JUDGMENT OF THE COURT (Full Court)
30 March 2004 *

In Case C-167/02 P,

Willi Rothley, residing in Rockenhausen (Germany),

Marco Pannella, residing in Rome (Italy),

Marco Cappato, residing in Milan (Italy),

Gianfranco Dell'Alba, residing in Rome,

Benedetto Della Vedova, residing in Milan,

Olivier Dupuis, residing in Rome,

Klaus-Heiner Lehne, residing in Düsseldorf (Germany),

Johannes Voggenhuber, residing in Vienna (Austria),

* Language of the case: German.

Christian von Boetticher, residing in Pinneberg (Germany),

Emma Bonino, residing in Rome,

Elmar Brok, residing in Bielefeld (Germany),

Renato Brunetta, residing in Rome,

Udo Bullmann, residing in Gießen (Germany),

Michl Ebner, residing in Bolzano (Italy),

Raina A. Mercedes Echerer, residing in Vienna,

Markus Ferber, residing in Bobingen (Germany),

Francesco Fiori, residing in Voghera (Italy),

Evelyne Gebhardt, residing in Mulfingen (Germany),

Norbert Glante, residing in Werder/Havel (Germany),

Alfred Gomolka, residing in Greifswald (Germany),

Friedrich-Wilhelm Graefe zu Baringdorf, residing in Spenge (Germany),

Lissy Gröner, residing in Neustadt (Germany),

Ruth Hieronymi, residing in Bonn (Germany),

Magdalene Hoff, residing in Hagen (Germany),

Georg Jarzembowski, residing in Hamburg (Germany),

Karin Jöns, residing in Bremen (Germany),

Karin Junker, residing in Düsseldorf,

Othmar Karas, residing in Vienna,

Margot Keßler, residing in Kehmstedt (Germany),

Heinz Kindermann, residing in Strasburg (Germany),

Karsten Knolle, residing in Quedlinburg (Germany),

Dieter-Lebrecht Koch, residing in Weimar (Germany),

Christoph Konrad, residing in Bochum (Germany),

Constanze Krehl, residing in Leipzig (Germany),

Wilfried Kuckelkorn, residing in Bergheim (Germany),

Helmut Kuhne, residing in Soest (Germany),

Bernd Lange, residing in Hanover (Germany),

Kurt Lechner, residing in Kaiserslautern (Germany),

Jo Leinen, residing in Saarbrucken (Germany),

Rolf Linkohr, residing in Stuttgart (Germany),

Giorgio Lisi, residing in Rimini (Italy),

Erika Mann, residing in Bad Gandersheim (Germany),

Thomas Mann, residing in Schwalbach/Taunus (Germany),

Mario Mauro, residing in Milan,

Hans-Peter Mayer, residing in Vechta (Germany),

Winfried Menrad, residing in Schwäbisch Hall (Germany),

Peter-Michael Mombaur, residing in Düsseldorf,

Rosemarie Müller, residing in Nieder-Olm (Germany),

Hartmut Nassauer, residing in Wolfhagen (Germany),

Giuseppe Nistico, residing in Rome,

Willi Piecyk, residing in Reinfeld (Germany),

Hubert Pirker, residing in Klagenfurt (Austria),

Christa Randzio-Plath, residing in Hamburg,

Bernhard Rapkay, residing in Dortmund (Germany),

Mechtild Rothe, residing in Bad Lippspringe (Germany),

Dagmar Roth-Behrendt, residing in Berlin (Germany),

Paul Rübig, residing in Wels (Austria),

Umberto Scapagnini, residing in Catane (Italy),

Jannis Sakellariou, residing in Munich (Germany),

Horst Schnellhardt, residing in Langenstein (Germany),

Jürgen Schröder, residing in Dresden (Germany),

Martin Schulz, residing in Würselen (Germany),

Renate Sommer, residing in Herne (Germany),

Ulrich Stockmann, residing in Bad Kösen (Germany),

Maurizio Turco, residing in Pulsano (Italy),

Guido Viceconte, residing in Bari (Italy),

Ralf Walter, residing in Cochem (Germany),

Brigitte Wenzel-Perillo, residing in Leipzig,

Rainer Wieland, residing in Stuttgart,

Stefano Zappala, residing in Latina (Italy),

and

Jürgen Zimmerling, residing in Essen (Germany),

represented by H.-J. Rabe, Rechtsanwalt,

appellants,

APPEAL against the judgment of the Court of First Instance (Fifth Chamber) of 26 February 2002 in Case T-17/00 *Rothley and Others* v *Parliament* [2002] ECR II-579, seeking to have that judgment set aside,

the other parties to the proceedings being:

European Parliament, represented by J. Schoo and H. Krück, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

Kingdom of the Netherlands, represented by H.G. Sevenster, acting as Agent,

French Republic,

Council of the European Union, represented by M. Bauer and I. Díez Parra, acting as Agents,

and

Commission of the European Communities, represented by H.-P. Hartvig and U. Wölker, acting as Agents, with an address for service in Luxembourg,

interveners at first instance,

THE COURT (Full Court),

composed of V. Skouris, President, P. Jann (Rapporteur), C. Gulmann, J.N. Cunha Rodrigues and A. Rosas, Presidents of Chambers, A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges,

Advocate General: F.G. Jacobs,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 23 September 2003,

after hearing the Opinion of the Advocate General at the sitting on 20 November 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 3 May 2002, Mr Rothley and 70 other Members of the European Parliament ('the appellants') brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 26 February 2002 in Case T-17/00 *Rothley and Others* v *Parliament* [2002] ECR II-579 ('the contested judgment'), in which the Court of First Instance found inadmissible their action for annulment of the Parliament's decision of 18 November 1999 concerning amendments to its Rules of Procedure ('the contested measure') following adoption of the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 15; 'the Interinstitutional Agreement').

Legal background

On 28 April 1999 the Commission adopted Decision 1999/352/EC, ECSC, Euratom, establishing the European Anti-fraud Office (OLAF) (OJ 1999 L 136, p. 20).

Article 1(3) of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OJ 1999 L 136, p. 1) provides:

'Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties... , [OLAF] shall conduct administrative investigations for the purpose of:

— fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community,

— investigating to that end serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.'

4 Article 4 of Regulation No 1073/1999 provides:

'1. In the areas referred to in Article 1, [OLAF] shall carry out administrative investigations within the institutions, bodies, offices and agencies... [referred to as] "internal investigations" [in this Regulation].

These internal investigations shall be carried out subject to the rules of the Treaties, in particular the Protocol on privileges and immunities of the European Communities, and with due regard for the Staff Regulations under the conditions and in accordance with the procedures provided for in this Regulation and in decisions adopted by each institution, body, office and agency. The institutions shall consult each other on the rules to be laid down by such decisions.

2. Provided that the provisions referred to in paragraph 1 are complied with:

— [OLAF] shall have the right of immediate and unannounced access to any information held by the institutions, bodies, offices and agencies, and to their premises. [OLAF] shall be empowered to inspect the accounts of the institutions, bodies, offices and agencies. [OLAF] may take a copy of and obtain extracts from any document or the contents of any data medium held by the institutions, bodies, offices and agencies and, if necessary, assume custody of such documents or data to ensure that there is no danger of their disappearing,

— [OLAF] may request oral information from members of the institutions and bodies, from managers of offices and agencies and from the staff of the institutions, bodies, offices and agencies.

...

6. Without prejudice to the rules laid down by the Treaties, in particular the Protocol on privileges and immunities of the European Communities, and to the provisions of the Staff Regulations, the decision to be adopted by each institution, body, office or agency as provided for in paragraph 1 shall in particular include rules concerning:

(a) a duty on the part of members, officials and other servants of the institutions and bodies, and managers, officials, and servants of offices and agencies, to cooperate with and supply information to [OLAF's] servants;

(b) the procedures to be observed by [OLAF's] employees when conducting internal investigations and the guarantees of the rights of persons concerned by an internal investigation.'

Article 6(6) of Regulation No 1073/1999 provides:

'... The institutions and bodies shall ensure that their members and staff afford the necessary assistance to enable [OLAF's] agents to fulfil their task; the offices and agencies shall ensure that their managers and staff do likewise.'

6 Article 9 of Regulation No 1073/1999 is worded as follows:

'1. On completion of an investigation carried out by [OLAF], the latter shall draw up a report, under the authority of the Director, specifying the facts established, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of [OLAF] on the action that should be taken.

...

4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Director of [OLAF], within a deadline laid down by him in the findings of his report.'

7 Article 10(2) and (3) of Regulation No 1073/1999 provides:

'2. Without prejudice to Articles 8, 9 and 11 of this Regulation, the Director of [OLAF] shall forward to the judicial authorities of the Member State concerned the information obtained by [OLAF] during internal investigations into matters liable to result in criminal proceedings. Subject to the requirements of the investigation, he shall simultaneously inform the Member State concerned.

3. Without prejudice to Articles 8 and 9 of this Regulation, [OLAF] may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.'

By the Interinstitutional Agreement, the Parliament, the Council and the Commission agreed 'to adopt common rules consisting of the implementing measures required to ensure the smooth operation of the investigations carried out by [OLAF] within their institution' and 'to draw up such rules and make them immediately applicable by adopting an internal decision in accordance with the model attached to this Agreement and not to deviate from that model save where their own particular requirements make such deviation a technical necessity'.

The contested measure approves the Parliament's Decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud and corruption and any illegal activity detrimental to the Communities' interests ('the Parliament's decision concerning the terms and conditions for internal investigations') and, as a consequence, amends the Parliament's Rules of Procedure. The decision, which appears in Annex XI to the Rules of Procedure, reproduces the model decision attached to the Interinstitutional Agreement whilst making certain amendments thereto.

The second paragraph of Article 1 of the Parliament's decision concerning the terms and conditions for internal investigations provides that:

'Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them, Members shall cooperate fully with [OLAF].'

11 The fourth and fifth paragraphs of Article 2 of that decision provide that:

'Members who acquire knowledge of facts as referred to in the first paragraph [knowledge of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or servants of the Communities or staff not subject to the Staff Regulations liable to result in disciplinary or, in appropriate cases, criminal proceedings] shall inform the President of the Parliament or, if they consider it useful, [OLAF] direct.

This article applies without prejudice to confidentiality requirements laid down in law or the European Parliament's Rules of Procedure.'

12 Article 3 of the decision states that 'at the request of the Director of [OLAF], the European Parliament's security office shall assist [OLAF] in the practical conduct of investigations'.

13 Article 4 of the Parliament's decision concerning the terms and conditions for internal investigations provides that 'rules governing Members' parliamentary immunity and the right to refuse to testify shall remain unchanged'.

4 Article 5 of the decision is worded as follows:

'Where the possible implication of a Member... emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to a Member... may not be drawn once the investigation has been completed without the interested party's having been enabled to express his views on all the facts which concern him.

In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the Member... to give his views may be deferred in agreement... with the President ...'

The contested judgment

5 By application lodged at the Registry of the Court of First Instance on 21 January 2000, the appellants brought an action on the basis of the fourth paragraph of Article 230 EC for annulment of the contested measure.

6 By the contested judgment, the Court of First Instance declared the action inadmissible on the ground that the appellants were not individually concerned by the contested measure for the purposes of Article 230 EC.

17 First, the Court of First Instance explained the reasons why it considered the contested measure to be a measure of general application. In that regard, it pointed out particularly, in paragraph 61 of the contested judgment, that:

'The general purpose of the contested measure is to lay down the conditions upon which the Parliament will cooperate with [OLAF] in order to facilitate the smooth operation of investigations within that institution. In keeping with that object, it perceives the Members as having rights and duties and it lays down special provisions for them where, in particular, they are implicated in an investigation conducted by [OLAF] or where they have acquired knowledge of facts which give rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with obligations liable to result in disciplinary or, where appropriate, criminal proceedings. The contested measure applies without distinction to the Members of the Parliament in office at the time of its entry into force and to any other person subsequently coming to perform the same duties. Thus it applies without temporal limitation to objectively determined situations and has legal effects with respect to categories of persons envisaged generally and in the abstract.'

18 Second, at paragraphs 63 to 74 of the contested judgment, the Court of First Instance held as follows:

'63 Nevertheless, it has been held that, in certain circumstances, a provision in a measure of general application may be of individual concern to some interested persons (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19). In such a case, a Community measure can be of a legislative nature and, at the same time, vis-à-vis some of the individuals concerned, in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Vereniging van Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50). Such is the case where the measure in

question affects natural or legal persons by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (*Codorniu* v *Council*, paragraph 20).

64 In light of that case-law, it must be established whether there are such circumstances in this case which make it possible to distinguish the applicants in a way similar to that in which the addressee of a decision could be identified.

65 The applicants have argued that because they are Members of the Parliament holding office at the time when the contested measure was adopted they belong to a closed circle of persons identifiable by name. The mere fact, however, that the number and even the identity of the persons to whom a measure applies can be determined in no way implies that those persons must be regarded as individually concerned by that measure, where that measure applies to them as a result of an objective situation of law or fact specified by the measure at issue (see, for example, the judgment in Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 595, 605 and 606, and the orders in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 30, and *CNPAAP* v *Council* [Case C-87/95 P [1996] ECR I-2003], paragraph 34).

66 As stated above, the contested measure affects the applicants only because they belong to a category of persons which is defined generally and in the abstract. The contested measure does not express the Parliament's intention to deal with a particular case, specifically that of the applicants. Furthermore, the applicants have neither claimed, nor adduced evidence to demonstrate, that adoption of the contested measure alters their legal situation or affects them, more particularly than other Members of the Parliament.

67 Likewise, merely belonging to one of the two categories of persons to whom the contested measure is addressed — all the Parliament's staff, whether subject to the Staff Regulations or not, on the one hand, and its Members, on the other — is not sufficient to distinguish the applicants, since those two categories are defined generally and in the abstract....

...

71 In addition, the Court must consider whether, in the circumstances, the case-law is applicable by virtue of which actions for annulment of measures of a legislative nature are admissible where a superior rule of law required the body responsible for it to take into account the applicants' particular circumstances (see, to that effect, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 11 to 32; Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraphs 11 to 13; Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraphs 25 to 30, and Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335, paragraph 90).

72 The applicants in the present case have argued in essence that the contested measure compromises both their independence and the immunity conferred upon them by the Protocol on privileges and immunities of the European Communities. However, the Protocol refers to Members of the Parliament only in a general fashion and contains no provision explicitly governing internal investigations in the Parliament....

73 As the President of the Court of First Instance was able to observe in paragraph 107 of the order in *Rothley and Others* v *Parliament* [Case T-17/00 R [2000] ECR II-2085], the risk cannot be excluded a priori that, in conducting an investigation, [OLAF] might perform an act prejudicial to the

immunity enjoyed by every Member of the Parliament. However, if that were to occur, any Member of the Parliament faced with such an act could, if he considered it damaging to him, avail himself of the judicial protection and the legal remedies provided for by the Treaty.

74 In any event, the existence of such a risk cannot warrant altering the system of remedies and procedures established by Articles 230 EC, 234 EC and 235 EC which is designed to give the Community judicature the power to review the legality of acts of the institutions. It cannot by any means serve to make an action for annulment brought by a natural or legal person who does not satisfy the conditions laid down by the fourth paragraph of Article 230 EC to be declared admissible (orders in *Asocarne* v *Council*, paragraph 26, and *CNPAAP* v *Council*, paragraph 38).'

The appeal

19 The appellants ask the Court of Justice to set aside the contested judgment and to grant the form of order sought by them at first instance or, failing that, to refer the case back to the Court of First Instance and to order the Parliament to pay the costs of both sets of proceedings.

20 They advance two pleas in law in support of their appeal. The Court of First Instance, first, misapplied the fourth paragraph of Article 230 EC in declaring their action inadmissible on the ground that they were not individually concerned by the contested measure and, second, infringed the principle of the right to effective judicial protection.

21 The Parliament, the Kingdom of the Netherlands, the Council and the Commission contend that the appeal should be dismissed and the appellants ordered to pay the costs.

The first ground of appeal

22 The first ground of appeal relied on by the appellants comprises three parts.

23 By the first part of this ground of appeal, the appellants submit that the Court of First Instance was wrong to find that the admissibility of their appeal was subject to the condition that they were individually concerned by the contested measure.

24 In their submission, it follows from paragraphs 67 to 69 of the order of the President of the Court of First Instance of 25 November 1999 in Case T-222/99 R *Martinez and de Gaulle* v *Parliament* [1999] ECR II-3397 that, where there is a decision of the Parliament which, like the contested measure, goes beyond the mere internal organisation of the Parliament and directly affects its Members, the latter have standing to bring an action without it being necessary to address the question as to whether they are individually concerned by the measure at issue.

25 In that regard, it is sufficient to observe that, as is apparent from the actual wording of the fourth paragraph of Article 230 EC and from settled case-law, a natural or legal person is entitled to bring an action for annulment of a measure which is not a decision addressed to it only if the person is not only directly concerned by the measure but also individually concerned by it (see, inter alia, *Piraiki-Patraiki and Others* v *Commission,* paragraph 5), with the result that the provision cannot be interpreted so as to have the effect of setting aside that condition, which is expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (see, in particular, Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 44).

6 By the second part of their first ground of appeal, the appellants maintain that the Court of First Instance erred in law when it held, in paragraphs 66 and 67 of the contested judgment, that it did not follow from the fact that they belonged to a closed and exclusive circle of persons identifiable by name in their capacity as Members of the Parliament holding office at the time when the contested measure was adopted that they were individually concerned by that measure for the purposes of the fourth paragraph of Article 230 EC.

7 In that regard, it must nevertheless be observed that, by virtue of settled case-law, the general applicability, and thus the legislative nature, of a measure is not called in question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it is established that it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see, *inter alia*, Case 26/86 *Deutz and Geldermann* v *Council* [1987] ECR 941, paragraph 8, and *Codorniu* v *Council*, paragraph 18).

8 For those persons to be regarded as individually concerned by such a measure, their legal situation must be affected by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and thus distinguishes them individually in the same way as the addressee (see, in particular, *Deutz and Geldermann* v *Council*, paragraph 9, and *Union de Pequeños Agricultores* v *Council*, paragraph 36).

9 The Court of First Instance stated, in paragraph 61 of the contested judgment, that the general purpose of the contested measure is to lay down the conditions upon which the Parliament will cooperate with OLAF and that, in keeping with that object, it perceives the Members of the Parliament as having rights and duties and in that regard applies without distinction to the Members of the Parliament in office at the time of its entry into force and to any other person subsequently

coming to perform the same duties. It rightly concluded from that that the measure applies without temporal limitation to objectively determined situations and has legal effects with respect to categories of persons envisaged generally and in the abstract.

30 It follows from all of the foregoing that, when it held, in paragraph 66 of the contested judgment (which must be read particularly in the light of paragraph 61 thereof), that the contested measure affected the applicants only because they belonged to a category of persons which was defined generally and in the abstract and did not affect them more particularly than other Members of the Parliament, the Court of First Instance did not err in law.

31 By the third part of their first ground of appeal, the appellants claim that the Court of First Instance erred in law when it found, in paragraphs 72 to 74 of the contested judgment, that there were no grounds in this instance for applying the case-law cited in paragraph 71 of the judgment, by virtue of which an action may be brought against a general measure where a superior rule of law requires the person responsible for the measure to take into account an applicant's particular circumstances.

32 The appellants submit that the independence of Members of the Parliament in the exercise of their mandate, their immunity and the duty of confidentiality incumbent upon them as members of committees of inquiry are equivalent to rights conferred on them by provisions of a constitutional nature. Since those superior rights are infringed in various respects by the contested measure, the appellants submit that they should be permitted to challenge the legality of the measure.

33 In that regard, it must be stated at the outset that the judgments of the Court of Justice mentioned in paragraph 71 of the contested judgment, which the appellants claim have been misinterpreted by the Court of First Instance, did not seek to call in question the interpretation of the fourth paragraph of Article 230 EC, referred to in paragraph 28 of this judgment.

34 Thus, in paragraphs 5, 11 and 19 of the judgment in *Piraiki-Patraiki and Others* v *Commission*, the Court accepted that the application before it was admissible only after having drawn attention to that interpretation and having found, inter alia, that the fact that the applicants had entered into contracts, before the contested decision was adopted, which were to be implemented during the months to which the contested decision applied constituted a circumstance which distinguished them from any other person concerned by the decision, in so far as the execution of their contracts was wholly or partly prevented by the adoption of the decision.

35 Likewise, having found that Community legislation required the Commission, when adopting the contested measure, to take account of the special position of products in transit to the Community, the Court pointed out, in paragraph 11 of the judgment in *Sofrimport* v *Commission*, that only certain importers of Chilean apples were in that position, with the result that they constituted a restricted group which was sufficiently well defined in relation to any other importer of such apples and could not be extended after the suspensory measures in issue took effect.

36 Finally, in paragraph 28 of the judgment in *Antillean Rice Mills and Others* v *Commission*, the Court drew particular attention to the fact that the judicial protection which an individual enjoys under the fourth paragraph of Article 173 of the EC Treaty (now the fourth paragraph of Article 230 EC) must be established on the basis of the specific situation of that individual compared to all other persons concerned.

37 In that regard, it must be held that, particularly in the light of the considerations set out in paragraphs 29 and 30 of this judgment, the appellants are not, even when account is taken of the rights and obligations inherent in their position and on which they rely, in a special situation such as to distinguish them from the other persons concerned by the contested measure, since the measure applies to them and affects them only because they belong to a category of persons defined generally and in the abstract, namely the Members, present or future, of the

Parliament. Contrary to the appellants' assertion and as the Court of First Instance rightly held in paragraph 67 of the contested judgment, such a finding is not undermined by the fact that, in this instance, the contested measure also applies to other categories of persons defined generally and in the abstract, such as all the Parliament's staff, whether subject to the Staff Regulations or not.

38 It follows that the Court of First Instance did not err in law in finding that in this instance there were no grounds for applying the case-law mentioned in paragraph 71 of the contested judgment.

39 Since its three parts are unfounded, the first ground of appeal must be rejected.

The second ground of appeal

The appellants' arguments

40 By their second ground of appeal, the appellants maintain that, in finding their application inadmissible, the Court of First Instance infringed the principle of the right to effective judicial protection. In particular, the Court of First Instance wrongly concluded, in paragraph 73 of the contested judgment, that if an action of OLAF were to prejudice the individual immunity of a Member of the Parliament, the latter could avail himself of the judicial protection and legal remedies provided for by the Treaty.

41 In that regard, they submit, first, that the duties of Members of the Parliament to provide OLAF with information and to cooperate with it, as well as the obligation to submit to OLAF's investigations, which derive from the contested measure, bind them directly without any need for an implementing measure amenable to legal challenge.

42 Second, OLAF's investigative powers are exercised directly under Article 4(2) of Regulation No 1073/1999, without any requirement that measures be adopted which are amenable to judicial review. The forwarding of results of investigations carried out by OLAF also occurs directly under the provisions of Articles 9 and 10 of Regulation No 1073/1999, without there being any scope for judicial review. Furthermore, since OLAF is fully independent of the Commission, the appellants submit that the latter cannot adopt a measure concerning OLAF's activity which may be challenged in an action for annulment.

43 Third, any defects in measures adopted by OLAF are likewise not open to subsequent challenge in national proceedings in the wake of an investigation by OLAF, since national judicial authorities have no jurisdiction to review such measures, even in the course of reviewing decisions taken by the national authorities. Moreover, national authorities are not competent to adopt measures relating to OLAF's activity; nor are they responsible for adopting measures on the basis of Community rules relating to that activity.

44 The appellants submit that the Court of First Instance should have found their action admissible on the ground that that they are thus afforded no opportunity of either indirectly pleading the invalidity of the contested measure before the Community judicature under Article 241 EC or of doing so before the national courts and asking them to make a reference to the Court of Justice for a preliminary ruling on the matter. If it had proceeded in that way, the Court of

First Instance would not, contrary to the statement in paragraph 74 of the contested judgment, have altered the system of remedies established by the Treaty but would simply have interpreted the fourth paragraph of Article 230 EC correctly in light of the principle of effective judicial protection (see the judgment in *Union de Pequeños Agricultores* v *Council*, paragraphs 40 and 44).

45 More specifically, the appellants submit that, in order to take account of the requirements of that principle, the Court of First Instance should have interpreted the condition laid down in the fourth paragraph of Article 230 EC more broadly than it is at present interpreted, by finding that a person is individually concerned by a general Community measure either when, because of his situation, the measure prejudices or is liable to prejudice his interests significantly, or when the measure actually and presently affects him by restricting his rights or by imposing obligations on him.

Findings of the Court

46 It is appropriate to bear in mind as a preliminary point that by Articles 230 EC and 241 EC the Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Community Courts. Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 241 EC or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the Court of Justice for a preliminary ruling on validity (*Union de Pequeños Agricultores* v *Council,* paragraph 40 and the case-law cited).

As has been observed in paragraph 25 of this judgment, the Court has also held that according to the system for judicial review of legality established by the Treaty, a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually. Although this last condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (*Union de Pequeños Agricultores* v *Council,* paragraph 44, and the case-law cited).

As regards the present case, it must be stated that there are no grounds for a finding that the appellants could not avail themselves of effective judicial protection if they were not permitted to bring an action for annulment of the contested measure before the Community Courts.

First, as the Parliament and the Commission have maintained and as the Advocate General has stated in paragraph 56 of his Opinion, the provisions of the contested measure relating to cooperation with OLAF or to supplying it with information are intended — whatever their exact scope may be — to impose obligations upon Members of the Parliament, so that it is in the first instance for Members, in any given case, either to act upon those obligations or not to comply with them if they are persuaded that it is open to them to do so without infringing Community law. If, in a specific case, one of the Members of the Parliament adopts that approach, any subsequent measures taken by the Parliament with regard to that Member and to his disadvantage will, in principle, be subject to judicial review.

50 Second, as regards the various measures which OLAF could take when exercising its investigative powers, there is nothing to suggest, contrary to the appellants' claim, that, where such measures affect certain Members of the Parliament, the latter would have no effective judicial protection in respect of those measures. In that regard, it seems neither possible nor necessary, in the context of this case, to examine all the situations that might arise. However, it must be borne in mind, as the Advocate General has noted in paragraph 62 of his Opinion, that the rules determining whether the Community Courts have jurisdiction, as regards either the commencement of direct actions before those Courts or where the Court is seised by way of a reference for a preliminary ruling made by a national court, must be interpreted above all in the light of the principle of effective judicial protection (*Union de Pequeños Agricultores* v *Council,* paragraphs 41, 42 and 44).

51 In any event, the fact that such judicial review takes place *a posteriori* does not call in question the findings made by the Court of First Instance in paragraphs 73 and 74 of the contested judgment. As the Court of First Instance found, the risk that, in conducting an investigation, OLAF might perform an act prejudicial to the immunity enjoyed by every Member of the Parliament cannot warrant altering the system of remedies and procedures established by the Treaty which is designed to give the Community judicature the power to review the legality of acts of the institutions.

52 It follows from all of the foregoing considerations that the Court of First Instance could, without infringing the principle of effective judicial protection, declare the application inadmissible on the ground that the appellants are not individually concerned by the contested measure within the meaning of the fourth paragraph of Article 230 EC.

53 It follows that the second ground of appeal cannot be accepted.

54 Since the two grounds of appeal advanced by the appellants in support of their appeal are unfounded, the appeal must be dismissed in its entirety.

Costs

55 The first paragraph of Article 122 of the Rules of Procedure provides that when the appeal is unfounded, the Court makes a decision as to costs. Article 69(2) of the Rules of Procedure, which applies to the procedure on appeal pursuant to Article 118 thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 69(4) states that Member States and institutions which intervene in the proceedings are to bear their own costs.

56 Since the appeal has been dismissed, the appellants must be ordered to bear their own costs and to pay those of the Parliament, in accordance with the form of order sought by the Parliament. The Kingdom of the Netherlands, the Council and the Commission are to bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the appeal;**

2. **Orders the appellants to bear their own costs and to pay those incurred by the European Parliament;**

3. **Orders the Kingdom of the Netherlands, the Council of the European Union and the Commission of the European Communities to bear their own costs.**

Skouris Jann Gulmann

Cunha Rodrigues Rosas La Pergola

Puissochet Schintgen Macken

Colneric von Bahr

Delivered in open court in Luxembourg on 30 March 2004.

R. Grass V. Skouris

Registrar President