

Case T-40/04

Emma Bonino and Others

v

European Parliament and Council of the European Union

(Regulation on the status and funding of political parties at European level — Action for annulment — Objection of inadmissibility — Challengeable act — Locus standi — Inadmissibility)

Order of the Court of First Instance (Second Chamber), 11 July 2005 II - 2690

Summary of the Order

- 1. Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Regulation on the regulations governing political parties at European level and the rules regarding their funding — Exclusion of a political formation from benefit — Whether that political formation directly concerned (Art. 230, fourth para., EC; European Parliament and Council Regulation No 2004/2003, Arts 2 and 3)*

2. *Procedure — Admissibility of actions — Assessment by reference to the situation when the application was lodged — Act providing for the postponement of its effects to a later date — No impact on whether natural or legal persons directly concerned*
(Art. 230, fourth and fifth paras, EC)
 3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Regulation on the regulations governing political parties at European level and the rules regarding their funding — Action brought by Members of the Parliament belonging to a political formation — Not directly concerned*
(Art. 230, fourth para., EC; European Parliament and Council Regulation No 2004/2003, Arts 2 and 3)
 4. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Regulation on the regulations governing political parties at European level and the rules regarding their funding — Action brought by a political formation — Inadmissibility*
(Art. 230, fourth para., EC; European Parliament and Council Regulation No 2004/2003)
 5. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Regulation on the regulations governing political parties at European level and the rules regarding their funding — Action brought by a political formation — Members of the Parliament belonging to the formation who participated in the drafting of the regulation — Legal basis of the regulation not providing for that participation — Inadmissibility*
(Art. 230, fourth para., EC; European Parliament and Council Regulation No 2004/2003)
 6. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Interpretation, contrary to law, of the requirement of being individually concerned — Not permissible*
(Art. 230, fourth para., EC)
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1. A regulation, such as Regulation No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding, which creates an advantageous legal status from which some political formations may benefit while others are excluded is capable of affecting the equality of opportunities of political parties. Accordingly, the legal effect to take into consideration in such a case is that of the exclusion of a political formation from the status of political party at European level and, accordingly, from the benefit of Community funding, in conjunction with the possibility that certain of its political competitors might benefit from such funding.
- The fact that the grant of funding under that regulation depends on an applica-

tion for funding does not preclude the contested regulation from being of direct concern to a political formation, since the submission of such an application depends solely on the will of that party.

Furthermore, since political formations which do not satisfy the conditions set out in Articles 2 and 3 of that regulation are excluded from funding and since the criteria referred to in Article 3(a), (b) and (d) are formulated in such a way as to leave no discretion to the Parliament, the terms of a decision granting or refusing funding in application of those criteria therefore represent the exercise of a mandatory duty, as the decision is purely automatic and flows solely from the contested regulation without the application of other intermediate rules.

(see paras 43, 49, 51-52)

2. While it is true that the admissibility of an action for annulment must be assessed at the time when the action is brought, the fact that the effects of an act do not materialise until a subsequent date determined in the act does not preclude an individual from being directly affected by it.

First, as the applicants are required to comply with the period for bringing an action prescribed in the fifth paragraph of Article 230 EC, any other interpretation would have the consequence that the institution which adopted the act would be able to prevent an individual from bringing a direct action under the fourth paragraph of Article 230 EC by postponing the date of applicability of a provision capable of directly affecting the legal situation of the person concerned.

Also, where the legislature provides that the measures in the contested act will become applicable on a specific date and where the application of those provisions does not depend on the occurrence of uncertain events, the fact that the application of those provisions is postponed has no impact on the direct concern of the regulation to an individual.

(see paras 45-48)

3. Members of the European Parliament who belong to a political formation are not directly concerned, for the purpose of the fourth paragraph of Article 230 EC, by Regulation No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding, since even though it cannot be precluded that the conditions of funding of a political party may have

consequences for the exercise of the mandate of the Members of the Parliament who belong to that party, the fact remains that the economic consequences of such funding as may be granted to a competing political formation and denied to the one to which the applicant MEPs belong must be classified as indirect. In reality, the direct economic effect impacts on the situation of the political formation and not on the situation of the Members of the Parliament elected on the political formation's list and those economic consequences do not concern the legal situation but only the factual situation of the applicant MEPs.

(see paras 56, 59)

The reference group does not therefore belong to a closed group of persons concerned by Regulation No 2004/2003, but is made up of all the political formations capable of being directly concerned by that regulation, namely, in particular, all the political parties which participated in the European elections or which expressed the intention of doing so.

The mere fact that it is possible to determine the number or even the identity of certain persons concerned, whereas such a possibility does not exist for other persons concerned, is not capable of distinguishing an applicant sufficiently.

(see paras 61-63)

4. Regulation No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding applies to objectively determined situations and contains legal effects in regard to categories of persons envisaged generally and in the abstract, provided that those persons are not individually concerned for the purpose of the fourth paragraph of Article 230 EC. In effect, the conditions which must be satisfied by a political party wishing to benefit from Community funding are formulated in general terms and are capable of applying without differentiation to any political formation falling within the scope of that regulation.
5. The mere fact of having participated in the talks preceding the adoption of a measure does not confer *locus standi*. While the position of 'negotiator' of an association whose objective is to promote the interests of its members may possibly suffice to distinguish such an applicant individually, that conclusion does not apply to an act of a normative nature when the legal basis on which it was adopted does not provide for the intervention of individuals. Likewise, in the absence of specific procedures involving individuals in the adoption, imple-

mentation and monitoring of the decisions in issue, the mere fact of having lodged a complaint and having subsequently exchanged correspondence with the Commission cannot confer on a complainant *locus standi* under Article 230 EC.

In that regard, a political formation some of whose members participated in the legislative process as Members of the Parliament is not individually concerned, for the purposes of the fourth paragraph of Article 230 EC, by Regulation No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding, since those members are not directly concerned by that regulation and there is no procedural provision requiring the formal participation of the political parties in the procedure for its adoption.

(see paras 70-72, 75)

6. An interpretation of the system of remedies to the effect that a direct action for annulment before the Community Court will be available where it can be shown, following an examination by that Court of the particular national procedural rules, that those rules do not allow the individual to bring proceedings to contest the validity of the Community measure at issue, is not acceptable.

Furthermore, according to the system for judicial review of legality established by the Treaty, a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually. Although this last condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts.

(see para. 77)