Reports of Cases

OPINION OF ADVOCATE GENERAL
JÄÄSKINEN
delivered on 17 July 2014[1]

Case C-261/13 P

Peter Schönberger
v

European Parliament

(Appeal — Right to petition the European Parliament — Articles 20 TFEU and 227 TFEU — Article 44 of the Charter of Fundamental Rights of the European Union — Lack of competence of the Committee on Petitions to rule on the questions raised — Decision to take no further action on the petition — Action for annulment — Act producing legally binding effects of such a kind as to affect the legal position of an individual — Article 263 TFEU)

I – **Introduction**

1. In accordance with a report by the Committee on Petitions of the European Parliament ('the Committee on Petitions'), '[t]he petition is an important way for individuals to be formally heard and their concerns considered within the institutions of the EU. It is thus a direct link between elected representatives and those whose interests we seek to serve'.[2] As the statistics provided by the Committee on Petitions show, this instrument has in fact been very successful. In 2013, the number of petitions registered with that committee exceeded 3 000, which represents an increase of over 45% compared with 2012 and a doubling compared with 2011.[3]

2. By his appeal, Mr Schönberger ('the appellant') seeks to have set aside the judgment of the General Court of the European Union of 7 March 2013 in *Schönberger* v *Parliament* (T-186/11, EU:T:2013:111; 'the judgment under appeal'), which dismissed as inadmissible the application for annulment of the decision of the European Parliament's Committee on Petitions of 25 January 2011 which concluded the examination of the petition submitted by the appellant on 2 October 2010[4] ('the contested decision').

3. The present case therefore concerns the interpretation of the scope of the right to petition under Articles 20 TFEU and 227 TFEU, as confirmed by Article 44 of the Charter of Fundamental Rights of the European Union ('the Charter'). For the first time, the Court is called upon to decide whether the decisions adopted by the Committee on Petitions are subject to review by the EU courts, in accordance with Article 263 TFEU.

1 — Original language: French.

2 — Report on the deliberations of the Committee on Petitions during the parliamentary year 1999-2000, A5-0162/2000, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2000-0162+0+DOC+PDF+V0//EN

3 — Report on the activities of the Committee on Petitions 2013 (2014/2008(INI)), p. 15.

4 — Petition No 1188/2010.

4. In this Opinion, it is therefore necessary to examine the exercise of the right of petition in the light of the General Court's case-law on this subject to date by comparing it with the case-law of the Court of Justice relating to the concept of a challengeable act. The judgment under appeal represents a faithful application of the judgment in *Tegebauer* v *Parliament*,[5] in which the General Court's interpretation was to the effect that the assessment of the admissibility of a petition must be subject to judicial review on the ground that a decision that a petition is inadmissible or that no further action is to be taken on it is liable to affect the essence of the right of petition and therefore constitutes a decision which may be the subject of an action for annulment in accordance with Article 263 TFEU.[6]

5. From the outset, I take the view that, in its judgment in *Tegebauer* v *Parliament* (EU:T:2011:466), the General Court misapplied the concept of a challengeable act and, to my mind, that error is based on a broad interpretation of the scope of the right of petition. However, in my opinion, the right of petition is a tool of direct political dialogue, the expression of democratic interaction between a citizen and elected representatives which should, save in exceptional cases, remain shielded from intervention by the EU Courts.

6. Therefore, in this Opinion, I intend to invite the Court to declare invalid the rule in *Tegebauer* v *Parliament* (EU:T:2011:466) on which the judgment under appeal is founded. In any event, in order to ensure legal certainty for individuals, in the present appeal the Court should adopt a clear position with regard to the rule in *Tegebauer* v *Parliament* (EU:T:2011:466) by either declaring it invalid or confirming it. In the latter case, dealing with the appeal should not pose any difficulties.

II – **Legal framework**

7. The right of petition is recognised by Articles 20(2)(d) TFEU and 227 TFEU as a specific expression of European citizenship.

8. As provided in Article 44 of the Charter:

'Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.'[7]

9. The handling of petitions is governed by Title VIII of the Rules of Procedure of the European Parliament ('the Rules of Procedure'). The provisions applicable *ratione temporis* to the present case are Rules 191 to 193 of the Rules of Procedure.[8] However, it must be noted that, following the amendment of the Rules of Procedure which took effect in 2011, those provisions were amended and were then found in Rules 201 to 203 of the Rules of Procedure ('the amended Rules of Procedure').[9] Finally, following an amendment introduced in July 2014, the right of petition is now governed by Articles 215 to 218 of the Rules of Procedure in the version amended in the 8th Parliamentary term.[10] However, this last amendment did not affect the wording of the relevant provisions vis-à-vis the amended Rules of Procedure.

5 — Judgment in *Tegebauer* v *Parliament*, T-308/07, EU:T:2011:466.

6 — Judgment in *Tegebauer* v *Parliament*, EU:T:2011:466, paragraph 21.

7 — In accordance with the explanations relating to the Charter, the right guaranteed in that article is the right guaranteed by Articles 20 TFEU and 227 TFEU. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in those two articles.

8 — Version of July 2004 (OJ 2005 L 44, p. 1).

9 — An amendment of the Rules of Procedure governing the right of petition in accordance with the version of the 7th Parliamentary term of March 2011 (OJ 2011 L 116, p. 1). This essentially reproduces the revision, purely temporary, of the Rules of Procedure adopted pursuant to the decision of the European Parliament of 6 May 2009 (2006/2209(REG)) (OJ 2010 C 212 E, p. 140).

10 — http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20140701+TOC+DOC+XML+V0//EN.

10. Under Rule 191 of the Rules of Procedure, entitled 'Right of petition':

'1. Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly.

…

6. Petitions declared inadmissible by the committee shall be filed; the petitioner shall be informed of the decision and the reasons therefor.

…'

11. Rule 192 of the Rules of Procedure, entitled 'Examination of petitions', provides:

'1. The committee responsible may decide to draw up a report or otherwise express its opinion on petitions it has declared admissible.

The committee may, particularly in the case of petitions which seek changes in existing law, request opinions from other committees pursuant to Rule 46.

…

3. When considering petitions or establishing facts, the committee may organise hearings of petitioners or general hearings or dispatch members to establish the facts of the situation *in situ*.

…

7. The President shall inform petitioners of the decisions taken and the reasons therefor.'

12. Under Rule 201(7) of the amended Rules of Procedure, petitions entered in the register are to be forwarded by the President (of the Parliament) to the committee responsible, which establishes whether or not the petition is admissible in accordance with Article 227 [TFEU].

13. Rule 201(8) of the amended Rules of Procedure provides:

'Petitions declared inadmissible by the committee shall be filed; the petitioner shall be informed of the decision and the reasons for it. Where possible, alternative means of redress may be recommended.'

14. Rule 203a of the amended Rules of Procedure, resulting from the decision of the European Parliament of 22 May 2012,[11] also governs how the citizens' initiative is dealt with.

11 — Proposed amendment to the Rules of Procedure of the European Parliament (B7-0732/2011) and decision of the European Parliament of 22 May 2012 amending the European Parliament's Rules of Procedure with regard to the implementation of the European citizens' initiative (2011/2302(REG)) (OJ 2013 C 264 E, p. 98).

III – **The background to the dispute, the proceedings before the General Court and the judgment under appeal**

15. The appellant, a former official of the Parliament, challenged the merit points awarded to him in the 2005 promotion procedure. Following the complaint filed by the appellant on 15 November 2008, the European Ombudsman concluded, by decision of 13 July 2010, that there had been maladministration by the Parliament in so far as the President of the Parliament should have taken a decision on the appellant's complaint.

16. On 2 October 2010, pursuant to Article 227 TFEU, the appellant submitted a petition to the Parliament in which he requested that the Parliament take measures to give effect to the finding of the Ombudsman.

17. By the contested decision, the chairperson of the Committee on Petitions wrote to the appellant as follows: 'I hereby inform you that the Committee has examined your petition and has declared it admissible in accordance with the Rules of Procedure of the European Parliament in so far as it falls within the areas of activity of the European Union. However, the Committee on Petitions is unable to deal with the substance of your petition and has therefore taken note of your comments. Your petition will be forwarded to the Director-General responsible for staff in order for him to take appropriate action. Please also note that the examination of your petition has therefore been concluded.' Accordingly, the examination of the petition was brought to an end.

18. By application lodged at the Registry of the General Court on 26 March 2011, Mr Schönberger sought annulment of the contested decision on the ground that it put an end to the handling of his petition without an examination of the merits.

19. By the judgment under appeal, the General Court dismissed the action as inadmissible. On the basis of *Tegebauer* v *Parliament* (EU:T:2011:466), the General Court held that, although the appellant's petition was considered admissible, the contested decision did not produce legally binding effects of such a kind as to affect his legal position. For more details, reference is made to the judgment under appeal.

IV – **Forms of order sought by the parties and proceedings before the Court**

20. By his appeal, Mr Schönberger requests that the Court set aside the judgment under appeal, allow the application made at first instance, annul the contested decision and order the Parliament to pay the costs.

21. In its response, the Parliament requests that the Court dismiss the appeal and order the appellant to pay the costs.

V – **The appeal**

22. In support of his appeal, the appellant puts forward six heads of complaint,[12] alleging, first, a distortion of the facts,[13] secondly, a misunderstanding of the scope of the fundamental right of petition,[14] thirdly, the failure to state reasons and lack of logic vitiating the judgment under appeal,[15] fourthly, an error of assessment as a result of a misapplication of the rule in *Tegebauer* v *Parliament* (EU:T:2011:466),[16] fifthly, a failure to state reasons relating to the lack of examination of the lack of reasoning in the contested decision[17] and, sixthly, the incomplete examination of the facts.[18]

23. In that regard, I propose that those criticisms be grouped into two grounds of appeal, on the basis of the link that can be established between them. The first ground of appeal will include the complaints concerning the scope of the right of petition (derived from the second, third and fourth complaints in the appeal). The second ground of appeal will cover the complaints of a procedural nature (derived from the first, fifth and sixth complaints in the appeal).

24. Inasmuch as the response to the arguments concerning the substance of the right of petition and the scope of the rule in *Tegebauer* v *Parliament* (EU:T:2011:466) is determinant for the purpose of dealing with the present appeal, I propose to start by examining that ground of appeal.

VI – **The scope of the right of petition (first ground of appeal, encompassing the second, third and fourth complaints in the appeal)**

A – *Arguments of the parties*

25. By the criticisms grouped under the first ground of appeal taken as a whole, the appellant is disputing the scope of the right of petition. First, by referring to paragraph 18 of the judgment under appeal, the appellant alleges that the General Court held that only a decision classifying the petition as inadmissible is capable of restricting the exercise of the right of petition. Thus, the scope of the right of petition has been restricted, wrongly, to the issue of the admissibility of petitions. However, the Parliament is required not only to examine the admissibility of a petition, but also to assess the substance of petitions considered admissible. The refusal to deal with the substance of a petition precludes the exercise of that right in that the petitioner is thereby denied the opportunity to contribute to improving EU law and to participate in the democratic life of the European Union within the meaning of Article 10(3) TEU and in accordance with the second subparagraph of Article 24 TFEU.

12 — In so far as the arguments put forward are neither independent nor self-sustaining, I propose that the term ‘ground of appeal’ not be used to describe each of them.

13 — According to the appellant, in its account of the facts, the General Court overlooks the fact that the chairperson of the Committee on Petitions informed the appellant, without giving any reasons whatsoever, that, although his petition was admissible, its substance could not be examined. Subsequently, in the appellant’s view, the General Court distorted the facts by taking the view that the petition had been examined.

14 — According to the appellant, the General Court misinterprets the scope of the fundamental right of petition by considering, wrongly, that that right is confined to an examination as to the admissibility of the petition. However, the scope of the right of petition, he submits, also includes the substantive examination of petitions deemed admissible and the decision adopted on the substance (right to have the petition dealt with).

15 — According to the appellant, the General Court acted contrary to logic in stating that the failure to examine an admissible petition has no legal effect, unlike the failure to examine an inadmissible petition.

16 — According to the appellant, the General Court contradicts the judgment in *Tegebauer* v *Parliament*, in which it held that the effectiveness of the right of petition may be undermined where the content of the petition has not been examined.

17 — According to the appellant, the General Court disregards the fact that the Parliament erred in law by failing to give reasons for its decision. The General Court, he argues, substituted its own reasons in order to justify the failure to deal with the petition.

18 — According to the appellant, the General Court fails to take account of the fact that the appellant was unable to set out his case objectively before the Committee on Petitions.

26. Secondly, the appellant alleges that the General Court's reasoning was illogical in so far as it claimed, on the one hand, that, as far as petitions are concerned, the Parliament never adopts binding acts and, on the other hand, that the decision declaring a petition inadmissible or filing and taking no further action on a petition may form the subject-matter of an action for annulment.[19] Thirdly, the appellant takes issue with the General Court's application of the rule in *Tegebauer* v *Parliament* (EU:T:2011:466) to paragraphs 16, 17 and 19 of the judgment under appeal.

27. For its part, the European Parliament rejects all the complaints raised. It notes, inter alia, that, in the light of the extrajudicial nature of the right of petition, this guarantees only a right to bring a matter before the Parliament, whilst maintaining the Parliament's political freedom as to whether or not to act on a petition. The Parliament submits that neither the right of petition, enshrined in primary law, nor the provisions of the Rules of Procedure, support the conclusion that the petitioner has specific procedural rights for the purposes of the effective exercise of the right of petition. Moreover, it concurs with the analysis resulting from the judgment in *Tegebauer* v *Parliament* (EU:T:2011:466).

B – *The right of petition in EU law*

1. The exercise of the right of petition

28. As I have already pointed out, the right to address a petition is an instrument for direct participation in the political functions exercised by representatives of the peoples of the European Union. Nevertheless, since this is the first time that the Court has been asked to analyse the right of petition as a whole, I think it is useful to give a detailed analysis of this instrument.

29. Although the right to petition the European Parliament was not provided for in the founding treaties,[20] following the first election by universal suffrage, in 1981, the European Parliament amended its Rules of Procedure and officially recognised the right to submit petitions,[21] a right which has since been strengthened by an interinstitutional declaration in 1989.[22] It was not until the Maastricht Treaty entered into force that the right to petition the European Parliament was recognised in the Treaties and that it was finally given the status of a fundamental right incorporated into Article 44 of the Charter.[23]

30. The right of petition[24] was therefore initially designed as an instrument linked with European citizenship.[25] The right to address a petition to the Parliament, laid down in Article 20(2)(d), the second paragraph of Article 24 TFEU and Article 227 TFEU, and the right to submit a complaint to the European Ombudsman, in accordance with Article 228 TFEU, are means by which European citizens are enabled to exercise their direct democratic civic rights. The European citizens' initiative, established by the Lisbon Treaty in accordance with Article 11(4) TEU,[26] is a comparable tool.

19 — Although the appellant refers to paragraph 17 of the judgment under appeal, paragraph 16 thereof is the paragraph at issue.

20 — I note that the submission of petitions to the Assembly and their examination there were already provided for in the Regulation of the Common Assembly of the European Coal and Steel Community (ECSC). At the 1977 Paris summit, the Parliament adopted a resolution on the granting of special rights to citizens of the European Community, requesting that the Commission of the European Communities consider granting to citizens as a matter of priority the right of petition.

21 — The recognition of the right of petition for European citizens was confirmed for the first time at the European Council in 1984 by the adoption of the proposals of the Committee on 'A People's Europe'.

22 — Agreement signed on 12 April 1989 (OJ 1989 C 120, p. 90).

23 — It must be noted that, pursuant to Article 52(2) thereof, the Charter guarantees the right to petition within the limits defined by Articles 20 TFEU and 227 TFEU. The right of petition is also included in Article 24 TFEU.

24 — Etymologically, 'petition' means request (from the Latin 'petere' — to ask). For an analysis, see H. Surrel, 'Le "droit de pétition" au Parlement européen', *Revue du Marché Commun*, No 335, March 1990.

25 — European Parliament resolution on the deliberations of the Committee on Petitions during the parliamentary year 2003-2004 (2004/2090(INI)) (OJ 2005 C 320 E, p. 161).

26 — The conditions for the exercise of this initiative are set out in Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ 2011 L 65, p. 1).

31. A key tool for participation and democratic control by citizens, the right of petition therefore enhances the responsiveness of the European Parliament towards the citizens and residents of the European Union, while at the same time providing individuals with an open, democratic and transparent mechanism for obtaining, where legitimate and justified, a non-judicial remedy for their complaints. [27]

32. It is true that no measure has provided a definition of a petition as such. However, the Parliament has made efforts in this regard by proposing that a petition covers 'all complaints, requests for an opinion, demands for action, reactions to Parliament resolutions or decisions by other Community institutions or bodies forwarded to it by individuals and associations'. [28] Without the official adoption of such a definition, in the reports of the Committee on Petitions, petitions are understood as 'requests for intervention, for action, for change of policy or for an opinion, submitted to the Parliament'. Finally, I note that in a 2001 report, [29] a draft to consolidate the right of petition and an amendment to the Treaty were presented without any particular subsequent action being taken.

33. By way of comparison, as far as I am aware, in a number of Member States the right of petition is a constitutional right (Spain, France, Italy, Luxembourg and Romania) or a fundamental right (Czech Republic, Germany [30]). It is, however, difficult to give a general definition of the right of petition. Depending on national traditions, the petition may incorporate a suggestion or information, an initiative, expressing complaints or grievances. [31] Although certain Member States do not recognise an instrument enabling citizens to bring any matter before the Parliament (Republic of Finland, Kingdom of Sweden), those countries have other means of contacting Members of Parliament, such as letters addressed to the Parliament. [32]

34. In EU law, the exercise of the right of petition has been granted to any European Union resident and to any legal person having its registered office in a Member State. However, following an amendment to the Rules of Procedure in 2011, recourse to petitions has also been extended to natural or legal persons who are not citizens of the European Union and who neither reside nor have their registered office in a Member State. [33] Consequently, the petition is no longer strictly linked to Union citizenship. [34] Moreover, petitions may be signed by several million people who must be represented by one petitioner. [35]

35. However, pursuant to Article 227 TFEU, the possibility of addressing a petition is restricted to matters which fall within the scope of EU law. Therefore, the right of petition plays a role in the concept and monitoring of observance of EU law.

27 — Report on the activities of the Committee on Petitions 2013 (2014/2008(INI)) (A7-0131/2014).

28 — Report on the work of the Committee on Petitions during the parliamentary year 1993-1994 (A3-0158/94).

29 — Report of 27 November 2001 (A5-0429/2001) on European citizens' right of petition: consolidation by amendment of the EC Treaty (2001/2137(INI)).

30 — The right of petition is laid down in Paragraph 17 of the German Basic Law under the section 'Basic Rights' (http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/grundgesetz/gg_01/245122). In accordance with Paragraph 45c of the Basic Law, a Petitions Committee was created (http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/grundgesetz/gg_03/245126). The tasks and powers of that Committee are governed in more
detail by (1) the Law on the Powers of the Petitions Committee (http://www.bundestag.de/bundestag/ausschuesse18/a02/grundsaetze/petitionsausschuss_befugnisse/260546) and (2) the Rules of Procedure of the Bundestag, paragraph 108 et seq. (http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/go_btg/go09/245168).

31 — For a more detailed analysis, see the European Parliament report 'Le droit de pétition dans les pays de l'Union', prepared in 2001: http://www.uni-mannheim.de/edz/pdf/dg4/POLI119_FR.pdf.

32 — See the aforementioned European Parliament report 'Le droit de pétition dans les pays de l'Union', pp. 140 and 141.

33 — The Committee on Petitions is, however, not required to examine them; see Rule 201(13) of the amended Rules of Procedure.

34 — It must however be pointed out that Article 20(2)(d) TFEU, the second paragraph of Article 24 TFEU and Article 227 TFEU apply expressly to the right of citizens of the Union.

35 — See Petition No 1038/96 against experiments on animals in the cosmetic products sector, which was signed by 4 million people.

36. First, petitions prompt work by other European Parliament committees, which are competent as to the substance of the matter, to draft legislation in particular fields. The Parliament may subsequently also adopt resolutions in varied and politically sensitive fields. [36]

37. Secondly, the petition is a way for citizens of the European Union to monitor the application of EU law a posteriori. Petitions are a valuable source of information for detecting breaches of EU law, [37] particularly in the areas of the environment, the internal market, in areas relating to the recognition of professional qualifications, the financial services sector [38] and especially regarding the infringement of fundamental rights. [39] In several cases, the filing of a petition at the same time as a complaint to the European Commission may lead to the initiation of infringement proceedings or an action for failure to act. [40] The statistics show that between one quarter and one third of petitions are linked, or give rise, to infringement proceedings. [41] However, the issue of the action to be taken both on complaints and on petitions does not form the subject-matter of the present proceedings. [42]

2. The procedure for examining petitions

38. The detailed rules on the exercise of the right of petition are governed by Rules 201 to 203 of the amended Rules of Procedure [43] (as last amended). [44] In the light of those provisions, it seems to me indisputable that the Parliament is seeking to establish a fair and transparent procedure which enables any person so entitled to exercise his or her right of petition. [45]

36 — See, for example, Environmental impact of the planned gas pipeline in the Baltic Sea to link up Russia and Germany P6_TA(2008)0336, European Parliament Resolution of 8 July 2008 on the environmental impact of the planned gas pipeline in the Baltic Sea to link up Russia and Germany (Petitions 0614/2007 and 0952/2006) (2007/2118(INI)), OJ 2009 C 294 E, p. 3.

37 — See Resolution 2003-2004 (2004/2090(INI)), cited above: 'whereas the European Parliament, as the directly elected representative body of European citizens at the European level, has a specific duty and privilege to defend citizens' rights; whereas Parliament, nevertheless, needs the help and loyal cooperation of, notably, the Commission as the Guardian of the Treaties if it is to be able to remedy problems which have led citizens to seek its assistance'.

38 — 23rd Commission Report on monitoring the application of [European Union] law (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0416:FIN:EN:PDF, p. 4).

39 — Draft Report on the activities of the Committee on Petitions for 2012 (2013/2013(INI)) (http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-508.200+03+DOC+PDF+V0//EN&language=EN).

40 — Report on the petition at the dawn of the 21st century (2000/2026(INI)) (A5-0088/2001, p. 11).

41 — See 23rd Commission Report, cited above.

42 — See the request by the Committee on Petitions to the Commission to place petitions and complaints on an equal footing in the context of infringement proceedings; paragraph 17 of the Draft Report on the activities of the Committee on Petitions, cited above (2013/2013(INI)), (http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-508.200+03+DOC+PDF+V0//EN&language=EN).

43 — Contrary to the citizens' initiative governed by Regulation No 211/2011.

44 — Although they do not apply to the facts of the present case, these provisions remain essentially the same. For subsequent amendments, see the legal framework.

45 — The Parliament has even raised the question of whether it is necessary to revise the entire petitions procedure: Report on the activities of the Committee on Petitions 2013 (2014/2008(INI), p. 18).

39. In accordance with the provisions in force, the petitions which satisfy the formal conditions governing admissibility [46] are entered in the register in the order in which they are received. Petitions which do not satisfy the conditions set out in Rule 201(2) of the amended Rules of Procedure are to be filed and the petitioners informed of the reasons for this. Although unregistered petitions and those which are inadmissible fall into two distinct categories, [47] the difference between the two is not easy to establish by reference to the reports by the Committee on Petitions. [48]

40. The petitions entered in the register are forwarded to the Committee on Petitions, which checks their substantive admissibility by reference to Article 227 TFEU, which states that any person may address a petition on a matter which comes within the European Union's fields of activity and which affects him, her or it directly.

41. Petitions declared inadmissible at this stage are filed. The amended Rules of Procedure also provide for a vote in cases where the members of the Committee on Petitions fail to reach a consensus on the admissibility of the petition. In any event, the petitioner is informed of the decision on inadmissibility and the reasons for it, often accompanied by the suggestion to bring the matter before the competent national or international body. [49] In that regard, Rule 201(8) of those Rules of Procedure provides for the possibility to recommend alternative means of redress.

42. The petitions declared admissible include those closed with a direct reply and those sent for analysis to other institutions or bodies, for an opinion or for information. The Committee on Petitions then usually asks the Commission to provide any relevant information or to give its opinion on the points raised by the petitioner.

43. Under the provisions governing the examination of petitions, it is clear that the powers of the Committee on Petitions are, in reality, rather limited. That Committee 'is not a judicial body which can decide on the rights and wrongs of a case or whether a correct political decision was made by a Member State authority. The Committee does not have enforcement powers either'. [50]

44. However, it is clear that the Committee on Petitions enjoys a freedom of discretion as to how to act on a petition. Moreover, the decision on the admissibility of a petition may also be discretionary, notwithstanding the link established with Article 227 TFEU. It is, of course, true that that provision requires that, for a petition to be admissible, it must concern a matter which comes within the European Union's fields of activity and affect the petitioner directly. However, beyond those formal requirements, it is clear from Rule 201(7) of the amended Rules of Procedure that, if the Committee on Petitions fails to reach a consensus on the admissibility of the petition, it may be declared admissible at the request of at least one quarter of the members of that committee.

46 — Petitions must indicate the name, nationality and permanent address of each petitioner. They must be written in an official language of the European Union. However, in accordance with Rule 201(5), petitions written in another language may be considered if the petitioner has attached a translation.

47 — See the report on the activities of the Committee on Petitions 2012 (2013/2013(INI)) — Statistical Annex including the categories of applications.

48 — I observe that it is clear from the aforementioned reports by the Committee on Petitions that requests which did not comply with Article 227 TFEU *were not registered* as petitions. It is clear from the 2013 Committee on Petitions report that '[t]he Committee has received, thus far, about 10 000 petitions since 2009 which have been registered, about sixty per cent of these have been declared admissible, as they fall within the area of activity of the European Union'. The distinction between *petitions that were not registered* and *inadmissible petitions* leads to confusion. According to the report, 'in 2013 the Committee on Petitions received in total 2 885 petitions. The PETI Committee managed to process approximately 989 petitions out of which 654 petitions were admissible, 335 inadmissible, 538 have been closed. 199 have been recognised admissible, considered and closed'. It is not clear whether those decisions were notified and reasoned. This does not appear to be the case for unregistered petitions.

49 — According to the Parliament's analysis, the main reason why petitions are declared inadmissible is that petitioners continue to confuse European and national responsibilities and the manner in which responsibilities are split between the European institutions and the Council of Europe or the European Court of Human Rights (see http://www.europarl.europa.eu/ftu/pdf/en/FTU_2.1.4.pdf).

50 — Report on the deliberations of the Committee on Petitions during the parliamentary year 1999-2000 (A5-0162/2000).

45. Finally, I note that the Committee on Petitions considers that 'the petitions process can, and should, remain complementary to other mechanisms of redress [in broad terms] available to citizens, such as lodging complaints with the Commission or the European Ombudsman'.[51] The Committee on Petitions, along with other institutions, bodies and instruments such as the committees of inquiry, the European citizens' initiative and the European Ombudsman, plays an independent and clearly defined role as a point of contact for each individual citizen.[52]

46. This leads me to examine the issue of the concept of a challengeable act, as interpreted by the General Court in *Tegebauer* v *Parliament* (EU:T:2011:466) and which led it in the judgment under appeal to dismiss the action as inadmissible on the ground that, in accordance with the contested decision, the petition had been classified as admissible.

C – *The legal effects of the exercise of the right of petition in the light of Article 263 TFEU*

1. The concept of a measure producing legal effects

47. According to settled case-law, an action for annulment may be brought against all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects. In particular, any measure the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a significant change in his legal position is considered to be open to challenge in accordance with Article 263 TFEU.[53] On the other hand, actions directed against decisions which only constitute measures internal to the administration and which as a consequence have no effect which is external to the administration are inadmissible.[54]

48. Since the present case concerns a measure adopted by the Parliament, it must be noted that, in its judgment in *Les Verts* v *Parliament*, the Court held that an action for annulment may lie against measures adopted by the European Parliament which are intended to have legal effects vis-à-vis third parties.[55] According to settled case-law, measures which relate only to the internal organisation of the work of the Parliament cannot be challenged in an action for annulment.[56]

49. Accordingly, the Court has held that the declaration by the President of the Parliament that the budgetary procedure has been brought to a close ranks among the acts which are capable of producing legal effects vis-à-vis third parties.[57] The Court has also held that an action brought against rules on a transitional end-of-service allowance for Members of the European Parliament was admissible.[58] Judicial review was also made possible in the case of a Parliament resolution specifying the staff dealing with certain activities.[59]

51 — Draft report on the activities of the Committee on Petitions 2012 (2013/2013(INI), paragraph J).

52 — Ibid.

53 — Judgments in *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9; *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 29; and *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraph 51.

54 — Order in *Planet* v *Commission*, T-320/09, EU:T:2011:172, paragraphs 37 to 39.

55 — Judgment in *Les Verts* v *Parliament*, 294/83, EU:C:1986:166, judgment codified by Article G, point 53, of the Maastricht Treaty amending Article 173 of the EC Treaty.

56 — Judgment in *Weber* v *Parliament*, C-314/91, EU:C:1993:109, paragraphs 9 and 10.

57 — Judgment in *Council* v *Parliament*, 34/86, EU:C:1986:291. Subsequently, it has been specified that the measure based on Article 314(9) TFEU is a measure open to challenge for the purpose of Article 263 TFEU since it endows the European Union's budget with binding force; see judgment in *Council* v *Parliament*, C-77/11, EU:C:2013:559, paragraphs 50, 54 to 56, 60 and 63.

58 — Judgment in *Weber* v *Parliament*, EU:C:1993:109, paragraphs 9 and 10.

59 — Judgment in *Luxembourg* v *Parliament*, C-213/88 and C-39/89, EU:C:1991:449.

50. However, the Court has held that measures relating to the setting-up of a Parliament committee of inquiry concern only the internal organisation of the work of the European Parliament. [60] Moreover, the Court has noted that the powers of interparliamentary delegations are limited to matters of information and contact and that measures relating to the appointment of their members and the election of their chairmen are not challengeable acts. [61] The Court has also held that a letter sent by an institution in response to a request made by the addressee does not constitute an act making it possible to bring an action for annulment. [62] The Court has also reserved the decision on the examination of the admissibility of actions against Parliament acts for the final judgment. [63]

51. As far as the present case in concerned, in the light of the characteristics of the right of petition as an instrument of political dialogue falling within the responsibility of the European Parliament, it may be accepted that the decisions adopted by the Committee on Petitions are, prima facie, comparable to measures of internal organisation of the Parliament, adopted in the course of its political work. In the light of this finding, it is nevertheless necessary to examine the effects vis-à-vis third parties of the decisions of the Committee on Petitions, as they derive from the judgment in *Tegebauer* v *Parliament* (EU:T:2011:466)

2. The effects of the decisions of the Committee on Petitions

a) The judgment in *Tegebauer* v *Parliament*

52. First of all, contrary to the appellant's claims, it is established that the judgment in *Tegebauer* v *Parliament* (EU:T:2011:466) does not confer on all decisions of the Committee on Petitions the status of challengeable acts such as to open up the possibility of review by the EU Courts.

53. However, the General Court held in that judgment that 'although the action taken by the Parliament in response to a petition declared admissible is not subject to review by the EU Courts, since the Parliament retains full political discretion in that regard, the assessment as to the admissibility of a petition must, however, be subject to judicial review, since such review is the only guarantee of the effectiveness of the right to submit a petition laid down in Article 194 EC. A decision that a petition is inadmissible and that no further action is to be taken on it by the Committee on Petitions is liable to affect the very essence of the right of citizens to submit a petition, as laid down in the Treaty, and therefore constitutes a decision which may be the subject of an action for annulment'.

54. In the present case, it is clear from the judgment under appeal that the General Court has applied the principle that only those decisions of the Committee on Petitions which classify petitions as inadmissible may be the subject of an action for annulment.

55. According to the appellant, however, that conclusion is vitiated by a logical error since the case-law of the General Court, first, leaves broad discretion as to the validity of petitions and the action to be taken concerning them and, secondly, makes some of those decisions challengeable acts within the meaning of Article 263 TFEU.

60 — Order in *Group of the European Right* v *Parliament*, 78/85, EU:C:1986:227, paragraph 11.

61 — Order in *Blot and Front national* v *Parliament*, C-68/90, EU:C:1990:222, paragraph 12.

62 — See order in *Miethke* v *Parliament*, C-25/92, EU:C:1993:32, regarding a request addressed to the Parliament to declare that the mandates of the German Members had lost their validity by reason of the unification of Germany.

63 — In a recent case involving an application for the annulment of the votes of the European Parliament concerning the Parliament's calendar of part-sessions, judgment in *France* v *Parliament*, C-237/11 and C-238/11, EU:C:2012:796.

56. On the grounds already set out with regard to the characteristics of the petition in EU law and on the grounds which follow, I consider that the rule in *Tegebauer* v *Parliament* (EU:T:2011:466) is vitiated by a contradiction. In my view, no decision by the Committee on Petitions is capable of significantly affecting the legal position of the petitioner.

b) The meaning of the concept of 'right' of petition

57. First, it must be noted that, for the purposes of analysing the legal effects of any measure of EU law, attention must be given above all to its nature and substance and not to its name or form. The same must also apply to the right of petition. Therefore, it is wrong to proceed on the basis of the assumption that use of the term 'right' automatically equates to the existence of a subjective right.

58. In that regard, as to the fact that the right to petition is contained in the Charter and constitutes a fundamental right, it is sufficient to refer to Article 52 of the Charter, paragraph 5 of which lays down a distinction between rights and principles.[64] However, despite being so designated in the Charter, some 'rights' contained therein are not considered to be individual rights. As can be seen in the judgment in *Association de médiation sociale*,[65] 'the right to information and consultation' in accordance with Article 27 of the Charter has been established as a 'principle' within the meaning of the Charter. That provision does not define any individual legal situations, but requires the public authorities to determine the objective content (information and consultation of workers) and certain outcomes (effectiveness of the information, representation on the basis of the levels and notice in sufficient time).[66]

59. Furthermore, EU law has a number of extra-judicial instruments which are called 'rights' but which are not subject to judicial review.

60. Thus, citizens have the right to file a complaint if they consider that the Commission has not respected the Code of Good Administrative Behaviour.[67] The only legal remedy provided for is the complainant's right to ask the Secretariat-General of the Commission to review his complaint. That code also provides for the possibility of bringing the matter before the European Ombudsman. In addition, the Commission has also laid down general principles and minimum standards applicable to public consultations,[68] without coupling them, for the benefit of individuals, with the right to challenge decisions adopted in breach of those principles and standards before the courts.

61. Furthermore, although it is not governed by a specific legal act, citizens have the right to file a complaint with the Commission against an infringement of EU law by a Member State. It is, however, established that private individuals are not entitled to bring proceedings against a refusal by the Commission to institute proceedings against a Member State for failure to fulfil its obligations.[69] If a complainant considers that, in the handling of his complaint, there has been maladministration on the part of the Commission, he may bring an action before the Ombudsman.[70]

64 — It is clear from the explanations relating to the Charter that subjective rights are to be respected, whereas principles are to be observed. Moreover, it is stated that, in some cases, an article of the Charter may contain both elements of a right and of a principle.

65 — *Association de médiation sociale*, C-176/12, EU:C:2014:2.

66 — *Association de médiation sociale*, C-176/12, EU:C:2013:491, point 54 of the Opinion.

67 — European Commission Code of Good Administrative Behaviour, adopted in 2000, http://ec.europa.eu/transparency/code/_docs/code_en.pdf.

68 — Towards a reinforced culture of consultation and dialogue — General principles and minimum standards for consultation of interested parties by the Commission (COM(2002) 704 final).

69 — See, from among numerous cases, *Grúas Abril Asistencia* v *Commission*, C-521/10 P, EU:C:2011:418, paragraph 29, and *Altner* v *Commission*, C-411/11 P, EU:C:2011:852, paragraph 8.

70 — http://ec.europa.eu/eu_law/your_rights/your_rights_en.htm

62. In that regard, in the present appeal, the appellant alleges the risk of an infringement of a fundamental right or, in any event, of the exercise of that right from the perspective of the accompanying procedural safeguards. An infringement of that kind could, he submits, significantly affect the petitioner's legal position.

63. It is established that the principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,[71] and also reaffirmed by Article 47 of the Charter.

64. I note, however, that that principle stems from the finding that 'the existence of a remedy of a judicial nature against any decision of a national authority refusing the benefit of that right is essential in order to secure for the individual effective protection for his right'.[72] The absence of effective legal protection is therefore tantamount to an infringement of a guaranteed right.

65. However, this is not the case with the right of petition. If a petition is the subject of a decision to declare it inadmissible, to take no further action, to transfer it to another institution or to terminate proceedings with a reply, there is no question of restricting or refusing to grant a recognised right, creating the need for judicial protection. On the contrary, in such a situation, the right to exercise the right of petition is fully respected since the appellant was able to submit his petition, has been informed of the procedural steps within the Parliament and has received a response to his request.

66. I note, in the same vein, that, if his request is not granted, the petitioner may resubmit a petition to the Parliament which — following a different political assessment, where necessary — is free to adopt a contrary decision on that petition. It is important to bear in mind in this context that the Parliament has broadened the scope of admissible petitions in relation to the Treaty. Moreover, it may, in general, adopt a political position on subjects falling outside the European Union's areas of competence. However, the positions adopted by the Committee on Petitions have no negative or positive force of *res judicata*. Furthermore, the petitioner may subsequently write to the Ombudsman and the Commission.

c) Case-law relating to complaints

67. Secondly, in order to identify the source of the error which, in my view, has vitiated the distinction made by the General Court in *Tegebauer* v *Parliament* (EU:T:2011:466) and which has been applied in the judgment under appeal, reference must be made to the rules concerning the powers of the authorities when dealing with informal applications or complaints under EU law.

68. Therefore, first, the most classic example can be found in the case-law regarding the areas of competence of the Commission, which has binding powers with regard to complaints in competition law. The Court has already held that, although the Commission is not obliged to adopt a decision establishing the existence of an infringement of the rules on competition or to investigate a complaint brought before it under Regulation [No 17 — now Regulation No 1/2003[73]], it is none the less required to examine closely the matters of fact and of law raised by the complainant in order to ascertain

71 — Judgments in *Johnston*, 222/84, EU:C:1986:206, paragraphs 18 and 19; *Heylens and Others*, 222/86, EU:C:1987:442, paragraph 14; *Commission* v *Austria*, C-424/99, EU:C:2001:642, paragraph 45; *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 39; and *Eribrand*, C-467/01, EU:C:2003:364, paragraph 61.

72 — Judgment in *Heylens and Others*, EU:C:1987:442, paragraph 14.

73 — Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

whether there has been any anti-competitive conduct. Moreover, where an investigation is terminated without any action being taken, the Commission is required to state reasons for its decision in order to enable the General Court to verify whether the Commission committed any errors of fact or of law or was guilty of a misuse of powers.[74]

69. In those circumstances, the Court has held that *an institution empowered to find and sanction an infringement and to which a private person may make a complaint*, as is the case with the Commission in the field of competition, necessarily adopts a measure producing legal effects when it terminates, wholly or in part, an investigation initiated upon a complaint by such a person[75] (emphasis added).

70. However, it is clear that, in the light of the entirely distinct purpose of the economic rules at issue and the role played by the Commission in that context, the case-law in competition matters can in no way provide a point of reference as far as the right of petition is concerned. The distinction made in *Tegebauer* v *Parliament* (EU:T:2011:466) seems, however, to follow that logic. Moreover, the reference made by the appellant to the judgment in *Rendo and Others* v *Commission*[76] concerning competition not only does not apply as far as petitions are concerned but is also incorrect inasmuch as the judgment in *Rendo* did not confirm that every restriction of a right necessarily has legal effects.[77]

71. Secondly, an entirely opposite example is that of the areas of competence of the Ombudsman, who does not have the power to adopt binding measures.[78] Although that case-law does not fully answer the questions raised in the present case, it is useful to make a comparison between the assessment of decisions adopted by the Committee on Petitions and measures adopted by the Ombudsman in connection with the examination of complaints addressed to him under Article 228 TFEU.

72. In particular, it has been held that the report by the Ombudsman finding an instance of maladministration does not, by definition, produce any legal effects vis-à-vis third parties within the meaning of Article 230 EC and is also not binding on the Parliament, which is free to decide, within the framework of the powers conferred on it by the Treaty, what steps are to be taken in relation to it. The same applies *a fortiori* to the annual report which the Ombudsman must also submit to the Parliament at the end of each annual session relating to the outcome of his enquiries.[79] Thus, a reasoned decision by the Ombudsman concluding the substantive examination of a complaint by deciding to take no further action on it does not constitute a measure capable of being challenged by an action for annulment, since such a decision does not produce legal effects vis-à-vis third parties.[80]

73. Having regard to the powers of the Committee on Petitions, it is therefore reasonable to hold that it has no obligation as to the result to be achieved, in the same way as the Ombudsman.[81] Moreover, having regard to the characteristics of the right of petition set out above, that principle should be applied to decisions that a petition is inadmissible or to take no further action without examination of the petition.

74 — Judgment in *Rendo and Others* v *Commission*, C-19/93 P, EU:C:1995:339, paragraph 27.

75 — Judgment in *SFEI and Others* v *Commission*, C-39/93 P, EU:C:1994:253, paragraph 27 and the case-law cited therein.

76 — *Rendo and Others* v *Commission*, T-16/91, EU:T:1992:109, paragraphs 54 to 56.

77 — That judgment was, in any event, set aside by the Court in *Rendo and Others* v *Commission*, EU:C:1995:339 and gave rise to the judgment in *Rendo and Others* v *Commission*; T-16/91, EU:T:1996:189.

78 — See judgment in *Komninou and Others* v *Commission*, C-167/06 P, EU:C:2007:633, paragraph 44.

79 — Order in *Associazione delle Cantine Sociali Venete* v *European Ombudsman and Parliament*, T-103/99, EU:T:2000:135, paragraph 50.

80 — See the order in *Srinivasan* v *European Ombudsman*, T-196/08, EU:T:2008:470.

81 — See, by analogy, *European Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraphs 48 to 52 and the case-law cited therein.

d) The substance of the right of petition

74. Thirdly, I do not consider that the right of petition in EU law may reflect or must be guided by the model of petitions in force in several Member States. In the light of the information before me, only the Federal Republic of Germany,[82] the Kingdom of Spain[83] and the French Overseas Territories[84] have provided for judicial review of the decisions adopted following a petition. Nevertheless, according to my information, even in German law the decisions adopted in response to a petition are not considered to be 'administrative acts' since there is no legal effect on the petitioner.[85]

75. However, the right of petition in EU law must be regarded as an autonomous concept and, in order to come within the scope of Article 263 TFEU, it must satisfy the criteria established in case-law concerning the concept of a measure capable of bringing about a significant change in the legal position of the petitioner. Moreover, I note that, in connection with the control of legality based on Articles 263 TFEU and 265 TFEU, the EU Courts have no power to issue orders to the institutions and bodies of the European Union.[86]

76. Establishing the right of petition is in principle the sole responsibility of the European Parliament as guarantor of the interests of those who elect it. I would like to point out that the exercise of the right to petition the Parliament is not part of the activities of an administrative body, but falls within the activities of a political body. This means that citizens may control and sanction the decisions adopted by the Parliament at European elections.

77. The different types of response that the Committee on Petitions may adopt in relation to a petition, including the transfer to another body having regard to the limits of its mandate, cannot therefore be treated in the same way as a refusal by an administrative body since the Committee on Petitions is a subdivision of a representative body which is political in nature.

78. Accordingly, I propose that the Court find that the substance of the right of petition lies in the possibility of formally making the Parliament aware of certain issues, without conferring on the applicant the right directly to claim legal protection. It is not an individual right intended to produce legal effects with regard to the situation of a petitioner, but a political tool for participation in democratic life.

82 — In principle, these measures are not considered to be 'administrative acts' as they have no legal effect on the petitioner. However, an 'action for injunction' does exist which enables the petitioner to submit a decision without legal effect for judicial review by an administrative court. A constitutional appeal is also possible after all other legal proceedings have been exhausted. With regard to practice, see, for example, http://www.bundesverfassungsgericht.de/entscheidungen/rk20121121_2bvr172012.html, in which the Constitutional Court declared inadmissible a constitutional appeal brought against a decision by the Oberverwaltungsgericht Berlin-Brandenburg of 20 June 2012 in a case relating to a decision taken by the Bundestag's Committee on Petitions to refuse to examine a petition on the ground that two similar petitions were already being examined by the competent federal ministries.

83 — In Spanish law, in respect of a petition before the legislative chambers, the possibility of bringing an action before the constitutional court is provided for if a measure adopted by Parliament infringes a fundamental right. In such cases, an action before the administrative courts is precluded as the activities of Parliament are constitutional in nature.

84 — With regard to French law, only the Overseas Territories are entitled to bring an action before the administrative court, but only for certain decisions.

85 — To be more precise, the review accepted in German law is a formal and non-substantive review. Therefore, a citizen may bring proceedings before an administrative court on the ground that the Bundestag has not dealt with his petition or has not followed the correct procedure. The administrative court cannot, however, give a ruling on the substance.

86 — See order in *Pevasa and Inpesca* v *Commission*, C-199/94 P and C-200/94 P, EU:C:1995:360, paragraph 24; judgment in *Assurances du crédit* v *Council and Commission*, C-63/89, EU:C:1991:152, paragraph 30; orders in *Victoria Sánchez* v *Parliament and Commission*, C-52/11 P, EU:C:2011:693, paragraph 38; and *Mugraby* v *Council and Commission*, C-581/11 P, EU:C:2012:466, paragraph 75.

79. The possibility for citizens to send letters or other documents to the Parliament and Members of Parliament is not generally contingent on any formal right of petition. For that reason, I take the view that, from a constitutional perspective, the purpose of that instrument is tantamount to an authorisation for the European Parliament formally to have a matter brought before it through initiatives which do not emanate from the Commission or from the Parliament's members, factions or committees. [87]

80. The corollary to the right of petition is therefore the Parliament's duty to establish the mechanisms to enable applicants to access the Parliament using efficient and transparent procedures. Only the establishment of those mechanisms may therefore be subject to review by the EU Courts by means of an action for failure to act pursuant to Article 265 TFEU.

81. In that regard, I am inclined to take the view that a review by the EU Courts is required only if the Parliament's conduct reflects a serious and persistent infringement of the right of petition, calling into question the application of the petition instrument in itself, in particular in the event of a refusal to receive petitions or in the event of a failure to respond to petitions. Such conduct would constitute an infringement of the Parliament's duty under Articles 20 TFEU and 227 TFEU and Article 44 of the Charter. In that situation, following a complaint by an individual, the Commission, as guardian of the Treaties, would have to intervene in accordance with Article 265 TFEU.

82. In any event, the application by analogy of the solution formulated by the Court in case-law concerning the decisions of the Ombudsman cannot be ruled out, despite the approach that the right of petition is not a subjective right. In accordance with that case-law, in very exceptional circumstances a citizen may be able to demonstrate that the Committee on Petitions has committed a sufficiently serious breach of EU law in the performance of its duties such as is likely to cause damage to the citizen concerned. [88]

83. In the light of all of the foregoing, I consider that the rule in *Tegebauer* v *Parliament* (EU:T:2011:466) is based on an incorrect interpretation of the scope of the right of petition under Articles 20 TFEU and 227 TFEU in so far as it confers on decisions finding that a petition is inadmissible and that no further action will be taken on it the character of decisions which are open to challenge.

84. Consequently, by applying that case-law, the General Court has erred in law in the judgment under appeal.

85. However, that error has no implications for the operative part of the judgment under appeal. The error of law committed by the General Court does not invalidate the judgment under appeal since its operative part is well founded on other legal grounds. [89] I therefore propose that the Court substitute the grounds to the effect that the judicial review of all decisions by the European Parliament's Committee on Petitions must be precluded in so far as those decisions are not challengeable acts within the meaning of Article 263 TFEU.

VII – **The second ground of appeal (the first, fifth and sixth complaints in the appeal)**

86. In the light of the foregoing, there is no need to examine the remaining complaints in the appeal, which are, in any event, considered in the European Parliament's observations to be manifestly inadmissible. The following analysis is therefore presented in the alternative.

87 — I recall the position taken by Committee on Petitions in point 1 of this Opinion, namely that a petition enables an individual to be *formally* heard (emphasis added).

88 — See, by analogy, *European Ombudsman* v *Lamberts*, EU:C:2004:174, paragraph 52.

89 — Judgment in *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 136.

87. By his first complaint, the appellant alleges that the General Court failed to take account of the fact that the substance of his petition has not been examined by the Committee on Petitions. Such a distortion of the facts, he argues, led the General Court to conclude, wrongly, that the right of petition had not been infringed in the present case.

88. In this regard, it must be borne in mind that, although in an appeal the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts, the jurisdiction of the Court of Justice to review the findings of fact by the General Court extends to, inter alia, the substantive inaccuracy of findings as apparent from the documents in the file, the distortion of the evidence, the legal characterisation of that evidence and the question whether the rules relating to the burden of proof and the taking of evidence have been observed. [90]

89. However, the comparison between paragraph 3 of the judgment under appeal and the response in the contested decision cannot support a finding that there was any distortion or substantive inaccuracy. Although the General Court did not reproduce word for word the letter from the chairperson of the Committee on Petitions, it can be deduced clearly from the judgment under appeal that the Committee did not examine the appellant's petition. In any event, it is apparent from the judgment under appeal as a whole that the General Court correctly identified the petition at issue as being admissible, which led it to note, rightly, that the action to be taken in response to a petition is a matter within the sole discretion of the Parliament, which is not required to adopt a specific measure with regard to the petitioner. Accordingly, that argument is manifestly unfounded.

90. By the fifth complaint in the appeal, the appellant alleges that the General Court failed to state reasons. According to the appellant, in the judgment under appeal the General Court erred in refraining from examining whether, when adopting the contested decision, the Parliament had infringed the obligation to state reasons, despite the complaint raised by the appellant at first instance. However, since I propose that the Court should find that the contested decision is not a challengeable act, there is no need for any analysis in that regard and that complaint must be rejected as being manifestly inadmissible.

91. By the sixth complaint in the appeal, the appellant alleges that the General Court did not fully examine the facts as it did not establish whether the appellant had had the opportunity to set out his case before the Committee on Petitions. In the light of the case-law referred to in point 88 of this Opinion, that criticism must be rejected as being manifestly inadmissible. In any event, since I propose that the Court declare the appeal against the contested decision inadmissible, as the General Court also properly based the judgment under appeal on the inadmissibility of the appellant's request, the General Court was under no obligation to examine the course of the procedure before the Committee on Petitions.

VIII – **Conclusion**

92. I propose that the Court should:

— dismiss the appeal, whilst substituting the grounds of the judgment under appeal;

— order the appellant to bear his costs and to pay those of the European Parliament.

90 — Judgment in *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, EU:C:2013:866, paragraphs 38 and 39 and the case-law cited therein.