

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0222/2008

4.6.2008

REPORT

on the defence of the prerogatives of the European Parliament before the
national courts
(2007/2205(INI))

Committee on Legal Affairs

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(*):Associated committee – Rule 47 of the Rules of Procedure

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(*)Associated committee – Rule 47 of the Rules of Procedure

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the defence of the prerogatives of the European Parliament before the national courts (2007/2205(INI))

The European Parliament,

- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Constitutional Affairs (A6-0222/2008),
- A. whereas the European Parliament has no legal personality; whereas, as a result, it is often impeded in protecting its prerogatives before national courts from problems that are peculiar to its special nature,
- B. whereas Parliament respects the right of initiative of the Commission but upholds its own right under Article 192 of the EC Treaty to request the Commission to submit legislative proposals,
- C. whereas in this regard the European Parliament has at its disposal a range of remedies under the Treaty which ensure that the aforementioned prerogatives are protected vis-à-vis the other Community institutions, such as actions for failure to act (Article 232 of the EC Treaty) and actions for the annulment of Community acts (Article 230 of the EC Treaty),
- D. whereas, under the case-law of the Court of Justice, a Member State incurs liability for failure to fulfil its obligations under the Treaties, whatever the agency of that State whose action or inaction has caused the failure, even in the case of a constitutionally independent institution¹,
- E. whereas, however, the European Parliament does not have the same direct instruments with which to defend its prerogatives before the national courts, especially in the event of a national judgment which runs counter to those prerogatives, since it can neither participate in national legal proceedings nor directly bring an action before the Court of Justice to defend its decisions,
- F. whereas the European Parliament cannot even initiate, as a last resort, infringement proceedings (under Article 226 of the EC Treaty) against a Member State, since only the Commission has the power to do so,
- G. whereas the lack of appropriate instruments with which to defend its own decisions effectively can hamper the effectiveness of the European Parliament as a political and legislative body,
- H. whereas the principles of loyal cooperation between the institutions of the European Union and those of good administration call for the activity of Community bodies to be

¹ Judgment of 18 November 1970 in Case 8/70 *Commission v. Italy* [1970] ECR 961.

governed by rules of transparency and intelligibility in order to clarify the reasons for which a given action was or was not taken,

- I. whereas, in order to obviate the above-mentioned problems, it would be advisable to strengthen the measures to protect parliamentary prerogatives not by amending the EC Treaty but by attempting to extrapolate from the experience of the national parliaments remedies that are appropriate to the specific requirements of the European Parliament,
- J. whereas the results of the study carried out to that end on a broad cross-section of Member States clearly show that most national legal orders grant their national parliaments legal remedies aimed at ensuring not only the defence of the interests of the parliament as a whole but also of each individual member,
- K. whereas the Member States are subject to the principle of sincere and loyal cooperation enshrined in Article 10 of the Treaty establishing the European Community, and whereas, in the light of the case-law of the Court of Justice, those same Member States are required to ‘establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection’¹,
- L. whereas it would be opportune to grant the European Parliament similar, if not identical, instruments to protect its prerogatives vis-à-vis the judicial power, be that power represented by the Court of Justice or by the national courts, by analogy with the safeguards provided for by the national legal orders to the benefit of their national parliaments,
 - 1. Calls on the Commission to take account of requests by the European Parliament to bring infringement proceedings against any State for breach of parliamentary prerogatives, and asks that it be given a comprehensive statement of reasons by the competent Commissioner should the College of Commissioners decide not to take the action requested;
 - 2. Suggests that the Statute of the Court of Justice be amended in order to give the European Parliament the right to submit its observations to the Court in all cases in which, directly or indirectly, its prerogatives are called into question, so that the involvement of the European Parliament, where the latter is not formally a party to the proceedings, is not left to the discretion of the Court of Justice as currently provided for under Article 24(2) of the Statute;
 - 3. Suggests that an in-depth examination be carried out into the question whether the legal concept laid down in Article 300(6) of the EC Treaty may be applied in cases in which the prerogatives of the European Parliament are seriously under threat, so as to allow Parliament to ask the Court of Justice for an opinion on the compatibility of a given act of national law with primary Community law, without prejudice to the exclusive power of the Commission to decide whether or not to initiate infringement proceedings against the State which may have committed an infringement;

¹ Case C-50/00P *Unión de Pequeños Agricultores v Council* ECR [2002] I-6677.

4. Asks the committee responsible to prepare an amendment to Rule 121 of the Rules of Procedure so as to cover all legal proceedings before any court and to provide for a simplified procedure for use where proceedings are brought before the Court of Justice under an expedited or urgent procedure;
5. Considers it advisable to foster a policy of cooperation between the European Parliament and national courts, along the lines of that which is already producing good results in a number of Member States, by developing court procedures which allow the European Parliament to take part in legal proceedings concerning Parliament's own prerogatives before national courts;
6. Calls on the Commission to propose the appropriate legislative measures in order to ensure the full effectiveness of the legal defence by Parliament of its prerogatives;
7. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

The European Parliament has often found it – and still finds it – impossible to effectively protect the prerogatives which the Treaties and the European Court of Human Rights itself expressly grant it. There is therefore the risk that rights and powers that are enshrined at Community and European level remain on paper, without being effectively safeguarded. Under the existing Treaties, therefore, it is necessary to seek out and enhance the means that Parliament can exploit with a view to genuinely protecting its own prerogatives which were established as a guarantee of its independence and functionality.

At an abstract level, one of the instruments which can be used by the European Parliament in case of an infringement of its prerogatives is action for failure to act under Article 227 EC.

In the event of an infringement of one of its rights that are protected by Community law, Parliament can call on the Commission to undertake infringement proceedings pursuant to Article 226 EC. In practice, however, this cannot ensure the full protection of Parliament's prerogatives in that the decision on whether or not to start formal proceedings is left to the Commission's discretion.

Should the Commission decide not to take any action, in accordance with principles such as those of good administration, transparency and cooperation between institutions, Parliament must demand the reasons for such a decision to be clarified. Parliament is entitled, if not to demand action from the Commission, at least to know the reasons for which it has decided not to act, so that it can assess whether the Commission is exercising its discretion in a proper manner and understand the criteria guiding its decisions.

As regards the representation of the European Parliament in court, it would be appropriate to officially confer on the Chairman of the Committee on Legal Affairs the legal capacity to take part in court proceedings, where these involve the prerogatives of the European Parliament, representing Parliament as a whole. To that end, an amendment to Rule 19 of Parliament's Rules of Procedure would be desirable, to the effect that the Chairman of the Committee on Legal Affairs should be expressly appointed to represent the European Parliament in court in all legal proceedings in which its prerogatives are at issue.

With reference, in particular, to participation in proceedings before the Court of Justice of the European Communities, under Article 23 of the Court's Statute, Parliament may submit observations in applications for a preliminary ruling which concern the validity or interpretation of acts adopted under the codecision procedure. However, as the Rules of Procedure of the European Parliament are not included among such acts, it is to be hoped that the Court of Justice may encourage the involvement of the European Parliament where its prerogatives are at issue, on the basis of Article 24(2) which states: 'The Court may also require the Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings'.

It would, however, be advisable to amend the Statute so that the European Parliament's power to submit its own observations may be extended to all cases in which, directly or indirectly, parliamentary prerogatives are being debated.

But it is in the national courts that, without a doubt, an urgent need is felt for a strong European Parliament presence. Direct participation of the European Parliament in proceedings before the national judges in which its own prerogatives are at issue would have several advantages. It would, in fact, help to limit cases of possible infringement proceedings or referrals for a preliminary ruling, to foster greater efficiency in the courts and, lastly, to avoid forms of discrimination between national and European parliamentarians.

First of all, it is essential to foster a policy of cooperation between the European Parliament and national judges. Good practices in this regard have already been developed with the judicial authorities of several Member States. The aim is to implement those practices and launch them successfully with those countries which up to now have not been so receptive to the issue.

In this connection it would be useful to note Article 8 of Protocol No 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty establishing the European Community, according to which: ‘The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 230 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof’.

Since the Community legal order recognises the right of national parliaments to take action before the Court of Justice should the principle of subsidiarity be infringed, it would be illogical not to accept, conversely, the European Parliament’s right to take legal action, or in any case to take part in proceedings which concern its own prerogatives before the national courts.

Where national legal orders were not to recognise this right of the European Parliament, serious doubts would arise as to compliance with and enforcement of the ‘principle of sincere and loyal cooperation’ enshrined in Article 10 of the Treaty establishing the European Community.

Moreover, the case-law of the Court of Justice recognises an implicit power in respect of any legislative measures that are necessary to ensure the full effectiveness of rules laid down in an area falling within the competence of the Community legislator (for example, criminal penalties in matters relating to the infringement of environmental protection rules)¹; your rapporteur therefore considers that rules concerning the court-related aspects of parliamentary prerogatives could also fall within such implicit competence, given that they are necessary to ensure the full effectiveness of the rules conferring certain prerogatives on Parliament (see, for example, the rules laid down in Protocol No 36 on the Privileges and Immunities of the European Communities).

Should, however, the Community legislator not consider it necessary to adopt legislative measures in this regard, it cannot ignore the decision in which the Court of Justice ruled that

¹ CJEC C-176/03, Commission v. Council, 2005

'it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection'.¹

In the light of that judgment and, more generally, of the principle of sincere and loyal cooperation enshrined in Article 10 of the EC Treaty, your rapporteur considers that the national legal orders in general, and national judges in particular, are required to accept the participation of the European Parliament in all court proceedings in which Parliament's legally recognised prerogatives are in question.

28.5.2008

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS (*)

for the Committee on Legal Affairs

on the defence of the prerogatives of the European Parliament before the national courts
(2007/2205(INI))

Draftsman (*): Jo Leinen

(*) Procedure with associated committees - Rule 47 of the Rules of Procedure

SUGGESTIONS

The Committee on Constitutional Affairs,

- A. whereas it has been associated pursuant to Rule 47 of the Rules of Procedure with the report of the Committee on Legal Affairs on defending Parliament's prerogatives vis-à-vis the national courts,
- B. whereas the scope of this association is such that it covers questions concerning interinstitutional relations and Parliament's Rules of Procedure, inasmuch as those matters come within the responsibility of the Committee on Constitutional Affairs under Part XVIII of Annex VI to the Rules of Procedure,

calls on the Committee on Legal Affairs, as the committee responsible, to incorporate pursuant to Rule 47, fourth indent, of the Rules of Procedure, without a vote, the following

¹ CJEC C-50/00P, Unión de Pequeños Agricultores v. Council, 2002.

amendments in its motion for a resolution:

1. Paragraph 1 should be amended to read as follows:

"Calls on the Commission to take account of possible requests by the European Parliament to activate the infringement procedure against a State accused of having breached a parliamentary prerogative and requests to be informed by the Commission, in writing and in full detail, of the reasons for any decision by the Commission not to take the action requested;"

2. Paragraph 3 should be amended to read as follows:

"Suggests that an in-depth examination be carried out as to whether a legal mechanism similar to that laid down in Article 300(6) of the EC Treaty could be developed to cater for cases in which the prerogatives of the European Parliament are seriously under threat, allowing Parliament to ask the Court of Justice for an opinion on the compatibility of a certain act of national law with primary Community law, without prejudice to the exclusive power of the Commission to decide whether or not to initiate infringement proceedings against the State which may have committed an infringement;"

3. Paragraph 4 should be deleted;

4. Paragraph 6 should be amended to read as follows:

"Calls on the Commission to propose the appropriate legislative measures in order to ensure the full effectiveness of the legal defence by Parliament of its prerogatives;"

5. Recital A should be amended to read as follows:

"A. whereas the European Parliament is often impeded, in proceedings before national courts, in protecting its prerogatives because of problems that are peculiar to its special nature;"

6. A new recital Aa should be inserted, as follows:

"Aa. whereas Parliament respects the right of initiative of the Commission but upholds its own right under Article 192 of the EC Treaty to request the Commission to submit legislative proposals;"

7. Recital B should be amended to read as follows:

"B. whereas in this regard the European Parliament has at its disposal a range of remedies under the Treaty which ensure that the aforementioned prerogatives are protected vis-à-vis the other Community institutions, such as actions for failure to act (Article 232 of the EC Treaty) and actions for the annulment of Community acts (Article 230 of the EC Treaty);"

8. A new recital Ba should be inserted, as follows:

"Ba. whereas, under the case-law of the Court of Justice, a Member State incurs liability

for failure to fulfil its obligations under the Treaties, whatever the agency of that State whose action or inaction has caused the failure, even in the case of a constitutionally independent institution¹,

¹ Judgment of 18 November 1970 in Case 8/70 *Commission v Italy* [1970] ECR 961.”

9. Recital C should be amended to read as follows:

“C. whereas, however, the European Parliament does not have the same direct instruments with which to defend its prerogatives effectively in the event of a judgment of a national court in the field of Community law which runs counter to those prerogatives, since it is unable directly to bring an action before the Court of Justice to defend its decisions,”

10. Recital D should be amended to read as follows:

“D. whereas the European Parliament is not empowered to directly initiate infringement proceedings against a Member State under Article 226 of the EC Treaty, since it can do so only through the Commission,”

11. Recital E should be amended to read as follows:

“E. whereas the lack of appropriate instruments with which to defend its own decisions effectively can hamper the effectiveness of the European Parliament as a political and legislative body,”

12. Recital G should be amended to read as follows:

“G. whereas, in order to circumvent the above-mentioned problems, the measures to protect parliamentary prerogatives within the European legal framework should be strengthened, not by amending the EC Treaty but rather by enhancing the collaboration with the Commission and/or with the aim of encouraging the Commission whenever necessary to bring actions under Article 226 of the Treaty, or by using the judicial review mechanisms and practices established by the Court of Justice,”;

is opposed to amendment 4 tabled to the report of the Committee on Legal Affairs, because that amendment addresses a matter which is already under consideration in a report to be drawn up by the Committee on Constitutional Affairs in response to a formal request by the Committee on Legal Affairs.

SHORT JUSTIFICATION

1. The principle of legal cooperation between the Commission and the Parliament requires that any decision concerning a request by Parliament is taken by the college. Once this decision is taken the college, within its power of internal organisation, can delegate the task of notifying its decision to Parliament.
2. At present the Parliament should avoid any possible misunderstandings concerning its intention in relation to new requests to amend EU primary law.
3. The difficulties described in the draft report do not justify calling into question the prerogative of the President of the European Parliament to represent Parliament in legal matters.
4. The Commission cannot adopt legislative measures; it can only propose them if it considers them appropriate.
5. Parliament can not be regarded as the "the main transnational legislative institution in Europe" as it shares this quality with the Council. The specific nature of Parliament is an obstacle only with regard to its possibility to act before national courts. At Union level the limits of these possibilities are a consequence of the present institutional balance.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	27.5.2008
Result of final vote	+: 21 -: 2 0: 4
Members present for the final vote	Jim Allister, Richard Corbett, Brian Crowley, Hanne Dahl, Andrew Duff, Maria da Assunção Esteves, Ingo Friedrich, Anneli Jäätteenmäki, Sylvia-Yvonne Kaufmann, Timothy Kirkhope, Jo Leinen, Íñigo Méndez de Vigo, Ashley Mote, Rihards Pīks, Adrian Severin, József Szájer, Johannes Voggenhuber, Dushana Zdravkova
Substitute(s) present for the final vote	Graham Booth, Costas Botopoulos, Klaus Hänsch, György Schöpflin, Mauro Zani
Substitute(s) under Rule 178(2) present for the final vote	Philip Claeys, Glyn Ford, Sepp Kusstatscher, Michael Henry Natrass, Renate Weber

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	29.5.2008
Result of final vote	+: 22 -: 0 0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon
Substitute(s) under Rule 178(2) present for the final vote	Mario Mauro