EP Rules of Procedure, Rule 121: proceedings before the Court of Justice

2007/2266(REG) - 16/07/2008

The Committee on Constitutional Affairs adopted the report by Costas **BOTOPOULOS** (PES, EL), proposing an amendment of Rule 121 of Parliament's Rules of Procedure on proceedings before the Court of Justice.

Recall that, by letter dated 26 September 2007, the Chairman of the Committee on Legal Affairs presented a proposal to the Chairman of the Committee on Constitutional Affairs concerning the interpretation of Rule 121 of Parliament's Rules of Procedure. In his letter, Mr Gargani sought clarification from the Committee on Constitutional Affairs as to whether this Rule, and in particular paragraph 3, refers only to actions brought by Parliament before the Court of Justice or whether it can be interpreted so as to also include observations and interventions by Parliament before the Court.

Rule 121 is entitled 'Proceedings before the Court of Justice', while paragraph 3 refers expressly to 'actions' brought before the Court by the President on behalf of Parliament. Hence, Rule 121(3) applies when Parliament initiates judicial proceedings. There are also other types of proceedings brought before the Court of Justice in the course of which Parliament may have an interest to intervene or submit observations in accordance with the provisions of the Statute of the Court. This is notably the case in preliminary proceedings where the validity of a legislative act is being questioned and in particular where this act has been jointly adopted by the Parliament and the Council. According to current practice, in these cases the Committee on Legal Affairs is consulted on the appropriateness of presenting observations before the Court of Justice, while the President of Parliament takes the final decision.

According to the Rapporteur, it appears evident that Rule 121(3) in its present form applies only to 'actions' initiated by Parliament and does not cover 'observations' or 'interventions' in judicial procedures.

For reasons of completeness and legal certainty, the Committee on Constitutional Affairs considers that a new paragraph should be added to Rule 121 in order to incorporate in the Rules of Procedure the established practice of the President to submit observations or intervene before the Court on behalf of Parliament upon a recommendation of the Committee on Legal Affairs. The new paragraph shall also lay down the procedure to be followed when a divergence of views arises between the President and the committee responsible. Where the President intends to depart from the recommendation of the committee responsible, he shall inform the committee accordingly and shall refer the matter to the Conference of Presidents, stating his reasons. Where the Conference of Presidents takes the view that Parliament should, exceptionally, not submit observations or intervene before the Court of Justice where the legal validity of an act of Parliament is being questioned , the matter shall be submitted to plenary without delay.

In cases of urgency, the President may take precautionary action in order to comply with the time limits prescribed by the court concerned. In such cases, the procedure provided for in the new paragraph shall be implemented at the earliest opportunity.

Nevertheless, the committee responsible can decide on appropriate procedural arrangements so as to transmit its recommendation in time. This possibility is clarified by means of an interpretation contained in the amendment adopted by the Committee on Constitutional Affairs.