

ORDER OF THE COURT (Second Chamber)

29 October 2004 *

In Case C-360/02 P

APPEAL under Article 49 of the EC Statute of the Court of Justice, brought on 2 October 2002,

Carlo Ripa di Meana, former Member of the European Parliament, residing at Montecastello di Vibio (Italy), represented by W. Viscardini and G. Donà, avvocati,

applicant,

the other party to the proceedings being:

European Parliament, represented by A. Caiola and G. Ricci, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Italian.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans (Rapporteur), President of the Chamber, C. Gulmann, J. Makarczyk, P. Kūris and J. Klučka, Judges,

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

1 By his appeal, Mr Ripa di Meana seeks the annulment of the order of the Court of First Instance of the European Communities of 9 July 2002 in Case T-127/01 *Ripa di Meana v Parliament* [2002] ECR II-3005 ('the contested order'), by which the latter dismissed his application for annulment of the decision of the European Parliament of 26 March 2001 suspending payment of his retirement pension following his election as a member of the Regional Council of Umbria (Italy) on the ground that the action was inadmissible.

Legal framework

Community legislation

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

- 3 In the version which was in force at the time of the facts of the dispute, Annex III to the Rules Governing the Payment of Expenses and Allowances ('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 4

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.'

National legislation

- 4 Article 12(1) of the Regolamento per gli assegni vitalizi dei deputati (regulation on life-annuities applicable to Members of the Lower Chamber of the Italian Parliament, hereinafter 'the regulation on life-annuities') provides:

‘Where a member who has already completed his mandate is re-elected as a Member of the National or the European Parliament or is elected as a Regional Councillor, the payment of a life-annuity to which he is entitled shall be suspended for the duration of that new mandate.’

Facts and the procedure before the Court of First Instance

- 5 Mr Ripa di Meana, an Italian national, was a Member of the European Parliament during the legislative periods 1979 to 1984 and 1994 to 1999.
- 6 Following his election as a member of the Regional Council of Umbria, the Head of the Members’ Financial Affairs Division of the European Parliament wrote him a letter on 26 January 2001 relating to the suspension, during the period of his mandate as a regional councillor, of payment of the pension he received as a former Member of the Parliament (‘the letter of 26 January 2001’). That letter, which was received by the applicant on 31 January 2001, was worded as follows:

‘Allow me to draw your attention to the provisions of Article 12 of the Regolamento per gli assegni vitalizi dei deputati (copy attached), applicable by analogy to Italian Members who have contributed towards a pension from the European Parliament, which provide that the payment of the pension be suspended during the mandate as a Member of the National or the European Parliament or as a regional councillor.

Since it has come to our attention that you are serving as a regional councillor, we are obliged to suspend your pension rights.

To enable us to calculate the amount of the pension that has been paid to you in error, I should be grateful if you would inform me of the date you were elected regional councillor.'

- 7 As, by letter of 15 March 2001, Mr Ripa di Meana expressed his surprise at the intention of the Parliament to suspend payment of his pension by reason of his election as regional councillor and set out the reasons why, in his view, the regulation on life-annuities was not applicable by analogy to him, on 26 March 2001, the Parliament sent him a second letter ('the letter of 26 March 2001'), in which it stated as follows:

'In reply to your letter referred to above, in which you expressed your surprise at the suspension of your pension as a former Member of the European Parliament following your election as regional councillor, I can confirm that the decision is in accordance with the terms of Article 12(1) of the regulation of the Camera [Lower Chamber of the Italian Parliament] and the practice of the Camera.

I agree that the current text of the regulation of the Camera is incomplete. It is complete as regards the suspension of pensions but lacks, in respect of the re-establishment of rights, a reference to the office of regional councillor.

Nevertheless, the rules adopted by the political authority, intended to prevent the aggregation of a Member of Parliament's or regional councillor's pension and a Member of Parliament's or regional councillor's salary, are clear, and I would therefore ask that you inform me as soon as possible of the date of your election as regional councillor.

By way of information, I would point out that, in the meantime, your pension has been suspended.'

- 8 Those are the circumstances in which, by application lodged at the Registry of the Court of First Instance on 12 June 2001, Mr Ripa di Meana brought an action seeking, inter alia, the annulment of the letter of 26 March 2001 in so far as it contains the decision of the Parliament to suspend payment of his pension following his election as a member of the Regional Council of Umbria.

- 9 By document lodged at the Registry of the Court of First Instance on 27 July 2001, the Parliament raised an objection of inadmissibility of that action, pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance, which the Court of First Instance allowed by the contested order, after having invited the parties to reply in writing to certain questions.

The contested order

- 10 The dismissal by the Court of First Instance is essentially based on two grounds.

- 11 After noting, at paragraph 25 of the contested order, that it has consistently been held that acts or decisions against which an action for annulment may be brought under Article 230 EC are those which produce binding legal effects capable of affecting the applicant's interests by bringing about a significant change in his legal situation and that, in order to determine whether an act or decision produces such

effects, it is necessary to look to its substance, the Court of First Instance first held, at paragraph 29 of the order, that 'there is no doubt that the Parliament's initial decision of 26 January 2001 constitutes the act which immediately and directly affected the applicant's legal situation and which was liable to be challenged'.

- 12 The Court of First Instance based that conclusion, first, on the terms of the letter of 26 January 2001, which clearly indicate that the Parliament had decided to suspend the applicant's entitlement to the pension by reason of his election as a regional councillor (paragraphs 26 and 27 of the contested order) and, secondly, on the reply by that institution to a written question posed by the Court of First Instance, which shows that the decision to suspend payment of Mr Ripa di Meana's pension was applied as from the next monthly payment following the letter of 26 January 2001, that is in February 2001. The Court of First Instance held in that regard that it is apparent from the applicant's statement of account of 1 March 2001, supplied by him to the Court of First Instance, that Mr Ripa di Meana's pension for February 2001 had not been credited to that account, so that he no longer received his pension as a former Member of the Parliament after payment of the pension for January 2001, which was made on 26 January 2001 (paragraph 28 of the order).
- 13 Having held that Mr Ripa di Meana did not challenge the letter of 26 January 2001, the Court of First Instance went on to consider the nature of the letter of 26 March 2001. In that regard, it held in particular as follows:

'31 ... it is to be noted that in its letter of 26 March 2001 the Parliament merely stated that the regulation [on life-annuities] is incomplete in certain respects but that the rules aimed at preventing the aggregation of a Member of Parliament's or regional councillor's pension and a Member of Parliament's or councillor's salary are clear and that the decision of 26 January 2001 accords with Italian practice. Those statements, set in their context, are not to be seen as

showing that the decision to suspend the payment of the applicant's pension, notified by the letter of 26 January 2001, was the subject of a fresh examination. They are to be understood as meaning that the reasons which led the Parliament to suspend the applicant's pension are the same. The Parliament merely noted the *ratio legis* of the provision which had been applied by the decision of 26 January 2001 and indicated to the applicant that that decision was in line with Italian practice, without making any changes to the reasoning already supplied.

32 In addition, the fact that the applicant was informed by the letter of 26 March 2001 that his pension had been in fact suspended in the meantime cannot constitute a new factor lending to that letter the character of a new decision adversely affecting him. That information is only the implementation phase of the act adversely affecting him, namely the decision of 26 January 2001.'

14 The Court of First Instance accordingly held, at paragraph 33 of the contested order, that the letter of 26 March 2001 was a decision which merely confirmed the decision of 26 January 2001. As the latter was not challenged within the prescribed periods, the action was dismissed as being inadmissible and Mr Ripa di Meana was ordered to pay the costs.

The appeal

15 By his appeal, Mr Ripa di Meana requests the Court of Justice to annul the contested order, to declare his action before the Court of First Instance to be admissible, to refer the action back to the Court of First Instance for judgment on the substance of the case and to order the Parliament to pay the costs of both proceedings.

- 16 Mr Ripa di Meana raises four grounds in support of his appeal. These are based, first, on procedural irregularities 'before the Court of First Instance, which adversely affect the applicant's interests', secondly, on infringement of the rights of the defence, thirdly, on the wrong legal classification having been given to the letters of 26 January and 26 March 2001 and a misapplication of Community case-law relating to confirmatory acts and, lastly, an incorrect application of Community case-law relating to excusable error.
- 17 The Parliament contends for its part that the Court should dismiss the appeal as being inadmissible or, in any event, as being unfounded and order the applicant to pay the whole of the costs.
- 18 It must be stated at the outset that, pursuant to Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time, after hearing the Advocate General, dismiss it by reasoned order without initiating the oral procedure.

Admissibility of the appeal

- 19 In its reply, the Parliament raises the inadmissibility of the appeal as a preliminary point. It argues in that regard that since, first, the applicant did not state an address for service in Luxembourg for the purposes of the first subparagraph of Article 44(2) of the Rules of Procedure of the Court of First Instance and since, secondly, the first subparagraph of Article 100(2) of those Rules does not provide that judgments and orders are included in the procedural documents, service of which may be effected on the addressee by telefax or other technical means of communication, even if the

addressee has agreed to service in that manner in accordance with the second subparagraph of Article 44(2), only the third subparagraph of Article 44(2), which provides that service is to be deemed to have been duly effected by the lodging of a registered letter at the post office of the place where the Court of First Instance has its seat, can apply in this case.

20 Since, in the present case, the lodging of the contested order at the Luxembourg post office took place on 17 July 2002, and, in addition, the documents before the Court show that, contrary to what is provided in the second subparagraph of Article 100(2) of the Rules of Procedure of the Court of First Instance, the Registry of that Court did not advise the applicant, by telefax or other means of communication, of the dispatch of the order, the period for bringing an appeal against it expired, taking the period allowed for distance into account, on 27 September 2002. As it was lodged on 2 October 2002, the appeal was therefore brought out of time and should be dismissed as being inadmissible.

21 The Parliament's contention that the third subparagraph of Article 44(2) of the Rules of Procedure of the Court of First Instance applies in the present case must be dismissed at the outset. As the wording itself of that provision makes clear, all service for the purposes of the proceedings is to be effected on the party concerned by registered letter addressed to the agent or lawyer for that party 'if the application does not comply with the requirements referred to in the first and second subparagraphs [of Article 44(2)]', which provide respectively that an address for service is to be stated in the place where the Court of First Instance has its seat and, additionally or by way of alternative, that the applicant's agent or lawyer may agree to service being effected on him by telefax or other technical means of communication. In the present case, it is not disputed that Mr Ripa di Meana's application satisfies those conditions, as his lawyers agreed to pleadings being served on them by telefax or electronic mail. It must accordingly be held that the third subparagraph of Article 44(2) does not apply.

- 22 It is true that, as the Parliament rightly argues in its reply, that Article 100(2) of the Rules of Procedure of the Court of First Instance also states, by way of exception to the rule laid down in Article 100(1), that judgments and orders of the Court of First Instance are, where the addressee has failed to state an address for service, always to be served at his address in accordance with the procedures laid down in Article 100 (1), namely by registered post with a form for acknowledgement of receipt or by personal delivery of the copy of the judgment or order concerned against a receipt, with the addressee also being advised, by telefax or other technical means of communication of the dispatch of the document by the Court Registry.
- 23 However, it cannot be inferred from the absence of such advice by the Registry of the Court of First Instance that Mr Ripa di Meana is precluded from bringing an appeal and is automatically subject to the third subparagraph of Article 44(2) of the Rules of Procedure of the Court of First Instance. First, as was held at paragraph 21 of this order, that subparagraph applies only where there is no statement of an address for service in Luxembourg and/or no agreement by the applicant's lawyer or agent that service may be effected on him by telefax or other technical means of communication, which is clearly not the position in this case. Secondly, the second subparagraph of Article 100(2) of those Rules provides that service by registered post by the Court Registry is to be deemed to have been effected on the addressee on the 10th day following the lodging of the registered letter at the post office of the place where the Court of First Instance has its seat, unless it is shown by the acknowledgement of receipt that the letter was received on a different date or the addressee informs the Registrar, within three weeks of being advised by telefax or other technical means of communication, that the document to be served has not reached him.
- 24 As it is not in dispute that, in the present case, receipt of the contested order by Mr Ripa di Meana took place on 22 July 2002, that is to say five days after the registered letter serving the order was lodged at the post office in Luxembourg, and that the application initiating these proceedings reached the Court Registry by fax on

2 October 2002 — the original of that application having been lodged, pursuant to Article 37(6) of the Rules of Procedure of the Court of Justice, less than 10 days after receipt of that fax — this appeal must be held to be admissible.

- 25 It follows that the objection of inadmissibility raised by the Parliament is based on an incorrect reading of the Rules of Procedure of the Court of First Instance and must be dismissed as being manifestly unfounded.

Validity of the appeal

The first ground of appeal

- 26 By his first ground of appeal, Mr Ripa di Meana essentially criticises the Court of First Instance for having committed a procedural irregularity in holding, at paragraph 12 of the contested order, that the parties complied within the prescribed period with the request of the Court of First Instance, which had invited them to reply in writing to certain questions, whereas, in the event, the Parliament replied to only one of those questions. According to Mr Ripa di Meana, an irregularity of that nature has a material adverse effect on his interests, in that the Court of First Instance based its findings on the incomplete reply by the Parliament and confused the date on which the latter informed the applicant of its decision to suspend payment of his pension and the date on which he was informed that payment had actually been suspended. It is clear from both the fact that the Court of First Instance saw fit to put written questions to the parties and from the wording itself of those questions that the Court of First Instance considered that distinction to be of fundamental importance.

- 27 It is necessary to reject at the outset the applicant's contention that both the fact that the Court of First Instance saw fit to put written questions to the parties and the wording itself of those questions confirm that the Court of First Instance was in doubt as to whether the letter of 26 January 2001 was in the nature of a decision.
- 28 As the wording of Article 49 of the Rules of Procedure of the Court of First Instance makes clear, the decision to put written questions is a matter which is entirely within the discretion of that Court, which may, at any stage of the proceedings, prescribe any measure of organisation of procedure or any measure of enquiry referred to in Articles 64 and 65 of those Rules. The use of that power does not, however, have any automatic effect on the outcome of the dispute, as the Court of First Instance remains free in its absolute discretion to assess the value to be given to the whole of the facts and evidence which have been submitted to it or which it has itself adduced.
- 29 As regards the applicant's contention that the Court of First Instance committed a procedural irregularity in holding that the parties complied with its request when the Parliament replied to only one of the questions put to it, it must be pointed out that it is not the task of the Court of Justice in an appeal to rule on the assessment of the facts and evidence by the Court of First Instance, save where there has been a clear distortion of those facts and evidence by that Court (see, to that effect, *inter alia*, order of 11 November 2003 in Case C-488/01 P *Martinez v Parliament* [2003] ECR I-13355, paragraph 53, and judgment in Case C-470/00 P *Parliament v Ripa di Meana and Others* [2004] ECR I-4167, paragraph 40). In the present case, however, there is nothing in the documents submitted to the Court of Justice that suggests that such distortion exists.
- 30 First, the Parliament confirmed, in its reply to the written questions put by the Court of First Instance, that the decision to suspend payment of Mr Ripa di Meana's pension was 'taken with immediate effect' and that the pension was no longer paid after 26 January 2001.

- 31 Secondly, even if the Parliament's reply may appear incomplete as regards the date on which the applicant was informed that payment of his pension was actually suspended, that reply was not, in any case, the only factor taken into account by the Court of First Instance for the purposes of ruling on the admissibility of the action. It also took account of Mr Ripa di Meana's reply and, in particular, as is clear from paragraph 28 of the contested order, of a statement of account of 1 March 2001 supplied to it by the applicant, which clearly shows that the payment of the applicant's pension as a former Member of the Parliament for February 2001 was not credited to his account.
- 32 In those circumstances, the applicant's contention that the Court of First Instance based its findings on an incomplete reply by the Parliament to the questions that had been put by it by that Court must be set aside.
- 33 The first ground of appeal must accordingly be rejected as being manifestly unfounded.

The second ground of appeal

- 34 By his second ground of appeal, which is divided into two parts, Mr Ripa di Meana argues that the rights of the defence have been infringed in that the Court of First Instance, first, ruled directly on the objection of inadmissibility raised by the Parliament without giving the parties the opportunity of submitting additional written observations or of proceeding to the oral phase of the procedure, and, secondly, failed to take account of the replies provided by him to the questions put by the Court of First Instance. In that regard, Mr Ripa di Meana complains more particularly that that Court overlooked the fact that, as a result of a serious eye problem and when he was convalescing at his residence at Montecastello di Vibio,

he was unable to become aware of the contents of his statement of account of 1 March 2001, which had been sent to his address in Rome, until the beginning of April that year.

35 As regards the first part of that ground of appeal, it must first of all be noted that Article 114(1) to (3) of the Rules of Procedure of the Court of First Instance provides that, if a party applies to it for a decision on admissibility, on lack of competence or other preliminary plea not going to the substance of the case, the President of the Court of First Instance is to prescribe a period within which the opposite party may lodge a document containing a statement of the form of order sought by it and its pleas in law, and that, unless the Court of First Instance otherwise decides, the remainder of the proceedings is to be oral. It follows clearly from that provision that that Court is under no duty to hold a hearing. The Court of First Instance was therefore entitled in the circumstances to rule on the objection raised by the Parliament without initiating the oral procedure, provided that it considered itself to be sufficiently informed by the documents before it and, in particular, by the replies provided to the written questions which it saw fit to put to the parties.

36 As regards, secondly, the applicant's complaint based on a failure to satisfy the principle that the parties should be heard, in that he did not have the opportunity to state his views on the reply provided by the Parliament to the questions put by the Court of First Instance, that complaint cannot be upheld in this case. Leaving aside the answer — as to which the parties have differing views — to the question whether Mr Ripa di Meana did or did not have the opportunity of discussing before the Court of First Instance the Parliament's reply to the questions put by it, any failure to observe the principle of the right to be heard would not, in any event, have altered the outcome of the dispute. As paragraph 28 of the contested order shows, the Court of First Instance based its assessment on the parties' replies to the questions put by it only to the extent that they demonstrated that the decision of 26 January 2001 was immediately implemented by the Parliament. By contrast, the question whether Mr Ripa di Meana was in fact informed that the pension he received had actually been suspended was not addressed at all in the reasoning of the contested order.

- 37 In those circumstances, the complaint based on infringement of the principle of the right to be heard must be rejected as inoperative.
- 38 The first part of the second ground of appeal must therefore be rejected as being manifestly unfounded.
- 39 As regards the second part of the second ground of appeal, based on the failure of the Court of First Instance to take account of the fact that the applicant's state of health prevented him from becoming aware of the contents of his statement of account of 1 March 2001 before April that year, that part is very largely indissociable from the fourth ground of appeal and will therefore be considered with it.

The third ground of appeal

- 40 By his third ground of appeal, Mr Ripa di Meana challenges the legal classification applied to the letters of 26 January and 26 March 2001 by the Court of First Instance.
- 41 As regards the letter of 26 January 2001, Mr Ripa di Meana contests its decision-making nature in the light, first, of the general terms used in that letter by the Parliament and, secondly, of the fact that the investigation of his case had not yet been completed, since he was required to provide additional information to that institution relating to the date of his election as regional councillor for Umbria.

- 42 As far as the letter of 26 March 2001 is concerned, Mr Ripa di Meana denies that it is of a purely confirmatory character, since it raises several fresh points that do not arise in the letter of 26 January and it was preceded by a reconsideration of his position in the light of the letter he sent to the Parliament on 15 March 2001.
- 43 The applicant's claim that an action of annulment could not be brought against the letter of 26 January 2001, as it was of a purely interim nature, must be rejected at the outset. The Court of First Instance was entitled to hold, without committing an error of law, that it is clear both from the terms of that letter, set out at paragraph 6 of this order, and from the reasons relied upon by the Parliament that the latter had in fact decided to suspend payment of the applicant's pension by reason of his election as a regional councillor, as the sole purpose of the request for information sent to Mr Ripa di Meana was to calculate the amount of the pension that had been wrongly paid to him since the effective date of his election as a member of the Regional Council of Umbria.
- 44 As regards the applicant's claim that the Court of First Instance should have held that his action was admissible in so far as the letter of 26 March 2001 was not confirmatory in character, it is common ground that none of the factors relied upon by Mr Ripa di Meana in support of that claim is capable of affecting the findings of the Court of First Instance in that respect.
- 45 Thus, as regards first of all the reference by the Parliament to the practice of the Lower Chamber of the Italian Parliament and the wish of the political authorities to prevent the aggregation of a Member of Parliament's or regional councillor's pension and a Member of Parliament's or regional councillor's salary, that reference clearly adds nothing to the letter of 26 January 2001, which, from the start, drew Mr Ripa di

Meana's attention to the provisions of Article 12 of the regulation on life-annuities, which was attached to the letter and which specifically provides for the suspension of payment of the pension during a period of service either as a Member of the national or European Parliament or as a regional councillor.

46 As regards next the communication to the applicant of the fact that payment of his pension was actually suspended, it must be regarded, as the terms of the letter of 26 March 2001 show, as a communication of a purely informative nature to the party concerned, in reply to the letter which he had sent on 15 March 2001. In no case, however, could such a communication be seen as adding new material to the letter of 26 January 2001, as the latter already clearly mentions the suspension by the Parliament of the applicant's pension.

47 Lastly, as regards the applicant's contention that the letter of 26 March 2001 was preceded by a reconsideration of his position, in so far as, prompted by the letter sent by him to the Parliament on 15 March 2001, the latter acknowledged the incomplete nature of the Italian legislation on life-annuities, that acknowledgment relates only to the absence of any reference to the period of office of regional councillor in the context of the restoration of pension rights at the end of such a period of office. In the present case, however, the dispute does not relate to the restoration of pension rights, but to the suspension of those rights on the election of a former Member of the European Parliament as a member of a regional council.

48 In the light of all the above points, the third ground of appeal must accordingly be rejected as manifestly unfounded.

The fourth ground of appeal

49 By his fourth ground of appeal, which very largely restates the criticisms made in the second part of the second ground, Mr Ripa di Meana argues lastly, in the alternative, that, if the Court of Justice were to hold that the letter of 26 March 2001 was of a confirmatory character; it should in any event annul the contested order on the ground that the Court of First Instance did not apply the Community case-law relating to excusable error. The applicant maintains in that regard that the conditions for the application of that case-law are satisfied in the present case, since, first, the letter of 26 January 2001 reads as an interim letter and he expected, in all good faith, that the question of the application by way of analogy of Article 12 of the regulation on life-annuities would be the subject of a hearing at which all the parties would be heard. Secondly, his eye problems prevented him from undertaking 'visual activity' of any kind during February and March 2001, so that it was only in early April 2001 that he was able to become aware of the contents of his statement of account of 1 March 2001, which shows that the Parliament had stopped paying him his pension as a former Member of the European Parliament.

50 It must be noted in that regard that, according to settled case-law, an individual may plead excusable error in exceptional circumstances in order to avoid the time-bar applying to actions of annulment, in particular when the conduct of the institution which was the author of the contested measure has been, either alone or to a decisive extent, such as to give rise to pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally well-informed person (see, to that effect, Case C-195/91 P *Bayer v Commission* [1994] ECR I-5619, paragraph 26, and Case C-193/01 P *Pitsiorlas v Council and ECB* [2003] ECR I-4837, paragraph 24). In the present case, however, it is clear that Mr Ripa di Meana did not find himself in such an exceptional situation and that he cannot validly rely on the case-law mentioned above, as none of the conditions necessary to establish excusable error can be put forward, since none of them is satisfied in the circumstances.

- 51 First, Mr Ripa di Meana is not justified in alleging that the conduct of the Parliament was such as to give rise to pardonable confusion in his mind as to the true nature of the letter of 26 January 2001 since, as was held at paragraph 43 of this order, the terms of that letter clearly disclose both that institution's decision actually to suspend payment of the applicant's pension and the reasons justifying such a suspension.
- 52 Secondly, the documents submitted to the Court also give rise to doubt as to the diligence exercised by the applicant in this case, since, although he did acknowledge receipt of the letter of 26 January 2001 on 31 January, he did not take any active steps until 15 March 2001, by sending a letter to the Parliament in which he expressed his astonishment as to the Parliament's decision to suspend payment of his pension and it was only on 12 June 2001 that he brought proceedings before the Court of First Instance.
- 53 Moreover, Mr Ripa di Meana's contention that he was unable to undertake 'visual activity' of any kind during February and March 2001 and only became aware of the contents of his statement of account of 1 March 2001 in early April is contradicted by the fact that the applicant himself sent a letter to the Parliament on 15 March 2001, that is to say on a date occurring within the period when he submits that the serious eye trouble affecting him prevented him from undertaking 'visual activity of any kind'.
- 54 In the light of those points, the second part of the second ground of appeal and the fourth ground of appeal must be rejected as manifestly unfounded.

55 As the four grounds of appeal relied on by Mr Ripa di Meana in support of his appeal are manifestly unfounded, the appeal must be dismissed in its entirety.

Costs

56 Under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the Parliament has asked for costs from Mr Ripa di Meana and the latter has been unsuccessful, he must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) makes the following order:

- 1. The appeal is dismissed.**
- 2. Mr Ripa di Meana is ordered to pay the costs.**

[Signatures]