from that finding that the present actions are admissible, in accordance with the case-law set out in paragraph 20 above.

70 Lastly, the Court observes that, even if the disadvantages and costs engendered by the plurality of the Parliament's places of work – as described by that institution in the context of these proceedings – are acknowledged, it is not for the Parliament or for the Court to remedy that situation: rather, it is for the Member States to do so, where appropriate, in the exercise of their competence to determine the seats of the institutions.

71 In the light of the foregoing considerations, the Court concludes that the two plenary part-sessions scheduled by the contested votes for October 2012 and October 2013 cannot be regarded as two monthly plenary part-sessions within the meaning of the protocols concerning the seats of the institutions.

72 The contested votes must therefore be annulled to the extent that they do not provide for 12 monthly plenary part-sessions to be held in Strasbourg in 2012 and 2013.

Costs

73 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Parliament has been unsuccessful and the French Republic has applied for costs, the Parliament must be ordered to pay the costs. Under Article 140(1) of the Rules of Procedure, the Grand Duchy of Luxembourg, which has intervened in the proceedings, must bear its own costs.

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

1. **Annuls the votes of the European Parliament of 9 March 2011 adopting the Parliament's calendar of part-sessions for 2012 and 2013 to the extent that they do not provide for 12 monthly plenary part-sessions to be held in Strasbourg in 2012 and 2013;**

2. **Orders the European Parliament to pay the costs;**

3. **Orders the Grand Duchy of Luxembourg to bear its own costs.**

[Signatures]