JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
11 June 2002 *

In Case T-365/00,

Alsace International Car Service SARL (AICS), established in Strasbourg (France), represented by J.C. Fourgoux and J.L. Fourgoux, lawyers, with an address for service in Luxembourg,

applicant,

v

European Parliament, represented by O. Caisou-Rousseau and D. Peterheim, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for annulment of the European Parliament's decision of 4 October 2000 rejecting the applicant's request of 5 September 2000 concerning the validity of the contract entered into between the Parliament and Coopérative Taxi 13 and, secondly, for damages for the loss allegedly suffered by the applicant as a result of that decision,

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

composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges,

Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 5 February 2002

gives the following

Judgment

1 The applicant is a company established in Strasbourg which hires out vehicles with drivers.

2 On 23 March 1995 the Parliament entered into a contract with Association centrale des autos taxis de la communauté urbaine de Strasbourg (Central Taxi Association for the municipality of Strasbourg — 'ACATS Taxi 13') for the conveyance of persons in unmarked vehicles with drivers during sessions of the Parliament in Strasbourg.

3 That activity led to a criminal prosecution brought by the Public Prosecutor attached to the Tribunal de grande instance de Strasbourg (Regional Court, Strasbourg) against several directors and members of ACATS Taxi 13 for breach of faith, clandestine work and the unlawful exercise of the business of conveying persons by road.

4 On 13 November 1998 the Parliament and ACATS Taxi 13 decided to terminate their contract with effect from 23 March 1999. A new entity known as Coopérative Taxi 13, which was formed on 12 October 1998, took over from ACATS Taxi 13 performance of that contract until its expiry.

5 On 27 January 1999 the Parliament initiated a procedure (invitation to tender 99/S 18-8765/FR) for the award of a contract on flat-rate price terms for the transport of persons (members, officials or guests) in unmarked vehicles with drivers during sessions of the Parliament in Strasbourg. It is not disputed that those services are identical to those which ACATS Taxi 13 previously provided to the Parliament.

6 The applicant submitted a bid to the Parliament on 10 February 1999, whilst at the same time challenging the terms of the invitation to tender. It maintained that those terms were capable of being met only by a bidder associated with private drivers of taxis operating in contravention of French legislation. In particular, it

claimed that only an undertaking operating a limousine service would be in a position to meet the requirements of the Parliament whilst observing the legislation applicable to the conveyance of persons for valuable consideration.

7 The Parliament finally awarded the contract in question to the Coopérative Taxi 13 with which it entered into a contract on 31 March 1999 (hereinafter 'the contract of 31 March 1999').

8 On 7 April 1999 the Parliament informed the applicant that its bid had been rejected. On 8 June 1999 the applicant brought an action (hereinafter 'Case T-139/99') against that decision. It claimed essentially that its bid had been rejected in favour of persons belonging to an occupational category — taxi drivers — which was governed by rules and specific legislation precluding those persons from tendering for and performing the transport services in question in unmarked taxis.

9 The Court of First Instance dismissed that action by a judgment of 6 July 2000 (Case T-139/99 *AICS* v *Parliament* [2000] ECR II-2849, hereinafter the judgment of 6 July 2000).

10 By order of 21 June 2001 (Case C-300/00 P *AICS* v *Parliament* [2001] ECR I-4809) the Court dismissed the action brought by the applicant against that judgment.

11 As a result of the criminal prosecution brought in 1998 (see paragraph 3 above) the Tribunal correctionnel de Strasbourg (Criminal Court, Strasbourg), in its judgment of 7 April 2000, upheld two separate infringements by 30 private taxi

drivers who were members of ACATS Taxi 13, which provided transport services to the Parliament, namely the offence of carrying out clandestine work, on the one hand, and, that of carrying on the business of conveying persons by road without being registered in that regard, on the other.

12 The applicant sent a copy of that judgment to the President of the Parliament under cover of a letter dated 15 June 2000, drawing attention to the fact that, during the parliamentary session of June 2000, there had been a repetition of the practices found by the Tribunal correctionnel de Strasbourg to be unlawful, and adding that it wished these unlawful practices to be discontinued.

13 The President of the Parliament replied to the applicant on 1 September 2000, stating that the Tribunal correctionnel de Strasbourg had given judgment against the private taxi drivers who were members de l'ACATS Taxi 13, a body legally separate from Coopérative Taxi 13 to which the Parliament had in the meantime awarded the contract in question. After reminding the applicant that its action had been dismissed in the judgment of 6 July 2000, the President of the Parliament added that:

'The European Parliament considers that the contract currently in force does not contravene French legislation and I can assure you that my institution remains very vigilant in ensuring that performance of the contract continues to comply with the applicable legislation.'

14 By letter dated 5 September 2000, the applicant, having provided a detailed analysis of the relevant French legislation, requested the President of the Parliament 'henceforth to terminate the contract with Coopérative Taxi 13 and either to award the contract to it or to invite fresh bids, obviously excluding any bid by private taxi drivers or associations of such taxi drivers in such a way that only undertakings capable of performing those services lawfully might be allowed to compete for the contract'.

15 By letter dated 4 October 2000 ('the contested decision'), the President of the Parliament rejected that request in the following terms:

'... I would point out that the Parliament has taken due note of the judgments delivered by the Court of First Instance of the European Communities and by the Tribunal de grande instance de Strasbourg.

In that connection I would confirm that, since the award of the new contract to Coopérative Taxi 13 was upheld by the Court of First Instance and the infringements established in the case of Association Taxi 13 no longer apply in the case of Coopérative Taxi 13, the European Parliament considers that performance of the contract is in conformity with French legislation.

...

The change which has occurred is clearly the registration of that new undertaking in the register of companies and in the register of carriers by road. As far as the use of unmarked vehicles is concerned, I have asked my departments to verify that when those vehicles are transporting members of the Parliament, they do not enjoy the various advantages which the legislation confers only on taxis.

Finally, I would state that it has been ascertained that the drivers of the Coopérative Taxi 13 are duly insured when they provide services to the European Parliament.

...'

Procedure

16 By an application lodged on 29 November 2000 the applicant brought the present application.

17 By a document lodged at the Court Registry on 1 February 2001, the Parliament raised an objection to admissibility under Article 114 of the Rules of Procedure.

18 By order of the Court of 8 May 2001 the issue of inadmissibility was directed to be tried together with the merits and costs were reserved.

19 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure and to put certain written questions to the parties. The parties replied to them within the period prescribed.

20 The parties presented oral argument and replied to the Court's questions at the hearing on 5 February 2002.

Forms of order sought by the parties

21 The applicant claims that the Court should:

— annul the contested decision;

— order the Parliament to make good the damage occasioned by that decision;

— order the Parliament to pay the costs.

22 The Parliament contends that the Court should:

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

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

23 In support of its objection of inadmissibility the Parliament raises two pleas.

24 In the main, the Parliament considers that, under the guise of an application for annulment, the application is seeking in reality to obtain termination of the contract of 31 March 1999 or annulment of the award of the contract to Coopérative Taxi 13. The contested decision does not produce legal effects; far from constituting a fresh decision it merely constitutes an act confirmatory of previous decisions awarding the contract to Coopérative Taxi 13 rather than to the applicant.

25 Moreover, whilst the applicant may bring an action before the Community judicature under Article 232 EC only against the failure by the Parliament to address to it a decision other than a recommendation or an opinion, the applicant in the present case is in fact challenging the fact that the Parliament is refraining from adopting a decision concerning a third party, that is to say Coopérative Taxi 13.

26 In the alternative, the Parliament submits that, were the application to be regarded as challenging the decision to award the contract, it would then be the same as to subject-matter as that rejected by the Court of First Instance in the judgment of 6 June 2000. In fact, the application which resulted in that judgment was brought against the letter in which the Parliament informed the applicant that its bid had not been accepted. The award of the contract to Coopérative Taxi 13 necessarily and inseparably involved a concomitant decision not to

award the contract to the other bidders. In seeking annulment by the Court of the decision to reject its bid, the applicant was necessarily challenging the Parliament's decision to award that contract to Coopérative Taxi 13. It was specifically that application which the Court definitively rejected in the judgment of 6 July 2000 following which the applicant did not lodge an appeal on a point of law. If it were admissible, this application would allow the applicant to disregard the effect of *res judicata* attaching to that judgment by presenting the contested decision as a new decision which is merely confirmatory of the decision challenged in Case T-139/99.

27 For its part the applicant considers that the contested decision is amenable to an action for annulment. It points out that under the terms of the judgment of 6 July 2000 the Parliament 'stated at the hearing that, should it be wrong in its interpretation of the French legislation, it would be compelled to rescind the contract under that clause' (paragraph 45). It was to remind it of that unreserved undertaking that the applicant, by letter of 5 September 2000, requested the Parliament, in light of the judgment of the Tribunal correctionnel de Strasbourg of 7 April 2000, to terminate the 'Taxi 13 contract' and to award the contract afresh. By refusing to accede to that request, the contested decision adversely affects the applicant.

Findings of the Court

28 The action provided for in Article 232 EC is for a declaration of an unlawful failure to act by an institution. In the present case the action whose admissibility is called in question is not brought against a failure by the Parliament to act but challenges a decision by the Parliament in reply to a request by the applicant. Accordingly, the Parliament's plea going to the conditions of admissibility of the action provided for in Article 232 EC is not well founded.

29 For the rest, it is necessary to examine whether, as contended for on behalf of the Parliament, the contested decision is purely confirmatory of the contested decision in Case T-139/99.

30 An application for annulment brought against a decision which merely confirms an earlier decision 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 re-examination of the situation of the addressee of the earlier measure (judgments in Case 23/80 *Grasselli* v *Commission* [1980] ECR 3709, paragraph 18, Case T-4/90 *Lestelle* v *Commission* [1990] ECR II-689, paragraphs 24 to 27, and order in Case T-84/97 *BEUC* v *Commission* [1998] ECR II-795, paragraph 52).

31 In Case T-139/99 the applicant sought the annulment of the Parliament's decision of 7 April 1999 not to award it the contract in question, arguing in particular that the contract of 31 March 1999 was not in conformity with the French legislation applicable to the taxi business. The Court inquired as to whether the Parliament had observed the obligation on it to ensure that the terms of the invitation to tender did not induce potential bidders to infringe the national legislation applicable to their business. In order to do so, it examined whether the Parliament had manifestly erred in its interpretation of the applicable French legislation. Taking the view that that was not the case, it rejected the plea alleging an infringement of French law (judgment of 6 July 2000, paragraphs 39 to 46).

32 In its judgment of 7 April 2000 the Tribunal correctionnel de Strasbourg ruled on the conformity with French law of the conditions governing performance of the contracts awarded by the Parliament for the conveyance of persons in unmarked taxis during sessions of the Parliament in Strasbourg. Since that judgment was delivered after the oral procedure and, *a fortiori*, after the decision challenged in Case T-139/99, the Court did not take it into consideration in its judgment of 6 July 2000 (see order cited above in *AICS* v *Parliament,* paragraph 22).

33 Since the Tribunal correctionnel de Strasbourg held that the transport services provided by ACATS Taxi 13 contravened the legislation applicable to the taxi business, the applicant requested the Parliament on 5 September 2000 to act accordingly and to terminate the contract of 31 March 1999.

34 The judgment of the Tribunal correctionnel de Strasbourg therefore constitutes a new factor in the light of which the Parliament examined the applicant's request. In reply thereto the Parliament essentially maintained the position which it had defended in Case T-139/99 namely that the award of the contract in question to an undertaking operating taxis was in conformity with French law.

35 The fact that the Parliament did not resile from its initial view is not sufficient, in light of the case-law mentioned above, to allow the contested decision to be regarded as purely confirmatory of the decision challenged in Case T-139/99. Moreover, it appears that the Parliament adopted the contested decision after conducting a fresh examination of the applicant's arguments against the yardstick of the judgment of the Tribunal correctionnel de Strasbourg.

36 By refusing in the contested decision to draw the consequences of the judgment of the Tribunal correctionnel, the Parliament took a decision which perpetuates a legal situation whose lawfulness is called in question by the applicant. The latter essentially claims that an undertaking operating taxis is not authorised to provide the services forming the subject-matter of the contract of 31 March 1999 since under the French legislation those services, by their very nature, may be provided only by undertakings carrying on the regulated business of conveyance by limousine.

37 It thus appears that the contested decision produces binding legal effects impinging on the interests of the applicant in its capacity as an undertaking offering a limousine service and a bidder passed over in favour of an operator of taxis.

38 In those circumstances the contested decision is not purely confirmatory but constitutes a decision against which an application for annulment may be brought.

39 Since the Parliament took a fresh decision following the judgment of the Tribunal correctionnel de Strasbourg of 7 April 2000, the present action has a subject-matter which is different from that of Case T-139/99 such that it does not conflict with the status of *res judicata* of the judgment of 6 July 2000.

40 It follows from all the foregoing that the action is admissible.

Substance

The application for annulment

Arguments of the parties

41 The applicant essentially maintains that the use of taxis for the conveyance of persons in unmarked vehicles as envisaged in the contract of 31 March 1999 between the Parliament and Coopérative Taxi 13 contravenes French law. The latter prohibits the use for valuable consideration of taxis operating without their distinctive signs. The Parliament was thus in breach of both its obligation not to induce potential tenderers to infringe the national legislation applicable to their business and its solemn undertaking given to the Court of First Instance (judgment of 6 July 2000, paragraphs 41 and 45).

42 The applicant explains that taxis carry on the business of a public transport service governed by the law of 13 March 1937 on the organisation of the taxi

business and the implementing decrees adopted thereunder. In that connection they enjoy certain privileges: permission to park on the public highway, tax exemption on fuel, reduced VAT on purchase of the vehicle, exemption from road tax and occupational tax and preferred rates of depreciation. In return taxis are compelled to carry distinctive signs (meter, external equipment bearing the word 'taxi', plate sealed to the vehicle visible from outside and parking permit number).

43 Other services in connection with the conveyance of persons are governed by law 82-1153 of 30 December 1982, the 'law providing guidance concerning inland transport' (*Journal officiel de la République française* (JORF) of 31 December 1982) and by its implementing decrees. Decree 85-891 of 16 August 1985 on the urban transport of persons and non-urban conveyance by road of persons (JORF of 23 August 1985) states at Article 1 that its provisions are not applicable 'to transport by taxi, small and large limousines, ambulances and funeral vehicles which are subject to special regulations'.

44 The applicant thus maintains that vehicles intended for the taxi business cannot be used, even occasionally, for other transport services for valuable consideration.

45 It is for that reason that in its judgment of 7 April 2000 the Tribunal correctionnel de Strasbourg found against certain members of ACATS Taxi 13 on a personal basis for engaging in illegal work with the Parliament, since the occupation of a taxi driver did not include the public transport of persons which they carried on behalf of the Parliament by removing from their vehicles the distinctive signs indicative of a taxi.

46 Any registration of Coopérative Taxi 13 in the register of undertakings engaged in the public transport of persons by road is immaterial in that regard. Such

registration cannot nullify the infringement established by the Tribunal correctionnel de Strasbourg arising from the use of taxis without certain of their distinctive signs in connection with services falling outside the limits of their authorised use under the legislation.

47 The applicant adds that the Parliament had been aware since 1985 or at least 1992 of the fact that the conditions under which the transport services in question were being provided was in breach of French legislation.

48 Finally, the applicant stresses that, at the hearing in Case T-139/99, the Parliament had stated that 'should it be wrong in its interpretation of the French legislation, it would be compelled to rescind the contract'. Since the Tribunal correctionnel de Strasbourg had definitively settled the issue of the lawfulness of the transport services at issue, it was for the Parliament to honour its undertaking.

49 The Parliament rejects those allegations.

50 First, the Parliament points out that the services provided by Coopérative Taxi 13 are 'private' transport services. It recalls that in France inland transport is governed by Law 82-1153 of 30 December 1982 Article 29 of which is worded as follows:

'Non-urban transport of persons by road comprises the following categories:

...

— private services;

...

Private services may be organised by public authorities, and by undertakings and associations for their normal operating needs, in particular for the transport of their staff or members.

Those services and the conditions under which they are provided shall be determined by a decree of the Council of State...'

51 The Parliament also cites the provisions of Decree 87-242 of 7 April 1987 on the definition of and conditions governing the non-urban transport of persons by road (JORF of 8 April 1987, p. 3980), which provides:

'Transport of staff organised for normal operating needs by the public authorities, including teaching establishments, and by undertakings and associations, shall be deemed to be private services [Article 1].

The following services shall also be deemed to be private services when they are effected in the context of normal operating requirements:

(a) transport organised by authorities or associations of authorities for particular categories of persons in the context of activities coming within their specific competences excluding any journey of a tourist nature;

...

(d) transport organised by undertakings for their staff...

(e) transport organised by associations for their members, provided that those journeys are directly relevant to the stated objects of the association and that it is not an association whose main object is the transport of its members or the organisation of tourist travel [Article 2].

Transport referred to in Article 2 hereof must be effected free of charge with vehicles belonging to the organising body or with self-drive vehicles hired by it. Vehicles with drivers may be made available only by an undertaking entered in the register of undertakings engaged in the public transport of persons by road [Article 3].'

52 It is true that the judgment of the Tribunal correctionnel de Strasbourg of 7 April 2000 states that 'the activity distinct from that of private taxi driver carried on by

the accused in rendering transport services for persons under contracts entered into with the European Parliament on 1 September 1988 and 27 July 1991, and then on 23 March 1995, cannot be held to constitute private non-urban transport of persons by road within the meaning of Article 29 of the law of 30 December 1982 and Decree 87-242 of 7 April 1987, since the European Parliament clearly does not come within one of the categories of organising entity mentioned therein'. However, the Parliament is of the view that that interpretation, which is not fully argued, calls for several qualifications.

53 First, that judgment, even if it has the authority of *res judicata*, is applicable only to the facts of and the parties to the proceedings.

54 Secondly, that interpretation was given in a first-instance judgment and not in a judgment of the Cour de cassation.

55 Thirdly, Decree 87-242 must be interpreted in conformity with the provisions of law 82-1153 to which it gives effect. However, Article 5 of that law states that transport organised by public or private persons for their own account are private services. Although it is true that Articles 1 and 2 of Decree 87-242 do not expressly refer to the case of an international organisation such as the Parliament, the Parliament is none the less of the view that, under the terms of Article 5 of Law 82-1153, the transport of its members does not constitute public transport. For the purposes of Decree 87-242 the Parliament considers that it must be assimilated to a public authority, undertaking or association performing a private service.

56 Taking the view that it has thus demonstrated the private nature of the transport services at issue, the Parliament seeks secondly to dispel any confusion between the legal regime governing transport by taxi, that applicable to the distinctive signs required in that connection and to the vehicles used for those services.

57 The Parliament acknowledges that transport by taxi entirely constitutes public transport (Article 1 of Decree 73-225 of 2 March 1973 on the operation of taxis and limousines — JORF of 3 March 1973). In consideration for the advantages and facilities which are afforded to them (parking on the public highway, reductions in excise duties on fuel, reduced rate of VAT), taxis must be readily identifiable by virtue of their distinctive signs.

58 None the less, that does not mean that the vehicle as such is to be assigned exclusively to the public transport of persons for valuable consideration. Once the vehicle's external equipment has been switched off, concealed or removed, it is permissible for the vehicle to be used by its owner, or by the owner's employees, for personal purposes, it being understood that in those cases the user may not lawfully make use of the advantages and facilities reserved for operation of the vehicle as a taxi. According to the Parliament, the owner is entitled, in conformity with the relevant laws and regulations, to operate his vehicle, which will then be unmarked, specifically for the non-urban transport of persons by road, under the conditions provided for in the second sentence of Article 3 of Decree 87-242 of 7 April 1987, that is to say subject to registration in the register of undertakings engaged in the public transport of persons by road.

59 The Parliament contends that that interpretation is in accordance with that of the French authorities. By way of proof, it produced a letter of 13 August 2001 from the Minister for the Interior addressed to the president of the national federation of private taxi drivers the relevant passages of which are in the following terms:

'I confirm that the undertaking "Taxi 13" is performing the contract with the European Parliament in the framework of the provisions of the decree of 7 April 1987 concerning the non-urban transport of persons by road adopted pursuant to Article 29 of the law providing guidance on inland transport of 30 December 1982.

Drivers who are members of "Taxi 13" and are entered in the transport register in accordance with Article 7 of the law of 30 December 1982 may carry on that private business with their taxi.

...

I have recently put the matter to the Prefect of the Lower Rhine department reminding him of the abovementioned points and requesting him to ask the police and gendarmerie and transport inspectorate to show increased discernment in their supervision of the members of "Taxi 13". Those drivers are fully authorised to transport European parliamentarians in the context of the provision of private services and in accordance with the contract under which they are bound to that international institution.

...'

60 Lastly, the Parliament affirms that, although ACATS Taxi 13 was indeed convicted for failing to register with the register of undertakings engaged in the public transport of persons by road, Coopérative Taxi 13, for its part, is entered in that register. Thus, the latter carries on for the Parliament a private service for the transport by road of persons using unmarked vehicles, in accordance with French law.

61 Accordingly, the Parliament considers that it is not required to rescind the contract of 31 March 1999 and that to do so would render it liable for breach to the other contracting party.

Findings of the Court

62 The applicant is essentially questioning whether in the contested decision the Parliament was entitled to take the view that the French legislation does not preclude the transport of persons in question from being provided by taxis.

63 The Court of First Instance held that the institutions are required to ensure that the conditions laid down in an invitation to tender do not induce potential tenderers to infringe the national legislation applicable to their business. Since the interpretation of French law is a matter solely for the French authorities, the Court has merely to determine whether the Parliament in the contested decision committed a manifest error of assessment in its interpretation of the French legislation (judgment of 6 July 2000, paragraphs 40 and 41).

64 In Case T-139/99 the Court considered that the Parliament had not erred when it asserted that the French legislation did not prohibit the performance for the Parliament of transport services for valuable consideration in unmarked taxis provided that those services were covered by an entry in the register of undertakings engaged in public passenger transport by road. In fact, the Court considered that the applicant had failed to demonstrate that the Parliament had manifestly erred in its assessment that the French legislation did not ban taxis operating unofficially from providing non-urban private passenger transport services by road in accordance with the invitation to tender (judgment of 6 July 2000, paragraph 42).

65 It cannot but be noted that that assessment by the Parliament has subsequently been categorically invalidated by the clear terms of the judgment of the Tribunal correctionnel de Strasbourg of 7 April 2000.

66 In fact, the French court held that 'the activity distinct from that of private taxi driver carried on by the accused in rendering transport services for persons under contracts entered into with the European Parliament on 1 September 1988 and 27 July 1991 and then on 23 March 1995 cannot be held to constitute private non-urban transport of persons by road within the meaning of Article 29 of the law of 30 December 1982 and Decree 87-242 of 7 April 1987, since the European Parliament clearly does not come within one of the categories of organising entity mentioned therein liable to make a prior declaration to the Prefect for the Lower Rhine; moreover, under Article 1 of Decree 85-891 implementing law 82-1153 of 16 August 1985, the taxi business is excluded from the scope of Law 82-1153.'

67 Moreover, the Tribunal correctionnel de Strasbourg stated that the French legislation precludes the business of public passenger transport from being effected with taxis. In fact, it held:

'The occupation of taxi driver carried on by the accused and for which they were registered in the register of professions excluded the business of public passenger transport which they carried on on behalf of the European Parliament under the abovementioned conditions. That business of public passenger transport could be carried on only after registration in the commercial and companies' register and registration in the register of persons engaged in the transport of persons by road kept at the Lower Rhine directorate for infrastructure and only with a vehicle different from that for which the accused held an operating licence. The constraints associated with taxis and the business of a taxi driver are in fact offset by significant advantages such as the asset value — after a certain period — of the operating licence, the right to park in waiting areas in public places, duty-free fuel, reduced VAT (5.5%), exemption from car road tax and occupational tax, preferred rates of depreciation. Those privileges in favour of the taxi business cannot coherently be extended to a separate business freed from the constraints with which they go hand in hand. It is vain for the accused to assert that they

were constantly seeking information and authorisations when they were carrying on an activity under conditions of illegality of which they were fully cognizant. The investigation and the public hearings establish sufficiently that the law and regulation were alleged in bad faith by the accused to be equivocal, with the support of certain representatives of the State from whom they sought, by means of intense lobbying, authority to obtain legal backing for an unlawful situation which they had impudently entered into.'

68 With regard to the criticisms levelled at that judgment by the Parliament, it should be recalled that it is a definitive judgment with the status of *res judicata*. The fact that that status is relative in no way calls in question the pertinence to the present dispute of that judgment, inasmuch as in law it determines the question whether services for the transport of persons for valuable consideration may lawfully be provided to the Parliament by unmarked taxis and inasmuch as it is undisputed that those transport services are identical to those which formed the subject-matter of the contract of 31 March 1999.

69 Accordingly, the Court takes cognizance of the interpretation of French law set out unambiguously by the Tribunal correctionnel de Strasbourg in that judgment. The validity of that definitive judgment cannot be called in question by a letter from the French authorities subsequent to the contested decision.

70 Under those circumstances the Court considers that, inasmuch as the passenger transport services at issue are provided by taxis, they are being performed under conditions which contravene the applicable national legislation, as interpreted by the Tribunal correctionnel de Strasbourg.

71 It follows from all the foregoing that the Parliament committed a manifest error of assessment in taking the view, in light of the judgment of the Tribunal correctionnel de Strasbourg of 7 April 2000, that performance of the contract of 31 March 1999 complied with the French legislation applicable to taxis.

72 Since the plea is well founded the contested decision must be annulled.

The claim for compensation

Arguments of the parties

73 The applicant claims that it suffered a specific loss owing to the Parliament's refusal to rescind the contract which was not awarded to it. It seeks compensation calculated on the basis of EUR 10 000 per month with effect from the date of the contested decision until termination of the contract of 31 March 1999. That amount corresponds to the profit margin which the applicant would have achieved if the contract at issue had been awarded to it.

74 The Parliament refutes that plea and maintains that the contested decision occasioned no loss to the applicant.

75 The Parliament considers that, even if it were to terminate the contract of 31 March 1999, it would not be obliged to award a contract to the applicant. In order to satisfy its transport requirements, it could organise a new invitation to tender or find other means.

76 The Parliament points out the applicant did not satisfy one of the criteria of the invitation to tender and was not in a position to provide all the services required with the result that it had no chance of having the contract awarded to it.

77 Finally, the Parliament claims that calculation of the loss allegedly suffered by the applicant is based on a loss of profit. However, compensation of that kind of loss presupposes that the Parliament is liable in contract rather than on a non-contractual basis. In the absence of any contract with the applicant, the latter cannot claim compensation for loss of profit.

Findings of the Court

78 It has been consistently held that, under the second paragraph of Article 288 EC, the non-contractual liability of the Community depends on fulfilment of a set of conditions as regards the unlawfulness of the conduct alleged against the institution, the fact of damage and the existence of a causal link between the conduct in question and the damage complained of. Accordingly, the Community may not be held liable unless all those conditions are met (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16, and Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 30).

79 In the present case the injury alleged by the applicant is the loss of the opportunity of having the contract at issue awarded to it if the Parliament had acceded to its request of 5 September 2000. It cannot but be noted that that injury is not of a genuine and specific nature such as to render the Community liable.

80 In fact, there is no ground for considering that, if the Parliament had not manifestly erred in its assessment of the French legislation, as interpreted by the Tribunal correctionnel de Strasbourg in the judgment of 7 April 2000, it would have awarded the contract at issue to the applicant or have initiated the procedure for a new invitation to tender in which the latter would have been in a position to participate.

81 Accordingly, the claim for compensation must be rejected.

Costs

82 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings.

83 Since the Parliament has been essentially unsuccessful and the applicant applied for costs, the Parliament must be ordered to pay the costs including those reserved by the order of the Court of First Instance of 8 May 2001.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby:

1. **Annuls the Parliament's decision of 4 October 2000 rejecting the applicant's request of 5 September 2000;**

2. **Rejects the claim for compensation;**

3. **Orders the Parliament to pay the costs including those reserved by the order of the Court of First Instance of 8 May 2001.**

Cooke García-Valdecasas Lindh

Delivered in open court in Luxembourg on 11 June 2002.

H. Jung

Registrar

J.D. Cooke

President