JUDGMENT OF THE COURT (Fifth Chamber)
29 April 2004 *

In Case C-470/00 P,

European Parliament, represented initially by A. Caiola and G. Ricci, acting as Agents, and subsequently by the same, assisted by F. Capelli, avvocato, with an address for service in Luxembourg,

applicant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 26 October 2000 in Joined Cases T-83/99 to T-85/99 *Ripa di Meana and Others* v *Parliament* [2000] ECR II-3493, seeking to have that judgment set aside in part,

the other parties to the proceedings being:

Carlo Ripa di Meana, former Member of the European Parliament, residing in Montecastello di Vibio (Italy),

* Language of the case: Italian.

Leoluca Orlando, former Member of the European Parliament, residing in Palermo (Italy),

and

Gastone Parigi, former Member of the European Parliament, residing in Pordenone (Italy),

represented by W. Viscardini and G. Donà, avvocati, with an address for service in Luxembourg,

applicants at first instance,

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans (Rapporteur), acting for the President of the Fifth Chamber, A. Rosas and A. La Pergola, Judges,

Advocate General: J. Mischo,
Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing

after hearing oral argument from the parties at the hearing on 10 April 2003,

after hearing the Opinion of the Advocate General at the sitting on 26 June 2003,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 22 December 2000, the European Parliament brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 26 October 2000 in Joined Cases T-83/99 to T-85/99 *Ripa di Meana and Others* v *Parliament* [2000] ECR II-3493 (hereinafter 'the contested judgment'), by which the Court of First Instance annulled the decisions contained in letters Nos 300762 and 300763 from the College of Quaestors of 4 February 1999 rejecting the requests submitted by Mr Ripa di Meana and Mr Orlando respectively for the provisional pension scheme referred to in Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament to apply with retroactive effect (hereinafter 'the decisions of 4 February 1999').

Legal background

2 In the absence of a uniform Community pension scheme for all Members of the European Parliament (hereinafter 'the Parliament'), the Bureau of the Parliament adopted, on 24 and 25 May 1982, a provisional retirement pension scheme (hereinafter 'the provisional pension scheme') for Members from Member States whose national authorities do not provide a pension scheme for Members of the Parliament. That scheme, which also applies where the level and/or the conditions of the pension provided for are not identical with those applicable to the members of parliament of the State for which the Member of the Parliament concerned was elected, is mentioned in Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament (hereinafter 'the Rules Governing the Payment of Expenses and Allowances').

3 In the version in force since 25 May 1982, Annex III to the Rules Governing the Payment of Expenses and Allowances (hereinafter 'Annex III') provided inter alia as follows:

'Article 1

1. All Members of the European Parliament shall be entitled to a retirement pension.

2. Pending the establishment of a definitive Community pension scheme for all Members of the European Parliament, a provisional pension may, at the request of the Member concerned, be paid from the budget of the European Communities, Parliament section.

Article 2

1. The level and conditions of such pension shall be identical to those applicable to the pension for Members of the lower house of the parliament of the State for which the Member of the European Parliament was elected.

2. A Member benefiting under Article 1(2) shall pay to the Community budget a sum so calculated that he or she pays the same overall contribution as that payable by a Member of his or her parliament under national provisions.

Article 3

For the calculation of the amount of the pension, any period of service in the parliament of a Member State may be aggregated with the period of service in the European Parliament. Any period during which a Member has a dual mandate shall count only as a single period.'

4 The provisional pension scheme was amended by a decision of the Bureau of the Parliament of 13 September 1995 (hereinafter 'the 1995 decision') aimed, in essence, at making both membership of that scheme and payment of the pension subject to the submission, within a certain period, of an application to that effect.

5 Although Articles 1 and 2 of Annex III were not amended by the 1995 decision, that is not the case with Article 3 of that annex, which now provides:

'1. Applications to join this provisional pension scheme must be made within six months of the start of the Member's term of office.

Once that time-limit has expired, membership of the pension scheme shall take effect from the first day of the month in which the application was received.

2. Applications for payment of the pension must be made within six months of the commencement of entitlement.

Once that time-limit has expired, the pension shall be payable from the first day of the month in which the application was received.'

6 Article 4 of Annex III, in the version resulting from the 1995 decision, reproduces almost verbatim the wording of the former Article 3 of that annex.

7 With regard to Article 5 of Annex III, it provides, in the relevant version:

'These rules shall enter into force on the date of their adoption by the Bureau [that is to say on 13 September 1995].

However, Members who have already started their term of office on the date on which these rules are adopted shall have six months from the entry into force of these rules to submit their applications for membership of this scheme.'

8 The amendment to Annex III inserted by the 1995 decision was brought to the notice of all Members of the European Parliament by Communication of the European Parliament No 25/95 of 28 September 1995 (hereinafter 'Communication No 25/95').

9 Article 27(1) and (2) of the Rules Governing the Payment of Expenses and Allowances further provide:

'1. On commencement of their term of office, Members shall receive from the Secretary-General a copy of these Rules and shall acknowledge receipt thereof in writing.

2. A Member who considers that those rules have been incorrectly applied may write to the Secretary-General. If no agreement is reached between the Member and the Secretary-General, the matter shall be referred to the College of Quaestors which shall take a decision after consulting the Secretary-General. The College may also consult the President and/or the Bureau.'

Facts and procedure before the Court of First Instance

10 Mr Ripa di Meana, Mr Orlando and Mr Parigi, all three of Italian nationality, were Members of the European Parliament during the 1994 to 1999 legislative period.

11 Believing that they were automatically covered by the provisional pension scheme, as is the case with members of the Italian parliament, they did not submit applications to join that scheme, as is provided for in Annex III in the version resulting from the 1995 decision. It was only during the first few months of 1998 that they learned by chance that they were not in fact eligible for any retirement pension since they had not formally joined the provisional pension scheme within the period of six months laid down, so far as concerns them, in the second paragraph of Article 5 of that annex.

12 Those three Members of the Parliament then followed different courses of action in order to seek membership of the provisional pension scheme.

13 Mr Parigi submitted an application for membership of the provisional pension scheme to the Social Affairs Division of the Personnel Directorate-General of the Parliament on 18 February 1998. He requested the retroactive application of that scheme. The College of Quaestors replied to him by two letters, dated 2 July and 20 October 1998, that it was impossible to join such a scheme retroactively.

14 Mr Ripa di Meana and Mr Orlando, for their part, contacted the Parliament administration, without however submitting written applications, with a view to joining the provisional pension scheme retroactively.

15 Since those approaches to the competent departments of the Parliament proved fruitless, the three Members then turned to two of the Vice-Presidents of the Parliament, Mr Imbeni and Mr Podestà, who were also of Italian nationality, asking them to intervene to resolve their problem. Mr Imbeni and Mr Podestà sent a letter dated 19 November 1998 to the College of Quaestors seeking a review of the situation of Mr Ripa di Meana, Mr Orlando and Mr Parigi (hereinafter 'the letter of 19 November 1998').

16 That request was however rejected by letters sent to each of the three Members concerned by the College on 4 February 1999 (hereinafter 'the letters of 4 February 1999'), on the ground that all Members of the Parliament had been informed that membership of the provisional pension scheme would only be possible if an application to that effect was submitted within the period laid down by the 1995 decision.

17 Those are the circumstances in which, by applications lodged at the Registry of the Court of First Instance on 13 April 1999, Mr Ripa di Meana (Case T-83/99), Mr Orlando (Case T-84/99) and Mr Parigi (Case T-85/99) brought actions for annulment of those rejections contained in the letters of 4 February 1999.

18 On account of the connection between them, those three cases were joined for the purposes of the oral procedure and the judgment by order of the President of the Fourth Chamber of the Court of First Instance of 22 May 2000.

The contested judgment

19 By the contested judgment, the Court of First Instance upheld in part the objection of inadmissibility raised by the Parliament.

20 With regard to the action brought by Mr Parigi, the Court of First Instance considered that the letter of 4 February 1999 sent to that Member by the College of Quaestors contained no new matters as compared with the letters of 2 July and 20 October 1998 and therefore constituted a decision which was purely confirmatory of the decisions contained in those two letters. Since the two 1998

decisions had not been contested within the statutory period and, moreover, the decision of 4 February 1999 had not been preceded by any review of Mr Parigi's situation, the Court of First Instance held, in paragraph 36 of the contested judgment, that his action was inadmissible in its entirety.

21 With regard, on the other hand, to the actions brought by Mr Ripa di Meana and Mr Orlando, the Court of First Instance rejected the Parliament's argument that those actions were inadmissible on the ground that the letters of 4 February 1999 were merely a rewording of the 1995 decision which had not been contested in due time by those two Members. Taking the view, in paragraph 26 of the contested judgment, that 'the letter of 19 November 1998 must be regarded as a request of the applicants made on their behalf by the Vice-Presidents', the Court of First Instance held as follows in paragraphs 27 to 31 of that judgment:

'27. It must be borne in mind, next, that as early as its judgment in Joined Cases 16/62 and 17/62 *Confédération Nationale des Producteurs de Fruits et Légumes and Others* v *Council* [1962] ECR 471 the Court of Justice held that the term decision in the second paragraph of Article 173 of the EC Treaty (now the fourth paragraph of Article 230 EC) must be understood in the technical sense in which it is used in Article 189 of the EC Treaty (now Article 249 EC) and that the criterion for distinguishing between a legislative act and a decision within the meaning of the latter article must be sought in the general application or otherwise of the act in question.

28 Moreover, it is settled case-law that the fact that the number and even the identity of the persons to whom a measure applies can be determined more or less precisely is not such as to call in question the normative nature of the measure (order of the Court of Justice in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 30 and the case-law cited).

29 In the present case, it must be observed that the definitions adopted in the amendment of 13 September 1995 to Annex III, drafted in general and abstract terms, producing thereby legal effects in respect of certain Members of the Parliament in a general and abstract manner and, therefore, in respect of each of the Members, must be regarded as being of a general and normative nature. Even if it had been established that the Members to whom Article 5(2) of the amendment of 13 September 1995 applies were identifiable at the time it was adopted, the normative nature of that provision would not thereby be called into question, since it envisages objective legal or factual situations.

30 Even though the Court of Justice has acknowledged that, in certain circumstances, a [normative] measure may be of direct and individual concern to certain natural or legal persons (Joined Cases T-172/98 and T-175/98 to T-177/98 *Salamander and Others* v *Parliament and Council* [2000] ECR I-2487, paragraph 30 and the case-law cited), that case-law may not be relied upon in the present case since the contested provision has not adversely affected any specific right of the applicants in the sense of that case-law.

31 It follows that the arguments of the Parliament relating to the inadmissibility of the actions in Cases T-83/99 and T-84/99 must be rejected.'

22 Examining the substance of the actions brought by Mr Ripa di Meana and Mr Orlando, the Court of First Instance rejected the objection of illegality raised by them against the 1995 decision, but accepted their pleas in law alleging (a) that there was no failure to comply with the six-month time-limit laid down by Annex III, (b) breach of the principle of sound administration and (c) breach of the principle of legal certainty.

23 In that regard, the Court of First Instance held in particular as follows:

'75 The Court finds that the Parliament, in order to satisfy the requirements stemming from the principle of legal certainty and sound administration and having regard to Article 27(1) of the Rules Governing the Payment of Expenses and Allowances to Members of the Parliament, ought to have informed the Members concerned of the amendment to Annex III by way of individual notification with a form of acknowledgement of receipt.

76 Only by acting in this way would the Parliament have conducted itself in conformity with the case-law of the Community judicature, which requires that every measure of the administration having legal effects must be clear and precise and must be brought to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and begins to have legal effects (see Joined Cases T-18/89 and T-24/89 *Tagaras* v *Court of Justice* [1991] ECR II-53, paragraph 40; see also the judgment of the Court of Justice in Case 5/85 *AKZO Chemie* v *Commission* [1986] ECR 2585, paragraph 39).

77 Since there was no such notification, a period prescribed for the submission of an application based on a measure providing for pension rights of the kind involved in the present case can only begin to run, according to Community case-law, from the moment at which the party concerned, having learnt of the existence of that measure, acquires, within a reasonable period, precise knowledge of that measure (see, to that effect, Case T-100/92 *La Pietra* v *Commission* [1994] ECR-SC I-A-83 and II-275, paragraph 30, and the case-law cited therein).

78 Even though the applicants do not deny having become aware of the existence of the amendment to Annex III during the early months of 1998, the

Parliament has not proved that they had precise knowledge of the amending measure more than six months before the applications were submitted on 19 November 1998. Furthermore, the facts of the case show that that precise knowledge was acquired within a reasonable time.

79 Accordingly, the applicants submitted their applications for membership of the provisional pension scheme within the period prescribed by the amendment to Annex III.'

24 On the basis of the foregoing considerations, the Court of First Instance, in paragraphs 1 and 3 respectively of the operative part of the contested judgment, annulled the decisions of 4 February 1999 and ordered the Parliament to bear its own costs and to pay those of Mr Ripa di Meana and Mr Orlando in Cases T-83/99 and T-84/99.

25 In paragraphs 2 and 4 of that operative part, however, it dismissed Mr Parigi's action as inadmissible and ordered him to bear his own costs and to pay those of the Parliament in Case T-85/99.

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

26 By its appeal, the Parliament claims that the Court should:

— set aside the contested judgment so far as concerns Cases T-83/99 and T-84/99;

— declare that, as a consequence, the actions brought by Mr Ripa di Meana and Mr Orlando are inadmissible and unfounded;

— order Mr Ripa di Meana and Mr Orlando to pay all the costs of the proceedings brought before the Court of First Instance and the Court of Justice.

27 Mr Ripa di Meana and Mr Orlando, for their part, contend that the Court should:

— dismiss the appeal in its entirety as manifestly inadmissible and/or unfounded;

— accordingly, confirm paragraphs 1 and 3 of the operative part of the contested judgment by granting, definitively and in full, the forms of order sought by them at first instance;

— order the Parliament to pay in addition the costs of the appeal.

28 Should the Court uphold the appeal in its entirety or in part, Mr Ripa di Meana and Mr Orlando contend, in the alternative, that the Court should:

— declare inadmissible the Parliament's claim that they should be ordered to pay all the costs of the proceedings brought before the Court of First Instance, since that is a different form of order, sought for the first time at the appeal stage, in breach of the second indent of Article 113(1) of the Rules of Procedure of the Court of Justice;

— order that the costs of the appeal be shared in the interests of equity.

29 In the response lodged by him pursuant to Article 115(1) of the Rules of Procedure, Mr Parigi brought a cross-appeal against the contested judgment in so far as, in paragraph 4 of the operative part thereof, the Court of First Instance ordered him to bear his own costs and to pay those of the Parliament. By that appeal, Mr Parigi claims that the Court should:

— annul the contested judgment only so far as concerns paragraph 4 of the operative part, relating to Case T-85/99;

— accordingly declare that, in respect of the proceedings in Case T-85/99, the parties are to bear their own costs;

— order the Parliament to pay the costs of the present appeal.

30 Should the Court dismiss the cross-appeal in its entirety or in part, Mr Parigi claims that it should order that the costs of the appeal be shared for reasons of equity.

31 The Parliament claims that the Court should declare that cross-appeal inadmissible and order Mr Parigi to pay all the costs of the appeal proceedings.

The application for reopening of the oral procedure

32 By application of 1 August 2003, received at the Court Registry on 7 August, Mr Ripa di Meana and Mr Orlando requested the reopening of the oral procedure should the Court see fit to follow the Opinion of the Advocate General, which, in their view, is based both on an incomplete reading of the contested judgment and on the judgment in Case 236/86 *Dillinger Hüttenwerke* v *Commission* [1988] ECR 3761, which concerned a situation different from that before the Court in the present case.

33 In that regard, it must be recalled that the Court may of its own motion, on a proposal from the Advocate General, or at the request of the parties, order that the oral procedure be reopened, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, inter alia, Case C-299/99 *Philips* [2002] ECR I-5475, paragraph 20; Case C-184/01 P *Hirschfeldt* v *EEA* [2002] ECR I-10173, paragraph 30; and Case C-209/01 *Schilling and Fleck-Schilling* [2003] ECR I-13389, paragraph 19).

34 In this case, the Court considers that there is no need to order the reopening of the oral procedure, which was closed on 26 June 2003, since it has all the information necessary for it to rule on the present appeal.

35 Consequently, the application lodged by Mr Ripa di Meana and Mr Orlando for the reopening of the oral procedure must be rejected.

The main appeal

36 The Parliament puts forward three pleas in law in support of its appeal, alleging, respectively, incorrect appraisal of the nature of the letter of 19 November 1998, the unchallengeable status of the letters of 4 February 1999, and errors of law made by the Court of First Instance with regard to the substance of the case. In the case of the last-mentioned plea in law, the Parliament disputes in particular the interpretation of Article 27(1) of the Rules Governing the Payment of Expenses and Allowances adopted by the Court of First Instance and the relevance of the reference by the latter to its case-law concerning 'precise' knowledge of Community acts.

The first plea in law

Arguments of the parties

37 By its first plea in law, the Parliament disputes the assertion, contained in paragraph 26 of the contested judgment, that 'the letter of 19 November 1998 must be regarded as a request of the applicants made on their behalf by the Vice-Presidents'. According to that institution, such a letter can in no circumstances be treated as an application to join the provisional pension scheme in so far as, firstly, the Vice-Presidents concerned had no particular standing, either on the basis of any regulation or on that of any mandate given to them by Mr Ripa di

Meana and Mr Orlando, to submit such an application on behalf of the latter and, secondly, those two Members themselves acknowledged that they had never submitted an application to join the provisional pension scheme in accordance with the formalities laid down by the Rules Governing the Payment of Expenses and Allowances or in any other way. The Parliament argues, in that regard, that those Members contacted its departments orally solely for the purpose of obtaining information on the provisional pension scheme, and that those departments then advised them of the existence both of the obligation to submit a written application for membership of the scheme and of special forms which were available for that purpose.

38 While observing as a preliminary point that that plea in law must be declared inadmissible in so far as it seeks to call in question, before the Court of Justice, an appraisal of fact made by the Court of First Instance, Mr Ripa di Meana and Mr Orlando maintain that the Court of First Instance made no error in characterising the letter of 19 November 1998 as an application by the applicants to join the provisional pension scheme, since neither Annex III nor any other provision of national or Community law specifies the procedures for the submission of such an application. There was therefore nothing to prevent them from contacting two of the Vice-Presidents of the Parliament in order to give them a mandate to make that approach on their behalf. In the absence of any mandatory rules concerning such a mandate, it ought to be possible to grant one without having to comply with any formal requirements whatsoever.

39 Mr Ripa di Meana and Mr Orlando add that, in any event, the letter of 19 November 1998 clearly and unequivocally mentioned the existence of a mandate on their part, which was not disputed by the Parliament since the College of Quaestors saw fit not only to reply to that letter, but also to contact each of the Members concerned directly by means of individual letters containing an express reference to their application to join the provisional pension scheme.

Findings of the Court

— Admissibility of the first plea in law

40 It must be recalled, as a preliminary point, that it is clear from Article 225 EC and Article 58 of the Statute of the Court of Justice that an appeal is to be limited to points of law. It is settled case-law that the Court of First Instance therefore has exclusive jurisdiction to find the facts, save where a substantive inaccuracy in its findings is attributable to the documents submitted to it, and to appraise those facts. That appraisal thus does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice in an appeal (see inter alia Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 47 to 49; Case C-390/95 P *Antillean Rice Millsand Others* v *Commission* [1999] ECR I-769, paragraph 29, and the order in Case C-233/03 P(R) *Linea GIG* v *Commission* [2003] ECR I-7911, paragraphs 34 and 35).

41 However, it is settled law that, where the Court of First Instance has found or appraised the facts, the Court of Justice has jurisdiction, pursuant to Article 225 EC, to carry out a review of the legal classification of those facts and the legal inferences drawn from them by the Court of First Instance. As the Court of Justice has held on several occasions, such a classification is a question of law which, as such, may be subject to review by the Court of Justice in an appeal (see, inter alia, Case C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319, paragraph 26, and Case C-154/99 P *Politi* v *European Training Foundation* [2000] ECR I-5019, paragraph 11).

42 Contrary to what is maintained by Mr Ripa di Meana and Mr Orlando, that is precisely the case in this instance. By its first plea in law, the Parliament does not

dispute the actual existence of the letter of 19 November 1998, but its characterisation, by the Court of First Instance, as an application to join the provisional pension scheme and the consequences which flow from that in legal terms.

43 That plea in law must therefore be declared admissible.

— Substance

44 On the other hand, the Parliament's argument that the aforementioned letter amounts to an informal approach seeking a review of the situation of Mr Ripa di Meana and Mr Orlando, but can in no circumstances be regarded as an application to join the provisional pension scheme, made on their behalf by two of the Vice-Presidents of the Parliament, cannot be accepted.

45 As the Advocate General observed in points 37 and 38 of his Opinion, that argument is invalidated by the fact, noted by the Court of First Instance, that one of the Parliament's governing bodies, namely the College of Quaestors, did regard that letter as constituting an application to join the provisional pension scheme, that application having however been rejected in a letter addressed to each of the Members concerned.

46 In those circumstances, it has not been demonstrated that the Court of First Instance erred in law by characterising the letter of 19 November 1998 as an application by Mr Ripa di Meana and Mr Orlando to join the provisional pension scheme, made on their behalf by two of the Vice-Presidents of the Parliament.

47 It follows that the first plea in law put forward by the Parliament in support of its appeal must be rejected as unfounded.

The second plea in law

Arguments of the parties

48 By its second plea in law, which also relates to the admissibility of the actions brought by Mr Ripa di Meana and Mr Orlando before the Court of First Instance, the Parliament complains, in essence, that the Court of First Instance annulled the letters of 4 February 1999 without having first determined their precise legal classification. In the opinion of the Parliament, such letters constitute at most written communications, purely for information, by the College of Quaestors for the purpose of confirming an existing situation of which the Members concerned were fully aware, but those letters can in no circumstances be characterised as 'decisions' of the Parliament, against which an action for annulment may be brought.

49 In that regard, the Parliament disputes, first, the statement in paragraph 30 of the contested judgment that the 1995 decision 'has not adversely affected any specific right of the applicants in the sense of [the] case-law'. In its view, by introducing deadlines for applying to be entitled to a pension, the 1995 decision does adversely affect the individual legal position of Members and Mr Ripa di Meana and Mr Orlando were therefore entitled to bring an action for annulment against that decision. However, that action should have been brought within the periods laid down in Article 230 EC and the expiry of those periods may in no circumstances be rectified by a subsequent action against 'courtesy letters' which merely confirm a rule known to parliamentarians.

50 The Parliament draws attention, secondly, to the contradictions present in the contested judgment since the Court of First Instance states, on the one hand, in paragraphs 29 and 30 of the contested judgment, that the 1995 decision must be regarded as being a measure of a general and legislative nature, which did not adversely affect any specific right of Mr Ripa di Meana and Mr Orlando, and, on the other, in paragraph 75 of the same judgment, that the Parliament, in order to satisfy the requirements stemming from the principle of legal certainty and sound administration, ought to have informed the Members concerned of the amendment to Annex III by way of individual notification with acknowledgement of receipt. In the Parliament's view, those two propositions cannot be defended concomitantly since either the 1995 decision must be regarded as a measure of general application which does not prejudice the rights of its addressees, in which case the ordinary manner in which an institution communicates with its members must be regarded as sufficient, or such a decision constitutes a measure of individual application which had to be notified to all Members, in which case the Members ought to have brought an action for annulment against that measure within the prescribed period, which started to run on the day on which that measure came to their knowledge. Since that period had expired, the action should have been declared inadmissible by the Court of First Instance.

51 The Parliament submits, thirdly, that the letters of 4 February 1999 cannot, in any circumstances, be characterised as 'decisions of the European Parliament' in so far as Mr Ripa di Meana and Mr Orlando had not submitted an application to join the provisional pension scheme and, by the informal and atypical course which they took of approaching two of the Vice-Presidents, they in any event placed themselves outside the normal rules and procedures. The Parliament refers more specifically in that regard to Article 27(2) of the Rules Governing the Payment of Expenses and Allowances, under which a Member who considers that those rules have been incorrectly applied may write to the Secretary-General of the Parliament, the matter being referred to the College of Quaestors only in the last instance, failing agreement between that Member and the Secretary-General.

52 Challenging the inadmissibility of that second plea in law on the ground that it relates, like the first, to an appraisal of fact made by the Court of First Instance, Mr Ripa di Meana and Mr Orlando dispute the Parliament's contention that the letters of 4 February 1999 are mere 'courtesy communications' of a confirmatory

nature. Referring in that connection both to the unequivocal decision-making character of the wording employed in those letters and to the case-law of the Court of Justice, in particular its judgment in Case C-314/91 *Weber* v *Parliament* [1993] ECR I-1093, in which the Court declared admissible the action brought by a Member of the Parliament to challenge a letter from the College of Quaestors which had rejected her application for payment of a transitional end-of-service allowance which, likewise, was provided for in a more general set of rules, Mr Ripa di Meana and Mr Orlando argue that, in this case also, it is in fact the letters of 4 February 1999, and not the general rules of the Parliament governing retirement pensions, which specifically affect their financial situation. It was therefore those letters, and not the 1995 decision, against which an action for annulment had to be brought.

Findings of the Court

53 Before the substance of the second plea in law is addressed, the objection of inadmissibility raised against it by Mr Ripa di Meana and Mr Orlando must be rejected at the outset. Since it is common ground that, by that plea in law, the Parliament does not dispute either the actual existence of the letters of 4 February 1999 or their legal classification, adopted by the Court of First Instance, as 'decisions of the European Parliament', the Court of Justice has jurisdiction, in accordance with the case-law cited in paragraph 41 of this judgment, to carry out a review of that classification.

54 In that respect, however, it is necessary to focus the Court's scrutiny solely on the first limb of the second plea in law, relating to the allegedly confirmatory nature of the aforementioned letters and to the error allegedly made by the Court of First Instance in paragraph 30 of the contested judgment. The second limb of that plea, relating to the alleged contradiction between paragraphs 29 and 30 of the contested judgment on the one hand and paragraph 75 of the same judgment on the other, concerns the method of communication of the 1995 decision and will, therefore, be examined as part of the analysis of the third plea in law. As regards

the third limb of the second plea in law, based on the absence of an application by Mr Ripa di Meana and Mr Orlando to join the provisional pension scheme, it is clearly indissociable from the first plea in law and must therefore be rejected on the same grounds.

55 Since the first limb of the second plea in law is based, in essence, on the argument that the letters of 4 February 1999 merely confirm the substance of the 1995 decision, the precise legal status of that decision must, first of all, be ascertained.

56 In that regard, the Parliament's argument that the Court of First Instance erred in holding, in paragraph 30 of the contested judgment, that the 1995 decision 'has not adversely affected any specific right of the [Members concerned]' must be rejected at the outset. As paragraphs 4 to 7 of the present judgment clearly show, that decision merely laid down, in general terms, the obligation for Members concerned by Annex III to submit both an application to join the provisional pension scheme and an application for payment of that pension within six months of, in the case of the former, the start of the Member's term of office, and, in the case of the latter, of the date of commencement of entitlement to a pension. As Mr Ripa di Meana and Mr Orlando rightly pointed out in their defence, they had no interest in seeking the annulment of that decision, which contained an express transitional provision in favour of Members whose term of office had already started on the date of its adoption, but only in securing its applicability to them from the date on which they first had knowledge of it.

57 However, the status of the letters of 4 February 1999 is completely different. In replying to the application submitted on behalf of Mr Ripa di Meana and Mr Orlando by two of the Vice-Presidents of the Parliament, the College of Quaestors did not merely confirm the existence of a mandatory time-limit for the submission of applications to join the provisional pension scheme. It rejected that application and expressly affirmed that it would not be possible for the two Members concerned to join the scheme retroactively in so far as, in their case, the time-limit laid down by the 1995 decision had not been complied with.

58 In the light of the foregoing considerations, it must be held that the Court of First Instance did not err in law in characterising the letters of 4 February 1999 as 'decisions of the European Parliament' which were not confirmatory in character. Where such letters affect the specific financial situation of the Members concerned, they do in fact constitute measures having legal effects going beyond the internal organisation of the work of the institution. In that respect, they were therefore measures against which actions for annulment could be brought within the time-limits laid down for that purpose (see, inter alia, to that effect, *Weber* v *Parliament*, cited above, paragraph 11).

59 Accordingly, the second plea in law put forward by the Parliament in support of its appeal must also be rejected as unfounded.

The third plea in law

60 Finally, by its third plea in law, the Parliament calls in question the finding of the Court of First Instance that Mr Ripa di Meana and Mr Orlando submitted their application to join the provisional pension scheme within the time-limit laid down for that purpose by the 1995 decision. In that regard, it puts forward four arguments alleging, first, misinterpretation of Article 27(1) of the Rules Governing the Payment of Expenses and Allowances, second, a contradiction in the contested judgment between, on the one hand, the grounds relating to the admissibility of the actions brought by Mr Ripa di Meana and Mr Orlando and, on the other, those relating to the substance of those actions, third, irrelevance of the reference by the Court of First Instance to its case-law relating to 'precise' knowledge of measures and, fourth, unjustified reversal of the burden of proof regarding the acquisition of that knowledge.

The first and second limbs of the third plea in law

Arguments of the parties

61 By the first two limbs of the third plea in law, which must be considered together in the light of their subject-matter, the Parliament disputes, in essence, the finding in paragraphs 75 and 76 of the contested judgment that in order to satisfy the requirements stemming from the principle of legal certainty and sound administration and having regard to Article 27(1) of the Rules Governing the Payment of Expenses and Allowances, the Parliament ought to have informed the Members concerned of the amendment to Annex III by way of individual notification with acknowledgement of receipt.

62 First, such a procedure for informing Members does not stem from those rules at all, since Article 27(1) concerns only the rules in force at the commencement of the term of office of Members and not subsequent amendments to those rules or to the annexes thereto. The Parliament argues in that regard that although it is legitimate to demand individual notification, with acknowledgement of receipt, of the rules in force at the commencement of the term of office of newly elected Members, more flexible methods of providing information, by the internal distribution of parliamentary documents, may be used in respect of subsequent amendments to those rules in so far as the Members are now part of the institution and are therefore in a position to acquire knowledge of such amendments more easily. By interpreting Article 27(1) of the Rules Governing the Payment of Expenses and Allowances broadly, therefore, the Court of First Instance applied similar treatment to different situations and in that way infringed the 'principle of substantive equality'.

63 Second, although it shares the assessment of the Court of First Instance, in paragraph 76 of the contested judgment, that 'every measure of the administration having legal effects must be clear and precise and must be brought to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and begins to have legal effects', the Parliament points out that that rule applies only to individual measures or, in any event, measures affecting the situation of clearly identified persons. In this case, the effect of paragraphs 28 to 30 of the contested judgment is that the amendment to Annex III is regarded by the Court of First Instance as a measure of a general and legislative nature, adopted to govern enjoyment of the pension entitlements of all Members, present and future, who are not covered by a national pension scheme. The Court of First Instance therefore erred in law, in paragraphs 75 to 78 of the contested judgment, in regarding that decision as an individual administrative measure which must be notified to Members individually, with acknowledgement of receipt.

64 Mr Ripa di Meana and Mr Orlando counter those two arguments by claiming, first, the absence of any interest on their part in bringing an action against the 1995 decision if, as the Parliament maintains, it does indeed constitute a general legislative measure intended to govern the situation of all Members, present and future, not covered by a national retirement pension scheme. Second, they argue that Annex III is an integral part of the Rules Governing the Payment of Expenses and Allowances, of which they received a copy, with acknowledgement of receipt, at the start of their term of office and that, consequently, it was necessary, for reasons both of legal certainty and of sound administration, to apply the procedure laid down in Article 27(1) of those rules in respect of any amendment thereto. They take as their basis, in that regard, the practice of the Community institutions of publishing in the *Official Journal of the European Communities* all amendments made to regulations which have been previously published and rely, in support of their argument, on the situation of a Member who has received written communication of amendments made by the Parliament to the supplementary retirement pension scheme both at the seat of the Parliament and at his private residence. In the view of Mr Ripa di Meana and Mr Orlando, similar procedures for providing information should have been applied in their case.

Findings of the Court

65 Since, in essence, the Court of First Instance based the requirement of individual notification of the 1995 decision — with acknowledgement of receipt — both on the wording of Article 27(1) of the Rules Governing the Payment of Expenses and Allowances and on the case-law of the Court of Justice according to which every measure of the administration having legal effects must be clear and precise and must be brought to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and begins to have legal effects, it must first of all be ascertained whether those premisses are correct.

66 In that regard, it is first clear that, in inferring from the wording of Article 27(1) of the aforementioned rules a duty to notify the 1995 decision individually, the Court of First Instance failed to have regard to the scope of that article. Although it provides that on commencement of their term of office Members are to receive a copy of those rules from the Secretary-General of the Parliament and are to acknowledge receipt thereof in writing, it certainly does not extend such a duty of notification to any amendments which might be made to those rules subsequently, in particular amendments relating to the annexes thereto. In this case, it is not disputed that the 1995 decision constitutes precisely such an amendment.

67 Nor can the rule that amendments made to those rules must be notified individually with acknowledgement of receipt be inferred from a requirement of equivalence of form, which would mean that the form used to bring a measure to the notice of its addressees would also have to be used for all subsequent amendments to that measure. In this case, it is sufficient to note that the method of communication adopted by Article 27(1) of the Rules Governing the Payment of Expenses and Allowances is attributable, as is moreover apparent from the very wording of that provision, to the Parliament's intention to make sure that, at the

time of taking office, new parliamentarians do actually become acquainted with the financial rules currently in force which are applicable to Members of the Parliament. However, once the latter have taken office, that institution's traditional methods of internal communication may be considered sufficient to ensure that those members are actually informed of amendments which it makes to those rules.

68 Next, with regard to the reference made by the Court of First Instance, in paragraph 76 of the contested judgment, to the case-law of the Court of Justice according to which every measure of the administration having legal effects must be clear and precise and must be brought to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and begins to have legal effects, it cannot be denied that it is important, in all circumstances, that measures which impose obligations on specific individuals are brought to their notice in an appropriate manner. Contrary to what the Court of First Instance held in paragraph 76, however, it cannot be inferred, either from that rule — which is dictated by fundamental considerations of legal certainty — or from the case-law cited by the Court of First Instance in the same paragraph of that judgment, that the communication of such measures should, in all circumstances, be effected by means of an individual notification with acknowledgement of receipt; the judgments in *Tagaras* v *Court of Justice* and *AKZO Chemie* v *Commission*, cited above, merely allude, in that regard, respectively, to the need to specify the measure adversely affecting the applicant at issue in that case and to the need to publish decisions granting delegations of authority to Members of the Commission.

69 As the Advocate General noted in points 78 and 79 of his Opinion, it must be observed that the reference by the Court of First Instance to the concept of 'measure of the administration having legal effects' is not unambiguous in the present case in so far as, inter alia, the judgment in *Tagaras* v *Court of Justice*

arises from an action for annulment of a decision appointing a probationer, that is, a decision of an individual nature. However, as the Parliament rightly pointed out in its appeal, it is clear from paragraphs 29 and 30 of the contested judgment that that is specifically not the case here, since the Court of First Instance regarded the 1995 decision as a general legislative measure and therefore held that it had not adversely affected any specific right of the Members concerned.

70 In those circumstances, it must be held that the Court of First Instance erred in law in finding, in paragraph 75 of the contested judgment, that the amendment to Annex III was an administrative measure which had to be notified individually with acknowledgement of receipt to the Members concerned.

71 It follows from all the foregoing that the contested judgment must be annulled, without there being any need to rule on the third and fourth limbs of the third plea in law.

The actions brought by Mr Ripa di Meana and Mr Orlando

72 The first paragraph of Article 61 of the Statute of the Court of Justice provides that, where the latter quashes the decision of the Court of First Instance, it may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

73 In this case, the Court considers that it has before it all the necessary evidence to give judgment in the actions brought by Mr Ripa di Meana and Mr Orlando for annulment of the decisions of 4 February 1999 rejecting their request for application, with retroactive effect, of the provisional pension scheme.

74 As paragraphs 62 to 68 of the contested judgment show, those two Members based their applications for annulment, in essence, on the circumstance that they had not received Communication No 25/95 and on the argument that the amendment to Annex III should have been brought to their notice by way of individual notification with acknowledgement of receipt, in accordance with Article 27(1) of the Rules Governing the Payment of Expenses and Allowances.

75 However, as is clear from paragraph 66 of the present judgment, no such obligation arises from that provision, which relates solely to individual notification of the Rules Governing the Payment of Expenses and Allowances in force when the Members of the Parliament start their term of office.

76 With regard, moreover, to the argument put forward by Mr Ripa di Meana and Mr Orlando that they did not receive Communication No 25/95 and were therefore not informed of the amendment to Annex III, the fact is that, on the date on which that amendment was adopted, Mr Ripa di Meana and Mr Orlando were Members of the Parliament. They were therefore deemed to follow the work of its governing bodies especially carefully and to keep themselves informed of the decisions taken by the latter, particularly in a field such as that covered by this case, which directly affects their pecuniary rights.

77 Moreover, it is apparent both from the documents before the Court and from the explanations provided by the Parliament at the hearing that Communication No 25/95, dated 28 September 1995, is not the only document by which the members of that institution were informed of the amendment in question, since it was also brought to the notice of Members by means of both the minutes of the meeting of the Bureau of 13 September 1995, which were distributed to all Members in accordance with the provisions of Rule 28(1) of the Parliament's Rules of Procedure, and the consolidated text of the Rules Governing the Payment of Expenses and Allowances, which was published in March 1996 and September 1997. In such circumstances, the plea in law put forward at first instance by Mr Ripa di Meana and Mr Orlando, according to which the amendment to Annex III is vitiated by failure to publicise, must therefore be rejected.

78 In the light of all the foregoing considerations, the actions brought by those two Members against the decisions of 4 February 1999 must therefore be dismissed.

The cross-appeal

79 By the cross-appeal which he has brought, Mr Parigi claims that the Court should set aside paragraph 4 of the operative part of the contested judgment in so far as it ordered him, in addition to bearing his own costs, to pay those incurred by the Parliament in Case T-85/99.

80 The Parliament disputes Mr Parigi's characterisation of his appeal and submits that it is an independent appeal brought out of time and, consequently, inadmissible. In any event, that appeal is inadmissible inasmuch as, contrary to the provisions of the second paragraph of Article 51 of the EC Statute of the Court of Justice, it relates only to the amount of the costs and to the party ordered to pay them.

81 In that regard, without there being any need to consider the other arguments put forward by the Parliament to challenge the admissibility of the appeal brought by Mr Parigi, it is sufficient to recall that, under both the second paragraph of Article 51 of the EC Statute of the Court of Justice, which was applicable on the date on which Mr Parigi's appeal was lodged, and the second paragraph of Article 58 of the Statute of the Court of Justice, which is now in force, no appeal may lie regarding only the amount of the costs or the party ordered to pay them.

82 Since those two provisions lay down no distinction based on the nature of the appeal or how it is brought, and since it is common ground in this case that the appeal brought by Mr Parigi relates solely to liability for costs, it must be dismissed as inadmissible.

Costs

83 In their response, Mr Ripa di Meana and Mr Orlando request the Court, if it should grant the appeal brought by the Parliament, to reject in any event as inadmissible the latter's claim that the 'applicants at first instance should be ordered to pay all the costs of the proceedings brought before the Court of First Instance ...'. In their view, such a claim constitutes a different form of order prohibited by the second indent of Article 113(1) of the Rules of Procedure of the Court of Justice, since at first instance the Parliament had not specifically sought an order for costs to be awarded against the applicants, but had merely requested the Court of First Instance to 'make an appropriate order as to costs'. Pursuant to the first subparagraph of Article 87(2) of the Rules of Procedure of the Court of First Instance, which states that 'the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings', the Parliament would therefore have had to bear its own costs if it had been successful at first instance.

84 In reply to that argument, the Parliament maintains, first, that its claim that the applicants at first instance should be ordered to pay all the costs of the proceedings brought before the Court of First Instance is not new at the appeal stage, but had been worded differently before that Court which, moreover, fully understood the significance of the claim since, in Case T-85/99, it ordered Mr Parigi to bear his own costs and to pay those of the Parliament.

85 Secondly, the Parliament points out that the payment of costs can only be the consequence of the decision given by the Community judicature both on the admissibility and on the substance of the action. In so far as Mr Ripa di Meana and Mr Orlando are unsuccessful in their applications for annulment of the decisions of 4 February 1999, it is logical that they should pay the costs incurred by the Parliament.

86 In that regard, it must be recalled, as a preliminary point, that, as Mr Ripa di Meana and Mr Orlando rightly observed in their rejoinder, a claim that the Court of First Instance should make an 'appropriate' order as to costs does not amount to a claim for costs to be expressly awarded against the other party (see, inter alia, to that effect, Case C-30/91 P *Lestelle* v *Commission* [1992] ECR I-3755, paragraph 38). Under both Article 69(2) of the Rules of Procedure of the Court of Justice, made applicable to the appeal procedure by Article 118 of those Rules, and the first subparagraph of Article 87(2) of the Rules of Procedure of the Court of First Instance, an unsuccessful party may be ordered to pay the costs only if they have been expressly applied for in the successful party's pleadings.

87 However, as the Advocate General observed in point 127 of his Opinion, the fact that the Parliament claimed that the Court of First Instance should make an

'appropriate' order as to costs cannot be binding upon the Court of Justice, at the appeal stage, in its determination as to the sharing of those costs, including those of the proceedings brought before the Court of First Instance. It is clear from the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice that the latter is to make a decision as to costs where the appeal is unfounded or where the appeal is well founded and the Court of Justice itself gives final judgment in the case.

88 Since that is precisely the case in this instance and since, in accordance with Article 69(2) of the Rules of Procedure of the Court of Justice, the Parliament expressly applied for Mr Ripa di Meana and Mr Orlando to be ordered to pay the costs incurred before the Court of Justice and the Court of First Instance, its application must be granted since it is clear from this judgment that the main appeal must be upheld and that the actions brought by Mr Ripa di Meana and Mr Orlando for annulment of the decisions of 4 February 1999 must be dismissed.

89 Consequently, Mr Ripa di Meana and Mr Orlando must be ordered to pay not only their own costs but also the costs incurred by the Parliament both at first instance and in the present appeal.

90 Since the Parliament also applied for Mr Parigi to be ordered to pay all the costs of the appeal proceedings and he has failed in his pleas, he must be ordered to pay not only his own costs but also the costs incurred by the Parliament in respect of the cross-appeal.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 26 October 2000 in Joined Cases T-83/99 to T-85/99 *Ripa di Meana and Others* v *Parliament* in so far as it upholds, in Cases T-83/99 and T-84/99, the actions brought by Mr Ripa di Meana and Mr Orlando;

2. Dismisses the actions brought by Mr Ripa di Meana and Mr Orlando for annulment of the decisions contained in letters Nos 300762 and 300763 from the College of Quaestors of 4 February 1999 rejecting their requests for the provisional pension scheme referred to in Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament to apply with retroactive effect;

3. Dismisses the cross-appeal brought by Mr Parigi as inadmissible;

4. Orders Mr Ripa di Meana and Mr Orlando to pay not only their own costs but also those incurred by the European Parliament both at first instance and in the present appeal;

5. Orders Mr Parigi to bear his own costs and to pay those incurred by the European Parliament in respect of the cross-appeal.

Timmermans Rosas La Pergola

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President