JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
26 October 2000 *

In Joined Cases T-83/99 to T-85/99,

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

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

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

represented by V. Viscardini Donà and G. Donà, of the Padua Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 8/10 Rue Mathias Hardt,

applicants,

v

European Parliament, represented by A. Caiola and G. Ricci, of its Legal Service, acting as Agents, assisted by F. Capelli, of the Milan Bar, with an address for

* Language of the case: Italian.

service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decisions of the European Parliament of 4 February 1999 rejecting the requests submitted by Mr Ripa di Meana, Mr Orlando and Mr Parigi for the provisional pension scheme referred to in Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament to apply with retroactive effect,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: V. Tiili, President, R.M. Moura Ramos and P. Mengozzi, Judges,

Registrar: G. Herzig, Administrator,

having regard to the written procedure and further to the hearing on 29 June 2000,

gives the following

Judgment

Facts

1 The applicants were Members of the European Parliament (hereinafter 'the Parliament') during the 1994 to 1999 legislative period.

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

3 The provisional pension scheme in force since 25 May 1982 provided:

'*Article 1*

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

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

Article 2

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

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

Article 3

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

...

Article 6

These rules shall enter into force on 25 May 1982.'

4 The provisional pension scheme was amended by the decision of the Bureau of the European Parliament on 13 September 1995. It provides:

'Article 1

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

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

Article 2

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

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

Article 3

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

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

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

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

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.

Article 5

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

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

5 That amendment was sent to the Members of the European Parliament by communication of the European Parliament No 25/95 of 28 September 1995.

6 The applicants, believing that they were covered by the provisional pension scheme, as is the case with respect to the Italian parliament, did not apply to join the provisional scheme as provided for by the amendment of 13 September 1995. It was not until the first few months of 1998 that the applicants learned by chance that in fact they enjoyed no pension protection because they had not formally joined the scheme within the period of six months from the entry into force of the new Article 3(1) of Annex III, as amended by decision of the Bureau of 13 September 1995.

7 The applicants then followed different courses of action. Mr Parigi submitted his application for membership of the abovementioned scheme to the Social Affairs Division of the Personnel and Social Affairs Directorate of the Personnel Directorate-General of the Parliament (hereinafter 'the Social Affairs Division') on 18 February 1998. He requested the retroactive application of the provisional pension scheme. The College of Quaestors replied by two letters, dated 2 July and 20 October 1998, informing him that it was impossible to join the provisional pension scheme retrospectively.

8 Mr Ripa di Meana and Mr Orlando contacted the Parliament administration without submitting a written application.

9 After a number of fruitless approaches to the competent departments, the applicants turned to the Vice-Presidents of the Parliament, Mr Imbeni and Mr Podestà, to ask them to intervene to resolve the problem.

10 Mr Imbeni and Mr Podestà sent a letter dated 19 November 1998 to the College of Quaestors seeking a review of the applicants' situation. The request was rejected by individual letters sent to the applicants (No 300762 to Mr Ripa di Meana, No 300763 to Mr Orlando and No 300761 to Mr Parigi) by the College on 4 February 1999, on the ground that all the Members had been informed that membership of the abovementioned retirement scheme would only be possible if an application to that effect was submitted within the period prescribed in the decision of the Bureau of the Parliament of 13 September 1995, cited above (hereinafter 'the contested decision' or 'the contested decisions').

Procedure and forms of order sought by the parties

11 Those are the circumstances in which, by applications lodged at the Registry of the Court of First Instance on 13 April 1999, the applicants brought the present proceedings.

12 By order of the President of the Fourth Chamber of 22 May 2000, after hearing the parties, Cases T-83/99, T-84/99 and T-85/99 were joined for the purposes of the oral procedure and the judgment on account of the connection between them, pursuant to Article 50 of the Rules of Procedure of the Court of First Instance.

13 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure, asked the parties to reply to written questions and to produce certain documents. The parties complied with those requests.

14 The applicants claim that the Court should:

— annul the contested decision;

— order the Parliament to pay the costs.

15 The defendant contends that the Court should:

— dismiss the action as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

16 The Parliament contests the admissibility of the application. It points out that Mr Ripa di Meana and Mr Orlando did not submit applications to join the provisional pension scheme to the Social Affairs Division. It considers that the letter from the Vice-Presidents is devoid of any legal effect. The measure whose

annulment is sought is a mere communication making known the content of a legal provision: the decision of the Bureau of the Parliament of 13 September 1995. Accordingly, the decision at issue is in fact the decision of 13 September 1995 amending Annex III, which, since its content is clear and mandatory, had already changed the legal situation of the applicants. In other words, the decision was adopted automatically as soon as the time-limit for submitting applications for membership expired.

17 The defendant submits that the application is, consequently, also out of time. The applicants should have challenged the decision of the Bureau of the Parliament of 13 September 1995 as soon as they became aware of it. Moreover, so far as concerns Mr Parigi, he should have, in any event, challenged the decisions of the College of Quaestors of 2 July or of 20 October 1998, since the letter of 4 February 1999 was only confirmatory.

18 The Parliament observes that since procedural time-limits are mandatory, the applicants cannot reopen them by requesting a review.

19 It rejects, in particular, Mr Parigi's argument that the Staff Regulations of officials of the European Communities (hereinafter 'the Staff Regulations') should be applied by analogy. It also points out that even if the Staff Regulations were applied, Mr Parigi's action would be out of time.

20 Finally, the Parliament submits that the contested decision is not a measure capable of producing legal effects, since it is not the outcome of the procedure provided for in Article 27(2) of the Rules Governing the Payment of Expenses and Allowances to Members of the Parliament. That procedure provides that a Member who considers that those rules have been incorrectly applied may write to the Secretary-General of the Parliament and that, if no agreement is reached between the Member and the Secretary-General, the matter is to be referred to the

College of Quaestors which is to take a decision after consulting the Secretary-General. The College may also consult the President and/or the Bureau.

21 Two of the applicants, namely Mr Ripa di Meana and Mr Orlando, concede that they did not submit formal applications to join the pensions scheme only because they were informed by the officials in the Social Affairs Division that membership could not be granted retrospectively.

22 Mr Parigi, for his part, claims that the unfavourable decisions taken by the College of Quaestors before the contested decision were not challengeable. Only the decision of 4 February 1999 was irrevocable. He submits that, given that other Italian Members had the same problem, he could expect a positive outcome for all of them. Finally, he states that the legal remedies provided for by the Staff Regulations should be applied by analogy to Members of the European Parliament.

23 As regards the defendant's assertion that the letters of the College of Quaestors of 4 February 1999 are no more than a reply to a request for information from the two Vice-Presidents of the Parliament, the applicants claim that this is belied by the wording of the said letters which were addressed personally to each of the applicants and which conclude as follows: 'Accordingly, pursuant to the rules in force, your request cannot be granted.' The applicants maintain that it is the decision of the College of Quaestors which directly affected their financial situation, and it is therefore that decision and not that of the Bureau that had to be challenged.

24 So far as concerns the Parliament's contention that the applicants should have challenged the decision of the Bureau of 13 September 1995, since it concerned directly their situation as Members of the Parliament, the applicants contend that, in view of Rule 25 of the Rules of Procedure of the Parliament, according to which 'the Quaestors shall be responsible for administrative and financial matters

directly concerning Members, pursuant to guidelines laid down by the Bureau,' the Bureau of the Parliament merely adopts 'guidelines' of a general nature whilst individual decisions are taken by the College of Quaestors.

Findings of the Court

25 So far as concerns the actions in Cases T-83/99 and T-84/99, Mr Ripa di Meana and Mr Orlando contacted the administration of the Parliament without written, and therefore explicit, requests, before the intervention of the Vice-Presidents of the Parliament, on 19 November 1998. None the less, the Parliament contends that those actions are inadmissible on the ground that the letter of 4 February 1999 is merely a rewording of a legal provision, namely the decision of the Bureau of the Parliament of 13 September 1995. Accordingly, the contested decision is in fact the decision of 13 September 1995 amending Annex III, which, since its content is clear and mandatory, had already changed the legal situation of the applicants.

26 That argument cannot be accepted. The letter of 19 November 1998 must be regarded as a request of the applicants made on their behalf by the Vice-Presidents.

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

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

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

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

31 It follows that the arguments of the Parliament relating to the inadmissibility of the actions in Cases T-83/99 and T-84/99 must be rejected.

32 So far as concerns the admissibility of the action in Case T-85/99 brought by Mr Parigi, it must be observed that, after realising that he was not a member of the

provisional pension scheme, Mr Parigi submitted his application to join that scheme to the Social Affairs Division on 18 February 1998. Next, by letter of 13 May 1999, he applied to join that scheme with retroactive effect. That request was explicitly refused by the College of Quaestors, first on 2 July and again on 20 October 1998.

33 According to settled case-law, an action for annulment brought against a decision which merely confirms an earlier decision which has not been challenged in good time is inadmissible. A decision is a mere confirmation of an earlier decision where it contains no new factors as compared with the earlier measure and is not preceded by any reexamination of the situation of the addressee of the earlier measure (order of the Court of First Instance in Case T-84/97 *BEUC* v *Commission* [1998] ECR II-795, paragraph 52, and case-law cited).

34 Accordingly, in view of the fact that the letter of 4 February 1999 does not contain any new factor as compared with the letters of 2 July or of 20 October 1998, it follows that the letter of 4 February 1999 is a mere confirmation of the decisions of 2 July and 20 October 1998. Moreover, the fact that the College of Quaestors again replied does not constitute a reexamination of Mr Parigi's situation. Since the decisions of 2 July and 20 October 1998 were not challenged within the prescribed time-limits, namely, in accordance with the fifth paragraph of Article 173 of the EC Treaty, within two months of their notification to the applicant, it follows that the action in Case T-85/99 is inadmissible.

35 So far as concern Mr Parigi's assertions connected with the objection of illegality, it must be recalled that the objection of illegality may be raised only as a preliminary issue, when an action is brought before the Court of First Instance or the Court of Justice on the basis of another provision of the Treaty, since Article 184 of the EC Treaty (now Article 241 EC) does not make it permissible for individuals to challenge the validity of a normative act by way of a direct action. The possibility of invoking the objection of illegality thus presupposes the admissibility of the action in respect of which it is raised (order of the Court of Justice in Case C-64/93 *Donatab and Others* v *Commission* [1993] ECR I-3595, paragraphs 19 and 20).

36 In those circumstances, it must be held that the action brought by Mr Parigi is inadmissible in its entirety. Accordingly, there is no need to examine the other pleas in law put forward by him. It follows that hereinafter any reference to the applicants means only Mr Ripa di Meana and Mr Orlando.

Substance

The objection of illegality

37 The applicants claim in the context of this action for annulment, *in limine*, that the decision of the Bureau of the Parliament of 13 September 1995 amending the provisional pension scheme is unlawful. That claim is supported by three pleas alleging abuse of powers, breach of the principle of the protection of legitimate expectations and breach of the principle of equal treatment.

The first plea: *ultra vires*

— Arguments of the parties

38 The applicants claim that the provisional pension scheme is administered by the Parliament on behalf of the various Governments, including the Italian Government. Consequently, it was to the scheme applicable to the Members of the Italian Camera dei Deputati (Chamber of Deputies) that the competent Parliament services and the Members of the European Parliament of Italian nationality ought to refer. In view of the fact that, according to the Italian rules,

deputies were automatically covered by the pension scheme, Annex III ought to have made the same provision and in any event should under no circumstances not have made application of that scheme subject to a time-limit. It follows that the Parliament, by introducing a time-limit for joining the provisional pension scheme mentioned in Annex III, arrogated a power to itself which it did not have and that, by doing so, it has acted *ultra vires*. Moreover, the applicants maintain that the amendment to Annex III is unlawful because it introduces a restriction to entitlement to retirement pension which does not exist in the Italian rules.

39 The Parliament contends that the applicants are attempting to circumvent the inadmissibility of their actions by invoking an objection of illegality. Referring to its contention relating to the inadmissibility of the actions, the Parliament repeats that the decision of the Bureau of the Parliament of 13 September 1995 was aimed at a specific and identifiable group of persons, who had the opportunity to challenge the validity of that decision by way of an action for annulment. Accordingly, the applicants could no longer call in question the lawfulness of that decision, since they had not challenged it in good time by way of an action for annulment.

40 The Parliament disputes that the reference to the level and conditions of the national schemes, in Article 2 of Annex III, precluded it from setting a time-limit for the submission of applications for membership. Furthermore, according to Rule 22 of the Rules of Procedure of the Parliament, the Bureau is the body with competence to do so. It points out that the adoption of certain rules and procedures for membership of the provisional pension scheme does not restrict the applicants' pension rights.

— Findings of the Court

41 It must be observed, at the outset, that, as the Court of Justice has held in particular in Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, paragraph

39, Article 184 of the Treaty expresses a general principle conferring upon any party to proceedings the right to challenge incidentally, for the purpose of obtaining the annulment of a decision directed at it, the validity of acts which form the legal basis of such a decision, if that party was not entitled under Article 173 of the Treaty to bring a direct action challenging those acts.

42 The first plea in law relating to the objection of illegality is based on the presumption that the provisional pension scheme is managed by the Parliament on behalf of the various Governments. However, that presumption is mistaken. It is clear from Article 1 of that scheme that a provisional retirement pension is paid out of the Community budget, Parliament section.

43 The applicants' assertion that Article 2(1) refers to the scheme applicable to the Members of the Italian Camera dei Deputati is also unfounded. Article 2(1) of Annex III provides that the level and conditions of the provisional pension are to 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. Thus, those provisions align the pension on the system of the State for which the Member concerned was elected and not on the conditions for joining the provisional pension scheme.

44 Moreover, as the Parliament correctly states, the adoption of certain rules and procedures for membership of the provisional pension scheme do not restrict the applicants' pension rights.

45 Finally, it must be emphasised that the Parliament is authorised, under the power of internal organisation conferred on it by the treaties, to take appropriate

measures to ensure the proper functioning and conduct of its proceedings, as is clear from the judgment of the Court of Justice in Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255, paragraph 38 (see also the judgment of the Court of Justice in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 44).

46 It follows that the Parliament has not acted *ultra vires* by adopting a time-limit for joining the provisional pension scheme.

47 The first plea in law cannot, therefore, be upheld.

The second plea in law: breach of the principle of the protection of legitimate expectations

— Arguments of the parties

48 The amendment of 13 September 1995 constituted furthermore, according to the applicants, a breach of the principle of the protection of legitimate expectations on the ground that it was not brought to the notice of the Members of the Parliament who were concerned. When they took their seats for the 1994-1999 legislative period, it was explained to the applicants that the rule in force on pensions was aligned on that of the Italian parliament. In view of that situation, which lasted at least 15 months, it was reasonable for the applicants to expect that the provisional pension scheme would not be amended during that legislative period.

49 The Parliament emphasises that its conduct could not have led the applicants to entertain legitimate expectations.

— Findings of the Court

50 In considering what the applicants could expect, it is necessary to examine the relevant provisions of Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the Parliament in force in July 1994, that is to say at the commencement of the legislative period. It is clear from the former Annex III that there did not exist any rule concerning a time-limit for the submission of applications for membership. Thus, before the amendment of 13 September 1995, Members of the European Parliament could submit an application to join the provisional pension scheme with retroactive effect at any time during the legislative period, as the Parliament also acknowledges.

51 Given that the Members of the European Parliament could submit, prior to the amendment of 13 September 1995, an application to join the provisional pension scheme without being subject to a time-limit, the Court must examine whether that situation could have been altered without infringing the applicants' legitimate expectations.

52 It is settled case-law that the right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it is apparent that the Community administration has led him to entertain justified expectations (see, for example, Case T-203/96 *Embassy Limousines & Services* v *Parliament* [1998] ECR II-4239, paragraph 74). On the other hand, breach of that principle may not be pleaded unless the administration has given him precise

assurances (Case T-498/93 *Dornonville de la Cour* v *Commission* [1994] ECR-SC I-A-257 and II-813, paragraph 46).

53 In that connection, it must be observed that the administration of the Parliament did not provide any assurances that the rules of the provisional pension scheme would remain untouched during the legislative period. Moreover, the reference in Annex III to the Italian system cannot be interpreted as of a nature such as to give rise to justified expectations on the part of the applicants regarding the maintenance of the membership rules for the provisional pension scheme.

54 It follows that the plea alleging breach of the principle of the protection of legitimate expectations must be rejected.

The third plea in law: breach of the principle of equal treatment

— Arguments of the parties

55 The applicants submit that the amendment of 13 September 1995 involves unequal treatment in two respects. First, the applicants are of the opinion that their factual and legal situation is so similar to that of a Member of the Italian Camera dei Deputati that their treatment should not be different. Given that the Italian rules do not lay down, in respect of national members of parliament, any time-limit for joining the pension scheme, the provisional pension scheme should not do so either. Secondly, the applicants also contend that they are victims of discrimination by comparison with those Italian Members of the European Parliament who took their seats in the European Parliament during the legislative period and who may join the provisional scheme by requesting its application with retroactive effect as from the commencement of the legislative period.

56 The Parliament disputes those assertions.

— Findings of the Court

57 It must be borne in mind from the outset that, according to settled case-law, the principle of equal treatment, one of the fundamental principles of Community law, is infringed only if two classes of persons whose legal and factual situations are not essentially different are treated differently or different situations are treated in the same way (Case T-172/96 *Chevalier-Delanoue* v *Council* [1997] ECR-SC I-A-287 and II-809, paragraph 21).

58 The applicants compare their situation to that of Italian deputies in the Camera dei Deputati and to that of Members of the Parliament who take their seats in the Parliament during the legislative period.

59 It is not disputed that those situations are different by comparison with those of the applicants, both as regards the legal and the factual aspects. Thus, it is consistent with the principle of non-discrimination that they should not be treated on an equal footing.

60 Consequently, the third plea in law must also be rejected.

61 It follows from the foregoing that all the pleas in law relating to the objection of illegality must be rejected.

The pleas in law alleging (a) that there was no failure by the applicants to comply with the six-month time-limit, laid down by Annex III, for submitting their applications to join the provisional pension scheme, (b) breach of the principle of sound administration and (c) breach of the principle of legal certainty

Arguments of the parties

62 The applicants claim that they did not receive Communication No 25/95 on the amendment of Annex III of 13 September 1995. They explain that it was by chance that in 1998 they learnt of the existence of a deadline for the submission of applications to join the provisional pension scheme.

63 With regard to the circumstances which might explain how they did not receive Communication No 25/95, they state that all the Members of the Parliament have a personal pigeonhole which has no lock and is not supervised and which daily receives a large and very mixed correspondence. Thus, it is possible that someone might have taken the correspondence in question or that it remained unnoticed.

64 They observe that, under Article 27(1) of the Rules Governing the Payment of Expenses and Allowances to Members of the Parliament, 'on commencement of their term of office, Members shall receive from the Secretary-General a copy of these Rules and shall acknowledge receipt thereof in writing'. According to the applicants, the decision of the Bureau of 13 September 1995 amending Annex III should have been brought to the notice of each Member in compliance with the rules laid down in Article 27(1), cited above, and, accordingly, should have been notified to them individually and the recipients should have acknowledged receipt thereof in writing.

65 The applicants claim that, according to settled case-law, it is for the parties invoking undue delay with regard to a measure to prove the date of notification

of the contested decision and, accordingly, *a fortiori*, the existence of such notification. Consequently, the administration has a duty to ensure that there is a system for communicating acts which is suited to the objective pursued and the importance of the act. In the present case, the administration did not comply with that duty.

66 They complain that the Parliament did not draw the notice of the Members in Communication No 25/95 to the fact that as from that date they only had six months in which to join the pension scheme with retroactive effect. Moreover, recalling the statement of the defendant that most of the Members had submitted the application in question in time, the applicants contend that an administration exercising ordinary care should have informed the 'few Members' who had not yet joined the scheme in question that the period within which they could still do so was about to expire.

67 In that regard, the applicants state that in 1992 the Parliament deemed it necessary to communicate the amendments to a supplementary pension scheme to all the Members both at their address at the Parliament and their private address. They point out that the amendment to Annex III affected only the Italian and French Members.

68 Finally, the applicants state that Community rules must be certain and their application foreseeable by those who are subject to them. That requirement of legal certainty must apply with particular rigour in the case of a rule likely to have financial consequences in order that those concerned may know with certainty the full extent of their obligations. According to the applicants, that principle was not observed in the present case for the abovementioned reasons.

69 So far as concerns the allegedly inappropriate manner in which the documents in question were publicised, the Parliament points out that the Members received, on several occasions, the information on the amendment of 13 September 1995. It states that the competent departments saw to the distribution to Members of

the text of the amendment made to Annex III by forwarding Communication No 25/95 dated 28 September 1995, the minutes of the meeting of the Bureau of 13 September 1995 which, in accordance with the provisions referred to in Rule 28(1) of the Rules of Procedure of the Parliament, is distributed to all the Members, and the consolidated text of the Rules Governing the Payment of Expenses and Allowances to Members of the Parliament which was published in March 1996 and again in September 1997. Furthermore, most of the Members concerned submitted their membership application within the prescribed period.

70 It observes that the applicants received, on commencement of their term of office, a copy of the Rules Governing the Payment of Expenses and Allowances to Members of the Parliament, pursuant to Article 27(1) of those Rules. It denies that all the amendments made to those rules must be distributed as provided for in Article 27(1) of the Rules. It points to the duty of care of the Members *vis-à-vis* their institution, in the absence of which, the receipt of information transmitted by internal channels could be systematically contested, thus hindering the normal work of the Parliament. Finally, the Parliament argues that the Members should be obliged to follow the work of the organs of the Parliament and to keep themselves up to date with the decisions adopted.

71 It therefore contends that it is only the applicants' negligence which gave rise to the failure to submit the application to join the provisional pension scheme within the six-month time-limit.

72 Moreover, it states that, in any event, the applicants themselves claim to have become aware of the amendment early in 1998 at the latest.

73 Finally, the Parliament observes that, even before the amendment of Annex III, membership of the provisional pension scheme was not automatic.

Findings of the Court

74 By the three pleas in law relating to the substance, the applicants seek, essentially, to show that the Parliament infringed the principles of legal certainty and sound administration by failing properly to notify the amendment to Annex III. The applicants claim that the amendment to Annex III is unenforceable against them given that the amendment was not brought to the notice of each Member in accordance with the arrangements laid down in Article 27(1) of the Rules Governing the Payment of Expenses and Allowances to Members of the Parliament and that, therefore, it was not notified to them individually.

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

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

77 Since there was no such notification, a period prescribed for the submission of an application based on a measure providing for pension rights of the kind involved in the present case can only begin to run, according to Community case-law, from the moment at which the third party concerned, having learnt of the existence of

that measure, acquires, within a reasonable period, precise knowledge of the content of that measure (see, to that effect, Case T-100/92 *La Pietra* v *Commission* [1994] ECR-SC I-A-83 and II-275, paragraph 30, and the case-law cited therein).

78 Even though the applicants do not deny having become aware of the existence of the amendment to Annex III during the early months of 1998, the Parliament has not proved that they had precise knowledge of the amending measure more than six months before the applications were submitted on 19 November 1998. Furthermore, the facts of the case show that that precise knowledge was acquired within a reasonable time.

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

80 It follows from all the foregoing that the contested decisions are to be annulled so far as Mr Ripa di Meana and Mr Orlando are concerned.

Costs

81 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament has been unsuccessful in Cases T-83/99 and T-84/99, it must be ordered to pay the costs incurred by Mr Ripa di Meana and Mr Orlando respectively, as applied for by them. Since Mr Parigi has been unsuccessful, he must be ordered to pay the costs incurred by the Parliament, as applied for by it.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Annuls the decisions of the European Parliament of 4 February 1999 Nos 300762 and 300763 rejecting the requests submitted by Mr Ripa di Meana and Mr Orlando respectively for the provisional pension scheme referred to in Annex III to the Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament to apply with retroactive effect;

2. Dismisses the application in Case T-85/99 as inadmissible;

3. Orders the Parliament to bear its own costs and to pay those of Mr Ripa di Meana and Mr Orlando in Cases T-83/99 and T-84/99;

4. Orders Mr Parigi to bear his own costs and pay those of the Parliament in Case T-85/99.

Tiili Moura Ramos Mengozzi

Delivered in open court in Luxembourg on 26 October 2000.

H. Jung

Registrar

P. Mengozzi

President