OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 4 December 1985 *

Mr President,
Members of the Court,

1. The funds allocated in the budget to finance the information campaign for the European elections have led the French ecologists to bring several actions against the Community institutions. In particular, 'Les Verts — Parti écologiste' (hereinafter referred to as 'the Ecologists') have brought actions:

(a) Against the Commission and the Council of the European Communities for a declaration that the following decisions are void:

(1) The Commission Decision of 20 June 1983 laying down and adopting the preliminary draft of the General Budget of the European Communities for the financial year 1984 and the preliminary draft of the Supplementary General Budget for the financial year 1983;

(2) The Council Decisions of 22 July 1983, also concerning the draft budgets for 1983 and 1984;

(3) All other related decisions (*Case 216/83*);

(b) Against the European Parliament for a declaration that the following measures are void:

(1) The decision adopted on 12 and 13 October 1982 and the decision adopted on 29 October 1983, the first by the Bureau of the European Parliament and the second by the enlarged Bureau, allocating the appropriations entered under Item 3708 of the budget of the Communities for the financial years 1982, 1983 and 1984 (*Case 294/83*);

(2) The resolutions adopted at their first reading on 27 October 1983 and at their second reading on 19 and 20 December 1983 as part of the procedure leading to the final adoption of the budget for 1984 (*Case 295/83*);

(3) The decision of 20 December 1983 adopted under Article 203 of the EEC Treaty in which the Parliament declared the 1984 budget to have been adopted (*Case 296/83*);

(4) All the decisions implementing the said budget in respect of Item 3708 (*Case 190/84*);

(c) Against the Council of the European Communities for a declaration that the decision of 22 November 1983 adopting the draft budget for 1984 at its second reading is void (*Case 297/83*).

It should also be noted that the decisions of 23 July 1983 have been challenged before the French Conseil d'État. The Ecologists consider that, by participating in their adoption, the representative of the French Government in the Council of the Communities exceeded his powers.

* Translated from the Italian.

2. It is first of all necessary to describe the system established to finance the information campaigns for the European elections by explaining its origin and tracing its history.

The decision to appropriate funds for that purpose goes back to 1976 and therefore precedes the Act deciding that the Parliament was to be elected by universal suffrage. In its preliminary draft budget for 1977, the Commission included an item entitled 'Information projects relating to direct elections to the European Parliament' (Item 2729) and allocated 400 000 units of account to it. During the debate on the Budget, the Parliament amended the draft by increasing the appropriation to one million units of account. The remarks on that item stated that the information projects were to be coordinated with the Parliament and the appropriation was frozen until the latter had approved the detailed programme of projects which the Commission intended to carry out and had coordinated it with its own programmes. The same item was included in the 1978 budget with an appropriation of 5 million units of account.

The 1977 Budget (section dealing with the Parliament) also contained, in Article 1001, an appropriation of 3 million units of account. That sum, administered by the enlarged Bureau, was to permit the Parliament itself also to provide information on the direct elections. In order to determine the rules for the management of the funds, a working party was set up chaired by the chairman of the political groups; the working party submitted its report on 23 December 1976.

The enlarged Bureau approved that report on 29 March 1977 and laid down the criteria for the allocation of the funds to the political groups and the rules for the verification of their use. The allocation was to be based on the scheme applied to Item 3706 (other political activities). The latter, in defining the nature of the expenditure which it covers, states that 'this appropriation covers . . . the political activities of the non-attached Members'. In the absence of more precise rules on the matter, the reference to that item therefore leads to the conclusion that the funds provided for in Article 1001 were intended for all the members of the Parliament and thus also for those who were not members of a group.

Numerous rules were laid down for monitoring the use of the funds, of which the principal ones were the following: (a) under an agreement, the group chairmen undertook to monitor the use of the funds, that is to say, to verify that they were used for purposes consonant with preparations for and the conduct of the election campaign; (b) the enlarged Bureau was to verify the regularity of the transactions undertaken by the groups on the basis of a report by the Control Sub-Committee. However, its responsibilities did not extend to verifying the legality of the expenditure, that is to say, its compliance with the provisions in force; nor did it seek to ascertain whether the financial management exercised by the groups fulfilled the requirements of effectiveness and economy.

The use of the funds in respect of the 1978 and 1979 financial years was reviewed by the Court of Auditors, which found it substantially correct, and by the Parliament's Committee on Budgets. As a result of the latter's recommendations, the enlarged Bureau adopted a new decision (14 February 1979) making the above-mentioned rules stricter. The groups were also required to control the amounts paid to

party federations or national parties, not to make payments before obtaining estimates, to keep separate accounts of their expenditure on information and to keep administrative costs as low as possible.

No amounts were included in the 1980 and 1981 budgets for information activities. Item 3708 appeared in the 1982 Budget and received an appropriation of 17 390 500 ECU, obtained by means of economies in the general expenses of the institution. The appropriation was to cover a 'contribution to the cost of preparations for the information campaign leading up to the second direct elections in 1984' (Official Journal L 31 of 8.2.1982, pp. 114 and 115). As in 1976, the Bureau set up a working party composed of the President of the Parliament and the political group chairmen to draw up rules governing the utilization of the appropriations.

The working party's report was approved at the meetings on 12 and 13 October 1982. The effect of the decision was that:

(a) the funds for the 1983-1984 election campaign were to be allocated from Item 3708 in the 1982, 1983 and 1984 Budgets;

(b) the Parliament was to allocate those funds on the basis of the allocation scheme proposed by the groups and approved by the Bureau;

(c) one quarter of the total amount to be allocated (minus the flat-rate portion) was to be paid after the elections had been held;

(d) the funds were not to be used to purchase immovable property or office furniture and administrative expenditure was not to exceed 25% of the total;

(e) control was not limited to the regularity of the way in which the funds had been used, as was the case under the decision of 29 March 1977, but extended to the questions of legality and sound financial management;

(f) the procedure for keeping accounts was to be laid down;

(g) the funds could be utilized until at the latest 40 days before the date of the elections to cover any payment commitments provided that payment was actually made not later than 40 days after the date of the elections.

Any monies not utilized in accordance with the criteria laid down were to be repaid to the Parliament within three months of the date of the elections. The final report on the utilization of the funds allocated in 1984 was to be forwarded to the President of the Parliament by 1 November 1984 at the latest.

The criteria for allocating the funds were substantially in accordance with the proposals of the political groups. The decision provided that:

(a) the amount entered under Item 3708, which came to a total of 43 million ECU for the financial years 1982 to 1984, was to be divided each year between the political groups, the non-attached members and a reserve fund for 1984;

(b) each group was to receive a flat-rate allocation of 1% of the total appropriations and a sum for each of its members equal to 1/434th part of the appropriations remaining after deduction of the flat-rate allocations;

(c) the total amount allocated to the groups and non-attached members was not to exceed 62% of the total amount;

(d) in 1982, 1983 and 1984, 31% of the total amount entered under Item 3708 was to be allocated to a reserve fund for accounting purposes;

(e) that reserve was to be made available to all political groupings which succeeded, in the 1984 elections, in obtaining more than 5% of the valid votes cast in the Member State in which the grouping put up candidates or more than 1% of the valid votes cast in the three or more Member States in which the grouping put up candidates.

Under rules adopted on 29 October 1983 (Official Journal C 293, p. 1) the enlarged Bureau laid down criteria for the distribution of the reserve (31% of the appropriations for 1982 and 1983) established by the decision of 12 and 13 October 1982. Those entitled to the funds were members elected or re-elected in 1984 and political groupings which, while failing to obtain a seat, had secured more than 5% of the votes cast in the Member State in which they participated in the elections or more than 1% in each of at least three Member States in which they so participated (Article 2). Any party, list or alliance of parties putting up candidates in accordance with national regulations was entitled to reimbursement on the terms laid down in Article 3. However, political groupings wishing to benefit from the 1% clause were to submit a declaration of affiliation, signed by their officers, to the Secretary General of the Parliament no later than 40 days before the election (Article 4).

With regard to the payment of the funds, the rules distinguish between parties, lists or alliances represented in the Parliament and those not so represented. With regard to the former, the rules to be applied are essentially those contained in the decision of 12 and 13 October 1982. With regard to the second group, the rules provide that:

(a) requests for reimbursement must be submitted together with supporting documents to the Secretary General of the Parliament within 90 days of the publication of the results of the election;

(b) the period during which expenditure may be considered as expenditure on the 1984 elections was to begin on 1 January 1983 and finish 40 days after the date of the elections;

(c) appropriations set aside for that purpose by the Parliament were to remain under the administration of the Secretary General until their payment;

(d) the criteria applicable to expenditure incurred by the political groups (decision of 12 and 13 Occtober 1982) were also to apply to that incurred by political groupings not represented in the Parliament.

In conclusion, I would point out that, as can be seen from the Parliament's reply to a question put by the Court, the rules for the implementation of Item 3708, that is to say, the rules of 29 October 1983 and that part of the decision of 12 and 13 October 1982 therein referred to, were in force at the end of September 1984.

3. Let us now turn our attention to the actions brought by the Ecologists. As the Court will be aware, the Parliament has the power, under Article 18 of the Financial Regulation of 21 December 1977 (Official Journal L 356, p. 1), to implement the sections of the Budget relating to it. Since it considered that by reserving only 31% of the funds for those elected in 1984 the Parliament had used that power to favour the parties already represented in the Parliament, the Ecologists brought six actions before the Court on 19 September 1983, 20 December 1983 and 7 June 1984, received at the Court Registry on 27 September 1983, 28 December 1983 and 18 July 1984 respectively.

However, the Court declared the applications in Cases 216, 295, 296 and 297/83 inadmissible of its own motion by reason of the failure to fulfil the condition laid down in the second paragraph of Article 173 of the EEC Treaty. The order of 26 September 1984 states that, since the Financial Regulation defines the Budget as 'the instrument which sets out forecasts of, and authorizes in advance, the expected revenue and expenditure of the Communities . . .', the procedure for the approval of the Budget leads only to the authorization of the commitment of expenditure. Therefore a natural or legal person cannot be directly concerned by the steps in that procedure, whereas such a person may be directly concerned by the measures taken to implement the Budget, such as those of which the Ecologists complain in Cases 294/83 and 190/84.

Finally, I should mention that the action brought before the French Conseil d'État was declared inadmissible on 23 November 1984. That court observed that the contested measures relate directly to the diplomatic powers of the national government in its relations with the Community. They do not therefore come within the jurisdiction of the Conseil d'État.

4. I will first consider the procedural aspects of Case 294/83. The Parliament contends that the application is inadmissible because:

(a) the applicants lack the capacity to bring it;

(b) the Parliament's acts cannot be attacked under the first paragraph of Article 173 of the EEC Treaty; and

(c) the conditions for the bringing of actions by private individuals laid down in the second paragraph of the same article are not fulfilled.

Let us begin with the argument regarding the Ecologists' capacity to bring the action. After the written procedure had been closed and a date had been fixed for the oral procedure, the Court learned from the *Official Journal of the French Republic* that the applicant association had dissolved itself with effect from 19 June 1984. The Registry therefore wrote to the Ecologists on 4 October 1984 and asked them to clarify whether, in the light of their position in French law, they still had the capacity to pursue the proceedings. No reply was received to that letter. The Court therefore fixed a date by which the parties were to make known their views on the applicants' capacity (letter of 4 December 1984), but only the Parliament complied with that request. It is however true that a 'reply' submitted by the Ecologists on 19 March 1985 is to be found among the documents in Case 190/84.

The Parliament states that the association known as 'Les Verts — Parti écologiste' dissolved itself on 29 March 1984 and informed the Paris Préfecture of its decision on 19 June 1984. On the same day, the association known as 'Les Verts' also dissolved itself. However, at the same time the two groups merged to form a new political organization called 'Les Verts — Confédération écologiste — Parti écologiste'; that organization declared its existence to the Paris préfecture on 20 June 1984 (JORF of 25.7.1984, pp. 6608 and 6604 respectively). The merger agreement provided for the pooling of assets and liabilities. Mentioned among those of 'Les Verts — Parti écologiste' was 'the benefit of the legal actions brought against the EEC

Budget before the *Conseil d'État* and before the Court of Justice at Luxembourg'; the agreement stated that those actions were 'to continue on on the same terms and under the same arrangements'. Furthermore, Article 13 of the rules of the new association provides that 'the national interregional council may exercise all the powers which have not been reserved (to the General Assembly) and it shall apply the Assembly's decisions. In particular, it may bring actions before the courts'.

The Parliament also cites a document dated 26 July 1984 submitted by the applicant in Case 190/84, according to which the representative in law of the new association, 'in accordance with the merger agreement... [and] the decisions of the General Assembly and the national interregional council, confirms Mr Étienne Tête in his position as delegate for legal affairs with authority to bring and continue on the same terms and under the same arrangements all actions brought before the courts by 'Les Verts — Parti écologiste' and in particular those brought before the Court of Justice and the *Conseil d'État*'.

On the basis of that information, the Parliament concludes that:

(a) as a result of its dissolution, the association known as 'Les Verts — Parti écologiste' has lost the capacity to continue the proceedings; and

(b) the action which it had brought has not been properly taken over by the new association and therefore the Court has no jurisdiction to hear it.

In support of its position, the Parliament puts forward two lines of argument, based on French law and on Community law. French law comes into consideration because, as the Court has always pointed out (most recently in the judgment of 27 November 1984 in Case 50/84 *Bensider and Others* v *Commission* [1984] ECR 3991), capacity to institute legal proceedings must be established in accordance with national law. According to Article 341 (2) of the French Law of 24 July 1966, legal persons which have been dissolved continue to exist only for the purposes of their liquidation. That rule (also known to German law and applied by the Court in the judgment of 20 March 1959 in Case 18/57 *Nold* v *High Authority* [1959] ECR 41) can certainly not be relied on in a case such as the present one in which all the rights and obligations of the applicant were transferred to another person.

With regard to Community law, the second paragraph of Article 173 is decisive in so far as it provides that an action is admissible only if the applicant is a natural or legal person and the contested measure is of concern to it. In this case, the first condition is not met owing to the applicant's dissolution, and since that took place before the Ecologists had put up candidates for the European election, it means that the measure was not addressed to them. The Ecologists thus lack a legitimate interest in the proceedings, and that is further reinforced by the fact that they have assigned their right to carry on the action to a third party.

The Parliament does not deny that that party, the new party to the action, had the capacity to continue the proceedings. The action was not however continued in accordance with the rules of French law, which are in fact analogous to those in force in most of the Member States: those rules provide that the action must be continued by the organs empowered to do so under the association's rules and that this must take place within a reasonable time. It is true that there is in existence a document of 17 February 1985, referred to during the

hearing, in which the national interregional council of the new association decided to 'take over all the actions begun by "Les Verts — Parti écologiste" before the Court of Justice sitting at Luxembourg'. However, in the Parliament's view, that document, which is to be found solely among the documents concerning Case 190/84, may not be taken into consideration in this case.

The Parliament adds that it is clear that 'Les Verts — Confédération écologiste — Parti écologiste' is confronted with an obvious dilemma. After its formation, the association put up a list of candidates in France, fulfilled all the obligations required by the contested rules and obtained a reimbursement equal to 82 058 ECU from the Secretary General of the Parliament. If the new association takes over and wins the action brought by the former association then the annulment of the contested decisions will oblige it to repay the sum received. If it does not take it over, the action will be dismissed on the ground that the applicant lacks the capacity to bring it. That is the origin of the ambiguity in its behaviour, which only the Court can overcome by calling upon it to make an unequivocal decision.

5. The arguments that I have just summarized do not appear to me to be well founded; moreover the latter argument is in fact extraneous to the legal problem on which the Court has been asked to rule.

I too consider that capacity to bring legal proceedings must be assessed on the basis of the national law governing the parties. However, I do not believe that that principle leads to the conclusions which the Parliament seeks to draw. In order to be a party to proceedings, as a plaintiff or defendant, political parties must, under French law, register with the *préfecture* of the *département* in which they have their headquarters (Article 5 of the Law of 9 November 1901). However, it can be seen from the *Journal Officiel* of 9 November 1984, p. 10241, correcting the notice which appeared in the *Journal Officiel* of 25 July 1984 at pp. 6604 and 6608, that the Paris préfecture received a declaration on 20 June 1984 announcing both the merger of the two associations dissolved on that date ('Les Verts — Parti écologiste' and 'Les Verts') and the formation of a new association ('Les Verts — Confédération écologiste — Parti écologiste') immediately after the dissolution of the association established by the merger (which took place at the same time).

The process therefore appears to have taken place in four stages — dissolution of the original associations; their merger; dissolution of the association thus created; formation of the definitive association — which took place practically at the same time and are functionally connected (for example, Part III of the Merger Agreement states that the association known as 'Les Verts — Parti écologiste . . . is dissolved *on condition* that it merges with Les Verts'). Consequently, there is temporal, political and legal continuity between the old and new ecologist associations and for that reason the latter automatically assume the rights and obligations belonging to the former, including the actions being carried on by it. I would also point out that the French *Conseil d'État* has decided in favour of a similar succession in a case not very different from the present one (see judgment of 4 March 1959, *Électricité et Gaz d'Algérie, Recueil Lebon*, p. 1059).

In the second place, the argument concerning the failure to resume, or irregular resumption of, the case by the new association appears to me to be extremely weak. I would point out firstly that a formal resumption is not provided for in the Court's Rules of Procedure and, in any event, was not requested by the Court. Then there is the document of 19 February 1985 which, in my opinion, represents a true and proper resumption of the action. As I have said, the Parliament submits that it is irrelevant because it is to be found only in the papers relating to Case 190/84. It is none the less true — and this is sufficient to refute its argument on this point — that the Parliament had knowledge of it, that it referred to it several times during the oral procedure and, most importantly, that it never contested the right of Mr Lallement to appear as legal representative for and speak in the name of the applicant association.

6. The second line of argument put forward to contest the admissibility of the action, namely that concerning judicial review of the activity of the European Parliament, merits closer examination. This is a difficult matter, partly because it is the first time that this Court has ruled on an application brought against a decision of the Parliament on the basis of Article 173 of the EEC Treaty alone. Moreover, it should be said in the first place that the defendant has not assisted the Court in finding the correct solution, even though it did not raise a formal objection of inadmissibility.

Let us see why. In its defence, the Parliament contends that the general rule laid down in Article 164 requires that Article 173 be interpreted broadly, that is to say as including the Parliament among the institutions whose acts may be contested. That requirement exists in all cases, but is particularly imperative in areas such as the Budget and the organization of elections in which the powers of the Parliament have been extended. Since the amendments of 1970 and 1975, the Parliament plays a decisive role in regard to the Budget since it has the power to reject the Draft Budget in its entirety (Article 203 (8] or to have the last word in regard to non-compulsory expenditure. Furthermore, the direct elections gave it a greater measure of legitimacy and therefore a greater authority in the exercise of the powers conferred on it. In particular, when it came to financing the information campaign, the Assembly was exercising its own powers. It would not therefore be acceptable if measures adopted in that regard were immune from review by the Court.

However, the Parliament dissociated itself more and more clearly from that argument as the case proceeded. Thus, in its reply, it stated that, while not entailing the inadmissibility of the action, its own lack of capacity to bring proceedings demands that an 'essential balance' be maintained between its powers and its obligations. Is that a withdrawal? There is no doubt that it is. However, the change of direction which took place at the hearing was even more striking. There, the Parliament declared that a broad interpretation of Article 173 implies, in order for the system of judicial review therein laid down to be consistent, that it has the power to contest the acts of the other institutions. In other words, *cuius incommoda eius et commoda.* The capacity to sue and be sued go hand in hand: the Parliament cannot be sued unless it itself has the capacity to sue.

7. I am in favour of the interpretation granting the greatest measure of protection. I am well aware that, interpreted literally, Article 173 does not provide for judicial review of the decisions of the Parliament. I none the less believe that such an interpretation would conflict with the general scheme of the Treaties and I consider that there is sufficient support in the Court's case-law and in academic works for the opposite view.

Let us begin with the case-law. There is no doubt that it supports in principle the Court's power to rule on the validity and lawfulness of acts of the Parliament. Let me refer for example to the judgment of 15 September 1981 in Case 208/80 (*Lord Bruce of Donington* v *Aspden* [1981] ECR 2205). In that case, which was brought under Article 177 of the EEC Treaty, the Court examined and by implication held to be lawful the rules adopted by the Parliament to govern the reimbursement of expenses and the indemnities paid to its members. The judgment of 10 February 1983 in Case 230/81 (*Luxembourg* v *Parliament* [1983] ECR 255) is even more significant however. The Parliament raised an objection of inadmissibility in an action brought by Luxembourg against a decision concerning its seat and places of work. The Grand Duchy responded by proposing that the Court adopt a wide interpretation of Article 173 on the basis of 'the increased powers of the Parliament' and in order 'to avoid lacunae in the legal protection provided by the Court' (paragraph 15).

The Court resolved the problem by deciding that it had jurisdiction under Article 38 of the ECSC Treaty in regard to measures which relate 'simultaneously and indivisibly to the spheres of the three Treaties' (paragraph 19). The Court therefore took the view that there was no need to consider the question whether the principles appertaining to observance of Community law required that Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty be interpreted as meaning that the Parliament acts may be attacked before the Court (paragraph 20). I would however draw the Court's attention to a sentence which strikes me as highly significant. After referring to Articles 173 and 146, the judgment points out that 'there is no express provision in those articles for active or passive participation of the Parliament in the proceedings before the Court'. Am I wrong in saying that the emphasis in that *obiter dictum* is on the adjective 'express'? I would not think so. It must therefore be accepted that the decision under consideration undeniably points in the direction of the interpretation which I favour.

That is not all. The attention of those who rely on the letter of Article 173 must be drawn to the wide interpretation which the Court has always adopted of the rules concerning its own powers. Thus, in the judgment of 15 July 1963 in Case 25/62 (*Plaumann* v *Commission* [1963] ECR 95), the Court stated with regard to Article 173 that 'provisions . . . regarding the right of interested parties to bring an action must not be interpreted restrictively. Therefore, the Treaty being silent on the point, a limitation in this respect may not be presumed' (p. 107). Also, in the judgment of 31 March 1971 in Case 22/70 (*Commission* v *Council* [1971] ECR 263), the Court decided that the objective of the action for annulment 'is to ensure, as required by Article 164, observance of the law in the interpretation and application of the Treaty. It would be inconsistent with this objective to interpret the conditions under which the action is

admissible . . . restrictively . . . ' (paragraphs 40 and 41).

In the same context, reference may be made to the judgment of 15 June 1976 in Case 110/75 (*Mills* v *EIB* [1976] ECR 955). As the Court will be aware, Article 179 of the EEC Treaty gives the Court jurisdiction in disputes between the Community and its servants. However, the European Investment Bank is a legal person distinct from the Community (combined effect of Articles 129 and 210). It was not therefore unreasonable to believe that the said rule was not applicable to its employees. The judgment decided otherwise: 'The staff of the Bank are . . . placed in a special legal situation identical to that of the staff of the institutions of the Community'. That identical situation permits them to bring actions before the Court.

The judgment of 17 February 1977 in Case 66/76 (*CFDT* v *Council* [1977] ECR 305) is even more important. The French trade union federation was seeking the annulment of a decision of the Council designating representative organizations to nominate candidates for the consultative committee of the ECSC; however, since it was aware that the ECSC Treaty did not permit private individuals to challenge acts of the Council, it relied on Article 31 of that Treaty, which requires the Court to ensure that the law is observed. Although it declared the action inadmissible, the Court accepted that 'the principles upon which the applicant relies call for a wide interpretation of the provisions concerning the institution of proceedings . . . with a view to ensuring individuals' legal protection'. For our purposes, of course, that is the only point that counts. In a system of judicial protection that is much less cohesive and affords much less protection than that established by the EEC Treaty, a declaration of inadmissibility was in fact inevitable.

Finally, another judgment no less worthy of citation is that delivered on 26 May 1982 in Case 44/81 (*Germany* v *Commission* [1982] ECR 1855). In that case, the Court declared inadmissible an application by the Federal Republic of Germany for an order for payment directed against the Commission. It observed however that the Member State could have acted under Article 173 or 175 and for that reason added that the failure to provide for the type of action brought by it did not constitute 'a lacuna which must be filled in order to ensure that persons concerned have effective protection for their rights' (paragraph 7). Thus, another important *obiter dictum* is to be found in that case. Its meaning seems to me to be that the obligation to observe the law takes precedence over the strict terms of the written law. Whenever required in the interests of judicial protection, the Court is prepared to correct or complete rules which limit its powers in the name of the principle which defines its mission.

After that long, yet necessary and certainly illuminating review, let us turn our attention to academic opinion. In my opinion, the most significant contribution that it has made to the resolution of the problem before the Court is that it highlights the transitory and non-binding nature of the reasons for which the Parliament was excluded from the list of institutions whose acts may be challenged. It has been pointed out that in the original scheme of the EEC and EAEC Treaties the only institutions entitled to adopt measures capable of having legal effects were the Council and the

Commission. The Parliament could certainly compel the Commission to resign by approving the motion provided for in Article 144 of the EEC Treaty and Article 114 of the EAEC Treaty, but the political character of that act overshadows its legal character to such a degree that it was inappropriate (or pointless) to provide a right of action against the body competent to adopt it.

However, there have been changes since then, particularly in regard to the budget. Until 1975, the budget was approved by a decision of the Council, that is to say by an act which could unquestionably be attacked. Today, the budget is adopted by the Council and the Parliament together. May it be concluded from that that the measures concerned are not subject to review by the Court? Certainly not. On the contrary, the change which took place in the procedure for approving the budget is the fact which more than any other demonstrates that the reasons for which the authors of the Treaty drafted Article 173 without mentioning the Parliament no longer exist. Moreover, as has been seen, the exclusion of the Parliament was not deliberate. For example, it did not flow from the nature of the Parliament. It was much more the implicit consequence of the largely ceremonial functions then attributed to it. It derived in fact, if I may be permitted a procedural metaphor, from the presumption that review of its acts was superfluous. However, it is clear that such a presumption is rebutted when judicial review is shown to be indispensable and when, in addition, the survival of the presumption compromises the very concept of legality in the Community system.

To complete the picture, all that now remains to be dealt with is the objection raised by the Parliament, principally at the hearing, to the effect that it would be inconsistent to allow proceedings to be brought against it without allowing it to bring proceedings itself. Let me say first of all that in my opinion it is going too far to attempt to forge so close a link between the two types of proceedings (in the context of Article 173, for example, such a link does not exist with regard to the Member States; and I would also cite the position of the regions with regard to review of the constitutionality of their acts in Italian law). I would add however that the reasons which led me to argue that decisions of the Parliament may be attacked before the Court also support the proposition that the Parliament may attack the acts of other institutions, and I note that the Court's case-law also offers a small measure of support for that argument.

Permit me to refer the Court first of all to the two 'Isoglucose' judgments (judgments of 29 October 1980 in Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333 and Case 139/79 *Maizena* v *Council* [1980] ECR 3393 respectively). The Council contested the Parliament's right to intervene voluntarily in a case before the Court by claiming that such a power must be equated with a right of action. However, the Court decided that the Parliament's intervention was admissible on the basis of Article 37 of the Statute of the Court and thus by implication rejected the objection. The next judgment in point is that of 22 May 1985 in Case 13/83 (*Parliament* v *Council*). Brought before the Court by an application under Article 175, the Council pleaded the inadmissibility of the action on the basis of a schematic interpretation of the Treaty. It stated that, while Article 175 gives a right of action 'to Member States and the other institutions of the Community', it is also true, as the Court emphasized in the judgment of 18 November 1970 in Case 15/70 (*Chevalley* v *Commission* [1970] ECR

975), that that provision and Article 173 'merely prescribe one and the same method of recourse'. If, therefore, the Treaty does not permit the Parliament to challenge acts of the Council and the Commission, it cannot permit it to bring an action before the Court for a declaration that one of those institutions has unlawfully failed to act.

As the Court will be aware, that objection was not accepted on the grounds that the action for failure to act is independent and that all the Community institutions are entitled to bring it. The obstacle represented by the *Chevalley* judgment was thus removed; it is therefore possible to argue that since the rules concerning jurisdiction must be interpreted widely, the Council's argument can be rejected. It is thus Article 173 which must be read in a way which accords with the more widely drafted Article 175.

8. The third ground of inadmissibility deals with the existence of the conditions to which the second paragraph of Article 173 makes actions brought by natural or legal persons subject. As the Court will be aware, those conditions are very strict: the measure may be of a general or abstract nature but it may only be challenged if it is of direct and individual concern to the person bringing the action.

It is worth pointing out that, in regard to this point also, the Parliament has advanced an essentially contradictory line of argument. During the written procedure, it stated that, as intermediate bodies between the Community and its citizens, the political parties enjoy a 'protected status', and therefore a wide interpretation of the rules in question is justified; in any event, the contested rules are of concern to them, both individually, because they lay down the conditions on which they will be reimbursed, and directly, in so far as they can be put into effect without special rules. A different opinion was expressed at the hearing. The Parliament confirmed the argument based on the special nature of the parties and for that purpose referred to the *Fediol* and *Allied Corporation* judgments (judgment of 4 October 1983 in Case 191/82 [1983] ECR 2913 and judgment of 21 February 1984 in Joined Cases 239 and 275/82 [1984] ECR 1005). More importantly, however, it contended that, since the Ecologists were not individually concerned by the contested measure, their action must be declared inadmissible.

In the applicant's view, its action is indisputably admissible. It claims that a person is individually concerned by a measure if he is identifiable as one of the persons to whom it is addressed. In this case, 'Les Verts — Confédération écologiste — Parti écologiste' put up candidates at the 1984 election and received reimbursement according to the rules laid down in the contested measure. It thus cannot be denied that, although it did not designate them by name, the measure identified them in the above-mentioned sense.

9. The Court's pronouncements on the meaning of 'individually' convince me that in this case the condition laid down in the second paragraph of Article 173 is not met. What in fact does that word mean? The Court's reply is well known: 'Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed' (*Plaumann* judgment, cited above, judgment of 11 July 1968 in Case

6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409 and judgment of 14 July 1983 in Case 231/82 *Spijker* v *Commission* [1983] ECR 2559).

If therefore the measure is capable of affecting interests other than those of the applicant, the requirement in question will be met only if the applicant's position can be described as unique; it will not therefore be satisfied even where the possibility exists 'of determining more or less precisely the number or even the identity of the persons to whom [the] measure applies' (see judgment of 5 May 1977 in Case 101/76 *Koninklijke Scholten Honig* v *Council and Commission* [1977] ECR 797; judgment of 16 March 1978 in Case 123/77 *UNICME* v *Council* [1978] ECR 845; and judgment of 29 January 1985 in Case 147/83 *Münchener Import-Weinkellerei* v *Commission* [1985] ECR 257). What is in fact required is the following:

(a) when the institution adopted the contested measure, it must have been aware of the identity of the applicant and there must have been a connection between that knowledge and the measure (judgment of 17 January 1985 in Case 11/82 *Piraiki Patraiki and Others* v *Commission* [1985] ECR 207);

(b) Also at the time when the measure was adopted, the applicant's situation must have been 'definitively determined' (judgment of 27 November 1984 in Case 232/81 *Agricola commerciale olio* v *Commission* [1984] ECR 3881); and

(c) the applicant must demonstrate the existence of special circumstances which have caused the institution to regulate the applicant's position in a way different from that of all other persons concerned (judgment of 10 December 1969 in Joined Cases 10 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459).

In the light of those clear criteria, it is relatively easy to resolve the problem in this case. As I have already said (at 2, above), the beneficiaries of the contested rules were all political groupings which put up candidates in the 1984 elections. Let me add here that, at the time when those rules were adopted, the closing date for submission of lists had not expired in any Member State. It was thus not possible for the enlarged Bureau to know which groupings would benefit from the reimbursement for which the rules provided; nor can the Ecologists rely on a situation peculiar to themselves which was already determined on 29 October 1983 and which induced the enlarged Bureau to draw distinction between them and all other persons to whom the measure was addressed.

That having been said, the Parliament's reference to the *Fediol* and *Allied Corporation* judgments appears to me to be completely misplaced. The second judgment does not in any way modify the Court's established case-law; the first makes the admissibility of the action dependent on the special legal position of the undertaking concerned but bases that position on the special rights conferred on the undertaking by Regulation No. 3017/79 in the context of protection against dumped or subsidized imports from non-member countries (Official Journal L 339, p. 1). The fact is therefore that, in the absence of specific rules, Community law does not equate anyone, not even the political parties, with the so-called 'privileged' applicants (the Member States and the institutions). Whether they like it or not, whether it is

just or not, under the Community system the parties must be regarded for all purposes as private persons subject to national law.

10. I am firmly convinced that the action brought by the Ecologists must be declared inadmissible. For that reason, I will deal briefly with the merits of the case, and then only out of respect for the convention that the Advocate General should consider the case in all its aspects.

The applicant association advances many submissions. It claims that the decisions of 12 and 13 October 1982 and of 29 October 1983 are vitiated by:

(a) lack of competence and absence of legal basis;

(b) infringement of the Treaties and of the rules implementing them;

(c) breach of the principle of equality;

(d) contravention of the French constitution; and

(e) misuse of powers.

They are also unlawful because the measure on which they are based (the Council decision of 22 July 1983) is itself unlawful. It is clear that the third of those complaints is the most important. According to the applicant, by reserving only 31% of the amount provided for in Item 3708 for groupings which put up candidates for the first time in 1984, those groupings were placed at a disadvantage *vis-à-vis* the parties which were already represented in the Parliament.

Summarized in that way, the complaint is undoubtedly persuasive but the least that can be said is that it is doubtful whether it is actually justified. It would certainly be justified if the rules to which it refers were intended to give effect to a system of financing political organizations out of public funds, such as exists in several Member States. The purpose of such a system is to ensure that the parties are able to extend their influence on public opinion and to take part in the formulation of national policy. In order to guarantee them equal opportunity in the pursuit of those objectives, such a system lays down a criterion for verifying the level of support they enjoy and provides for the division of the funds *in proportion* to the vote and seats they obtain. There is a difference between that type of financing and the type we are dealing with in this case, and that is not merely because the absence, in the Community legal order, of a uniform electoral system often has an effect on the relationship between seats and votes, with the effect that the proportionality rule and therefore the principle of equality are not strictly applied.

The difference which I have in mind concerns mainly the scope of the Community system. It is true that the rules of 29 October 1983 speak of 'reimbursement of expenditure' incurred by the 'political groupings having taken part in the 1984 European elections', but that formula, which is undoubtedly unfortunate, must be read in the light of the terms used in the title of Item 3708. As we have seen, there it is stated that the funds are intended to be a 'contribution to the costs of preparations for the next European elections' (Budget for 1982, Official Journal L 31, p. 115). Thus, the purpose of the contested rules was to make known to those who were unconcerned, unprepared or only lukewarm in their commitment to the European ideal the importance of the tasks performed by the European Parliament and therefore of the elections for that Parliament.

If that was so, if the funds in question were intended not to promote the role of the

parties in a pluralist democracy but, from 1977, to launch and maintain a campaign of information, then it is fairly reasonable that the 1982 decision should allocate the largest amount to the groupings already represented in the Parliament. At the time when the rules were adopted, they were the only identifiable persons to whom the task of informing the public could be entrusted and who could be expected, by virtue of their undoubtedly representative character, to carry out that task with the maximum degree of efficiency. Naturally, new or unrepresented groupings could also make a useful contribution. The Bureau took account of that fact and it was for that reason that it established in favour of such groupings a smaller, but still significant, reserve fund.

Let me say a few words about the other submissions advanced by the Ecologists. Those which attribute a different character to the fund and complain that the Treaty was infringed because the Parliament and its Bureau were not empowered to adopt the contested rules are certainly without foundation. Firstly, it is clear that the procedure followed for the adoption of Item 3708 fully complied with the rules. Secondly, there is no doubt that the Bureau acted on the basis of powers granted to it by the Assembly. The submission set out at (d), above, and the objection that the decision of 22 July 1983 is unlawful because the representative of the French Government exceeded his authority in voting for it must also fail. I will limit myself on this point to observing that, according to established case-law, the validity of acts of the Community must be determined in the light of the Treaties and it is not for the Court to inquire whether national rules have been observed.

The complaint of misuse of powers must also be rejected. The Ecologists complain:

(a) that the purpose of Item 3708 was to facilitate the re-election of candidates put up by parties already represented in order to 'perpetuate an Assembly protected from criticism . . . and democratic censure';

and

(b) that no control was exercised over the management of the funds.

I provided an answer to the first point when analysing the alleged breach of the principle of equality. With regard to the second, I would draw attention to the many controls provided for in the contested rules (*supra*, Section 2) and the favourable opinion delivered by the Court of Auditors on the implementation of Item 2729 in 1978 and 1979.

Let me conclude by saying that the submission alleging an infringement of Articles 85 and 86 of the Treaty does not need to be examined. To attribute to parties the privileges which Article 173 reserves to the Community institutions of the Member States is an incorrect but worthy argument. To assimilate them to commercial undertakings is quite simply unreasonable.

11. For all the foregoing reasons, I suggest that the Court:

(a) Declare inadmissible the action brought against the European Parliament on 20 December 1983 by the association called 'Les Verts — Parti écologiste' on the ground that the requirements laid down in the second paragraph of Article 173 of the EEC Treaty are not met;

(b) Dismiss it as unfounded if it is held to be admissible.

Since the applicant has failed in its submissions it should be ordered to pay the costs.