

## RECENT DEVELOPMENTS

EUROPEAN ECONOMIC COMMUNITY—THE USE OF ARTICLE 173(2) OF THE EEC TREATY TO CONTEST ACTIONS OF THE EUROPEAN PARLIAMENT, *Partie Ecologiste 'Les Verts' (The Greens) v. European Parliament*, [1987] 2 Comm. Mkt. L.R. 343 (1986).

### FACTS

Prior to the 1984 parliamentary elections within the European Communities, the European Parliament<sup>1</sup> made a series of budgetary decisions which authorized the allocation of funds to publicize the upcoming elections.<sup>2</sup> One decision directed the distribution of these

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<sup>1</sup> Article 137 of the Treaty establishing the European Economic Community set up the European Parliament as the representative body of the European Communities. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3, 11 [hereinafter EEC Treaty]; (In light of the differences in translations, the version published by the European Communities is treated as authoritative for the purposes of this paper.) OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES, TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES 331 (1978). The term European Communities refers to the European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (Euratom or EAEC). These three communities officially combined in 1967 with the ratification of the Merger Treaty. This treaty brought together the foundation treaties establishing each of the Communities. However, the European Parliament and the Court of Justice of the European Communities have been common to all three communities since their inception in 1958. J. LOUIS, THE COMMUNITY LEGAL ORDER 9 (1980). Presently, the member states of the European Communities are: Belgium, Denmark, France, The Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, and the United Kingdom.

Prior to the commencement of direct elections in 1979, the national parliaments of the member states selected the members of the European Parliament. BBC DATA & BBC POLITICAL RESEARCH UNIT, GUIDE TO THE EUROPEAN ELECTIONS 1984 1 (2d ed. 1985). The original EEC Treaty acknowledged the desirability of direct elections, but it was not until 1979 that the Council of the European Communities approved the necessary legislation to authorize direct elections. M. PALMER, THE EUROPEAN PARLIAMENT 23-24 (1981). The current Parliament is composed of 518 members elected by the peoples of the member states. COMMISSION OF THE EUROPEAN COMMUNITIES, 19 BULLETIN OF THE EUROPEAN COMMUNITIES, (No. 1) 7 (1986).

<sup>2</sup> The initial authorization for the election publicity funding stems from Item 3708 of the 1982 General Budget of the European Communities. This provision

funds to the political groups which planned to participate in the 1984 elections.<sup>3</sup> This decision favored existing members of Parliament, for it allocated a disproportionately large share of the funds to incumbents and left the remainder to previously unrepresented political groups.<sup>4</sup>

One unrepresented group, Les Verts—Partie Ecologiste (the Greens),<sup>5</sup> filed suit against the European Parliament in the Court of Justice of the European Communities,<sup>6</sup> seeking annulment<sup>7</sup> of the budgetary decision under Article 173(2) of the EEC Treaty.<sup>8</sup> The Greens con-

allocates funds to cover costs incurred "for the information campaign leading up to the second direct elections in 1984." *General Budget of the European Communities for the Financial Year 1982*, 25 O.J. EUR. COMM. (No. L 31) 115 (1982) (final version adopted by the European Parliament). Subsequently, the 1983 and 1984 budgets contained similar provisions. All of these provisions were of a general nature, leaving internal decisions of Parliament to determine the specifics of the distribution of funds. *Partie Ecologiste 'Les Verts' (The Greens) v. European Parliament*, [1987] 2 Comm. Mkt. L.R. 343, 365 (1986).

<sup>3</sup> On Oct. 12, 1982, the Bureau of the European Parliament made this decision despite the objections of one of the political groups in Parliament. The Bureau comprises the President and the twelve Vice-Presidents of Parliament. [1987] 2 Comm. Mkt. L.R. at 365-66.

<sup>4</sup> This decision, which was never published, contained a formula for disbursing up to 62% of the funds to existing members of Parliament. From the remaining funds, 31% was to be divided proportionally amongst all parties which obtained a certain percentage of the popular vote. *Id.* at 366.

<sup>5</sup> The Greens are members of a political movement which focuses on issues such as ecology, opposition to nuclear power, and peace. They first became a political force in the early 1980's. See F. CAPRA & C. SPRETNAK, *GREEN POLITICS* 3 (1984). Prior to the 1984 elections, the Greens had no representatives in the European Parliament. BBC DATA & BBC POLITICAL RESEARCH UNIT, *supra* note 1, at 2.

<sup>6</sup> The Court of Justice of the European Communities is the judicial organ of the European Economic Community. Its function is to "ensure observance of law and justice in the interpretation and applications of this Treaty." EEC Treaty, *supra* note 1, at art. 164. The Court possesses similar judicial responsibilities with respect to the EEC's sister treaties, Euratom and ECSC. See J. LOUIS, *supra* note 1, at 9. The Court consists of judges from each of the member states together with a rotating judge which is chosen from France, Germany, Italy, and the United Kingdom. L. BROWN & F. JACOBS, *THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES* 16 (2d ed. 1983).

<sup>7</sup> An action for annulment challenges the legality of a Community act. In these proceedings, the Court of Justice is not at liberty to modify the act via its interpretative powers. The Court of Justice only makes a determination as to whether the Community act is a valid exercise of Community authority. H. SCHERMERS, *JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES* 171 (2d ed. 1979). If the Court declares the act void then the institution which issued the act must "take the necessary measures to comply with the judgment of the Court of Justice." EEC Treaty, *supra* note 1, at Art. 176. This mandate implies a duty on the infringing institution to restore the *status quo ante*. R. LAUWAARS, *LAWFULNESS AND LEGAL FORCE OF COMMUNITY DECISIONS* 275 (1973).

<sup>8</sup> Article 173 provides:

tended, *inter alia*, that the budgetary decision amounted to campaign financing which was discriminatory and an abuse of Parliament's powers under the Treaty.<sup>9</sup> The Parliament denied the allegations, stating that the funding was merely part of an "information campaign" for the 1984 elections.<sup>10</sup> After determining that the Greens had standing to sue Parliament under Article 173(2), the Court of Justice, *held*, the decisions void. Acts of the European Parliament are assailable under Article 173(2) of the Treaty even though the Article itself does not provide explicit authority.<sup>11</sup> *Partie Ecologiste 'Les Verts' (The Greens) v. European Parliament*, [1987] 2 Comm. Mkt. L.R. 343 (1986).

### LEGAL BACKGROUND

One of the fundamental attributes of the Treaties establishing the European Communities is the procedure of judicial review<sup>12</sup> as ex-

[1] The Court of Justice shall review the legality of acts of the Council and the Commission other than recommendations or opinions. It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

[2] Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

[3] The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

EEC Treaty, *supra* note 1, at art. 173.

<sup>9</sup> The Greens raised seven grounds in support of their action. However, the Court decided the case on only one of these submissions, infringement of Article 7(2) of the Act concerning the election of the representatives of the Assembly [Parliament] by direct universal suffrage. *Partie Ecologiste 'Les Verts' (The Greens) v. European Parliament*, [1987] 2 Comm. Mkt. L.R. 343, 378 (1986). In the absence of any Community legislation to the contrary, Article 7(2) of the Act leaves questions of electoral procedure to the member states. 19 O.J. EUR. COMM. (No. L278) 6 (1976).

<sup>10</sup> [1987] Comm. Mkt. L.R. at 375. The European Parliament denied that the funds were tantamount to campaign financing; rather, the Parliament viewed these funds as publicity expenses associated with the maintenance of its internal organization. *Id.*

<sup>11</sup> *Id.* at 372.

<sup>12</sup> Contrast this emphasis on judicial review in the Communities with the emphasis on cooperation found in GATT or OECD. G. BEBR, *DEVELOPMENT OF JUDICIAL CONTROL OF THE EUROPEAN COMMUNITIES* 4 (1981).

pressed in provisions such as Article 173(2).<sup>13</sup> This article enables natural and legal persons<sup>14</sup> to bring actions of annulment against Community acts. Article 173(2) specifies that a person may contest either a "decision" or a "decision" in the "form of a regulation."<sup>15</sup> Though "decision" possesses a technical definition,<sup>16</sup> the Court of Justice has stressed a liberal interpretation of this term in recent cases.<sup>17</sup> The result has been that the Court has consistently granted review of legally binding acts regardless of the act's form.<sup>18</sup>

Though broad in scope, this grant of review under Article 173(2) is subject to limitations. Article 173(2), by reference to paragraph one, restricts the natural or legal person to four types of claims.<sup>19</sup> The first, "lack of competence," corresponds roughly to the French concept of *excès de pouvoir* or the English doctrine of substantive *ultra vires*. If a community institution exceeds its delegated powers, the Court, citing "lack of competence," may declare the excessive act void.<sup>20</sup> The second type of claim is "infringement of an essential procedural requirement." When a Community institution fails to fulfill a basic procedural requirement, the Court of Justice may annul

<sup>13</sup> EEC Treaty, *supra* note 1, at art. 173. For the text of Article 173 see *supra* note 8.

<sup>14</sup> Legal personality is defined by the relevant national law, for the Treaties do not address the question of what constitutes a legal person. G. BEBR, *supra* note 12, at 32.

<sup>15</sup> EEC Treaty, *supra* note 1, at art. 173.

<sup>16</sup> Article 189 of the EEC Treaty enumerates the acts of the Communities which are legally binding. With regard to a "decision" it states, "[a] decision shall be binding in its entirety upon those to whom it is addressed." EEC Treaty, *supra* note 1, Art. 189. "Decisions" are sometimes compared to administrative acts of national governments that are addressed to specific parties. V. HERMAN & J. LODGE, *THE EUROPEAN PARLIAMENT AND THE EUROPEAN COMMUNITY* 27 (1978).

<sup>17</sup> G. BEBR, *supra* note 12, at 32-33. A good example can be found in *Commission v. Council*:

Article 173 treats as acts open to review by the Court all measures adopted by the institutions which are intended to have legal force. The objective of this review is to ensure, as required by Article 164, observance of the law in the interpretation and application of the Treaty.

*Commission v. Council*, 1971 E. Comm. Ct. J. Rep. 263, 276; *accord*, *Alcan v. Commission*, 1970 E. Comm. Ct. J. Rep. 385, 393.

The Court has adopted the same approach when interpreting the meaning of "decisions" within other provisions of the Treaty. *Cimenteries v. Commission*, 1967 E. Comm. Ct. J. Rep. 75. Thus, the notion of a "decision" is not critical in obtaining review of Community acts.

<sup>18</sup> See *supra* note 17 and accompanying text.

<sup>19</sup> EEC Treaty, *supra* note 1, at art. 173.

<sup>20</sup> D. LASOK & J. BRIDGE, *LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES* 175 (2d ed. 1976).

the act which emerged from the defective legislative process.<sup>21</sup> This second type resembles the third, though the second is more specific and limited in scope. The third enumerated claim, "infringement of the Treaty or *any* rule of law relating to its application" (emphasis added), allows the Court of Justice to void all Community acts which contradict the essential legal framework of the Community.<sup>22</sup> The final ground for review is "misuse of powers." The Court of Justice has interpreted this term to cover unlawful uses of power as well as lawful uses which exceed statutory limits. Either circumstance provides sufficient reason for the Court to declare the offending act void.<sup>23</sup> In addition to bringing a claim within the above type restrictions of Article 173, a claimant who is a natural or legal person must be able to demonstrate a specific relationship with the contested Community act. The claimant must either be the addressee of the act or be able to prove that the act, while addressed to another, is of "direct and individual concern" to the claimant.<sup>24</sup> Though an indispensable element of any non-addressee's case, the concept of "direct and individual concern" remains ill-defined and a topic of some debate.<sup>25</sup> In most cases, the Court splits the examination of this requirement into two parts, determining the issues of direct concern and individual concern separately.<sup>26</sup> For the purpose of evaluating these issues, the

<sup>21</sup> These procedural requirements may be found in both the Treaties and regulations of the Communities. *Id.* at 176. The term Treaties refers to the EEC, ECSC, and Euratom treaties collectively. *See id.* at 20.

<sup>22</sup> The Treaties, the laws promulgated pursuant to the Treaties, and the "general principles common to the laws of the Member States," EEC Treaty, *supra* note 1, at Art. 215, are all within the ambit of this type of claim. L. BROWN & F. JACOBS, *supra* note 6, at 107. A Community act which encroaches on any of these laws/principles may be voided by the Court of Justice. *Id.*

<sup>23</sup> *Id.* at 108.

<sup>24</sup> EEC Treaty, *supra* note 1, at art. 173.

<sup>25</sup> As yet there is no definitive interpretation by the Court of the direct and individual concern aspect of the standing requirements under Article 173(2). L. BROWN & F. JACOBS, *supra* note 6, at 97. Indeed, the Court acknowledged the latent ambiguity of Article 173(2) in *Plaumann v. Commission*:

[T]he second paragraph of Article 173 does allow an individual to bring an action against decisions addressed to "another person" which are of direct and individual concern to the former, but this Article neither defines nor limits the scope of these words. The words and the natural meaning of this provision justify the broadest interpretation.

*Plaumann v. Commission*, 1963 E. Comm. Ct. J. Rep. 95, 106-07. Some scholars argue that this uncertainty reduces the utility of the provision. Tabaczyk, *Establishing Locus Standi Under Article 173(2) of the EEC Treaty*, 7 Nw. J. INT'L L. & Bus. 157, 160 (1985).

<sup>26</sup> H. SCHERMERS, *supra* note 7, at 180.

Court has developed some useful, though not exhaustive, criteria. With respect to the direct concern element, the Court has focused on what, if any, discretionary power the act in question creates. If the act on its face affects the claimant, leaving no discretion to an intermediary, then the Court has found the act to be of direct concern to the claimant.<sup>27</sup> In addressing the individual concern element, the Court has questioned whether at the time of the act's promulgation it affected the claimant due to his particular characteristics; an affirmative answer has led the Court to declare the act to be of individual concern to the claimant.<sup>28</sup> If the Court finds that the applicant's claim conforms to the aforesaid type and relationship limitations in the requisite time period, Article 173(2) authorizes the Court to then examine the validity of the contested act.<sup>29</sup>

Although Community case decisions indicated that the acts of the Commission and Council<sup>30</sup> were generally subject to review under Article 173(2),<sup>31</sup> prior to the instant case a question existed concerning acts of the European Parliament.<sup>32</sup> Article 173 specifically grants suit against the acts of the Council and Commission of the European Communities, but does not mention Parliament.<sup>33</sup> Initially, the omission of Parliament from the text of Article 173 did not prove problematic because Parliament was of no legislative or judicial

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<sup>27</sup> D. LASOK & J. BRIDGE, *supra* note 20, at 175. In the case of *Toepfer v. Commission*, the plaintiff was denied an import license by West German authorities, and this denial was subsequently ratified by an act of the European Commission. The Court of Justice held that since the ratification was "immediately enforceable" it was of direct concern to the plaintiff. *Toepfer v. Commission*, [1966] Comm. Mkt. L.R. 111, 142 (1965); *accord*, *International Fruit Co. v. Commission*, [1975] 2 Comm. Mkt. L.R. 515, 535 (1971).

<sup>28</sup> H. SCHERMERS, *supra* note 7, at 183. In *C.A.M. v. Commission*, the Société C.A.M., SA, brought suit against the European Commission, contesting the denial of certain agricultural export refunds. The Court of Justice held that since only agricultural companies which applied for the refunds during a specific time period were affected, the contested measures were of individual concern to the affected companies. *C.A.M. v. Commission*, 1975 E. Comm. Ct. J. Rep. 1393, 1402-03.

<sup>29</sup> See *supra* note 8 and accompanying text.

<sup>30</sup> The Council and the Commission along with the Parliament and the Court of Justice are the institutions of the European Communities. The Council and the Commission are primarily responsible for producing Community legislation. The Commission prepares and defends legislative proposals, and the Council enacts the legislation into law. COMMISSION OF THE EUROPEAN COMMUNITIES, THIRTY YEARS OF COMMUNITY LAW 3 (1983).

<sup>31</sup> See *supra* note 17 and accompanying text.

<sup>32</sup> L. BROWN & F. JACOBS, *supra* note 6, at 94-95.

<sup>33</sup> See *supra* note 8 and accompanying text.

consequence: Parliament functioned solely in an advisory and supervisory capacity.<sup>34</sup> Since its inception, however, the character of Parliament has changed both legislatively and judicially. In the legislative realm, Parliament's powers expanded. During the mid-1970s, Parliament acquired the ability to exercise a limited control over the budget.<sup>35</sup> Similarly, Parliament's judicial influence grew. In the case of *Roquette Frères v. Council*, the Court of Justice recognized Parliament's right to intervene in cases before the Court.<sup>36</sup> As Parliament's legal influence within the Communities developed, the question of its legal status under Article 173 became an increasingly pertinent issue.

The Court's first opportunity to decide Parliament's position with respect to Article 173 arose in *Luxembourg v. European Parliament*.<sup>37</sup> In this action, the Grand Duchy of Luxembourg brought suit against the European Parliament under Article 38 of the ECSC Treaty<sup>38</sup> and

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<sup>34</sup> The original text of the EEC Treaty specifies this role for Parliament. Article 137 of the EEC Treaty states: "The Assembly [Parliament], which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon it by this Treaty." EEC Treaty, *supra* note 1, at Art. 137. The EAEC Treaty has an identical provision, Article 107. Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 169, 205.

<sup>35</sup> Modifications to Article 203 of the EEC Treaty granted the European Parliament a genuine right of decision-making for the first time. Ehlerman, *Applying the New Budgetary Procedure for the First Time (Article 203 of the EEC Treaty)*, 12 COMMON MKT. L. REV. 325 (1975). Article 203 specifies the budgetary regime of the EEC. EEC Treaty, *supra* note 1, at Art. 203.

<sup>36</sup> *Roquette Frères v. Council*, 1980 E. Comm. Ct. J. Rep. 3333. In this case, the European Council contested the legal propriety of the European Parliament intervening in matters before the Court of Justice. The Council argued that a right to intervene is equivalent to a right of action, and Parliament does not have such rights under the Treaty. Also, in this respect the Council observed that Article 173 does not mention the Parliament as a party subject to suit. Nevertheless, the Court held that Article 37 of the Statute of the Court allows all "institutions" of the European Communities to intervene in cases before the Court. *Id.* at 3357.

<sup>37</sup> *Luxembourg v. European Parliament*, 1983 E. Comm. Ct. J. Rep. 255.

<sup>38</sup> Article 38 of the ECSC Treaty provides:

The court may, on application by a Member State or the High Authority, declare an act of the Assembly [Parliament] or of the Council to be void.

Application shall be made within one month of the publication of the act of the Assembly or the notification of the act of the Council to the Member States or to the High Authority.

The only grounds for such application shall be lack of competence or infringement of an essential procedural requirement.

Treaty Establishing the European Coal and Steel Community, Apr. 30, 1957, 261

in the alternative, Article 173 of the EEC Treaty.<sup>39</sup> While noting that Article 173 should be interpreted liberally, the Court sidestepped this article, basing its grant of standing instead on Article 38.<sup>40</sup> This decision was uncontroversial because Article 38 specifically grants member states standing to sue Parliament.<sup>41</sup>

The Court's decision in *Luxembourg* had significant consequences. The Court's reliance on Article 38 left the reach of Article 173 at issue. Since *Luxembourg* did not address Parliament's relation to Article 173, the legal position of natural and legal persons with respect to Parliament remained unresolved. Article 173 allows natural and legal persons to bring suit (under paragraph 2); Article 38 does not.<sup>42</sup> By circumventing the issue of Article 173, the Court left the "lacunae"<sup>43</sup> in Community law which the Grand Duchy warned of in its brief: whether a natural or legal person has standing to contest the acts of the European Parliament.<sup>44</sup>

#### COMMENT

Unlike the situation in *Luxembourg*, the Court in *Parti Ecologiste 'Les Verts' (The Greens) v. European Parliament* had no choice but to confront the issue of the scope of standing under Article 173; the Greens offered no alternative grounds for suit.<sup>45</sup> Also, in sharp contrast to the *Luxembourg* decision, the European Parliament did not contest the applicability of Article 173. The European Parliament apparently did not challenge its applicability in anticipation of future benefits, for Parliament argued at the hearing that if suits could be brought against it under the Article then it followed logically that it

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U.N.T.S. 140, 169-71 [hereinafter ECSC Treaty] (In light of the differences in translations, the version published by the European Communities is treated as authoritative for the purposes of this paper.) OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES, TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES, 50 (1978).

<sup>39</sup> Luxembourg sought annulment of a decision by the European Parliament to move its headquarters from Luxembourg. The Court admitted this action only to dismiss it later on substantive grounds. 1983 E. Comm. Ct. J. Rep. 255, 292.

<sup>40</sup> *Id.* at 283.

<sup>41</sup> ECSC Treaty, *supra* note 38 and accompanying text.

<sup>42</sup> *Id.*

<sup>43</sup> Lacunae are "gap[s] or blank[s] in writing." BLACK'S LAW DICTIONARY 1017 (4th ed. 1951).

<sup>44</sup> Luxembourg v. Parliament, 1983 E. Comm. Ct. J. Rep. at 255, 282.

<sup>45</sup> Although the Greens had seven different grounds for suit, each of them relied on a grant of standing under Article 173(2). *Partie Ecologiste 'Les Verts' (The Greens) v. European Parliament*, [1987] 2 Comm. Mkt. L.R. 343, 365-68 (1986).

should have the capacity to institute legal actions.<sup>46</sup> Specifically, the Parliament claimed that it should be able to contest the acts of other Community institutions.<sup>47</sup> The Court obliquely declined to address this point, limiting the discussion of standing under Article 173 to the fact situation before the Court.<sup>48</sup> The Court divided its analysis of standing into two parts: the Greens' standing to sue under Article 173(2) and the rationale for holding the Parliament subject to suit under Article 173(2).<sup>49</sup>

With regard to the Greens, the Court began by addressing the question of the Greens' "legal personality." This factor became an issue because the Green party which instituted the action had, technically speaking, dissolved.<sup>50</sup> Due to this dissolution, the European Parliament claimed that the Greens had lost capacity to sue.<sup>51</sup> The Court of Justice disagreed, holding that the applicant, Les Verts—Partie Ecologiste, had actually merged with a fellow Green Party, Les Verts—Confederation Ecologiste, without any break in legal continuity.<sup>52</sup> The Court's decision here correctly elevated substance over form, for though the Parliament admitted the necessary continuity in oral argument,<sup>53</sup> it sought to deny the continuity on a technicality.<sup>54</sup>

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<sup>46</sup> *Id.* at 371. Apparently, this proposition has some support from the Commission as well. In 1979, the President of the Commission endorsed this idea in his address to the Annual General Meeting of the United Kingdom Association for European Law. G. BEBR, *supra* note 12, at 33 n.68.

<sup>47</sup> [1987] 2 Comm. Mkt. L.R. at 356 (1986) (opinion of the Advocate General Mancini). The Advocates-General provide advisory assistance to the European Court of Justice. In the words of Article 166, "[i]t shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make in open court, reasoned submissions on cases brought before the Court of Justice." EEC Treaty, *supra* note 1, at Art. 166. Customarily, the Opinion of the Advocate General is published with the Court's decision. Although not binding, the Advocate General's opinion is often broader than the Court's decision, and it provides a good backdrop against which to view the case. D. LASOK & J. BRIDGE, *supra* note 20, at 159.

<sup>48</sup> [1987] 2 Comm. Mkt. L.R. at 371.

<sup>49</sup> The Court raised the issue of standing by its own motion, despite the fact that Parliament did not contest the admissibility of the action. *Id.* at 370.

<sup>50</sup> *Id.* at 368-70.

<sup>51</sup> Parliament argued that the dissolution prevented the Greens from continuing the action under both French and Community Law. Opinion of Advocate General Mancini, *id.* at 353. French law is relevant because it controls the issue of legal personality here. See *supra* note 14 and accompanying text.

<sup>52</sup> The merger was the result of a detailed agreement which explicitly provided for the consolidated party's participation in the instant case. Also, the new party registered appropriately under French law for official status as a party. [1987] 2 Comm. Mkt. L.R. at 369.

<sup>53</sup> *Id.* at 369-70.

<sup>54</sup> The Parliament contended that the documentation substantiating the Greens'

The Court's ruling focused on the underlying facts; thus, the new party, Les Verts—Confederation Ecologiste—Partie Ecologiste (the Greens) was an authentic party to the suit.<sup>55</sup>

The Court then turned to the "direct and individual concern" requirement of Article 173(2). The Court conducted this analysis because the contested budgetary measures of Parliament which favored incumbents did not specifically address the Greens. The Court approached this analysis in two parts, examining the direct and individual elements separately.<sup>56</sup> First, the Court found that the measures were of a direct concern to the Greens because those measures were effective immediately, requiring no further implementation at the national level.<sup>57</sup> Next, regarding the individual requirement, the Court found that the measure individually concerned the Greens due to the fact that they were unrepresented in the European Parliament.<sup>58</sup> As an unrepresented party, the Greens were singled out for discrimination in the distribution of public funds. From this analysis, the Court granted the Greens standing to sue under Article 173.<sup>59</sup>

This analysis of the Greens' *locus standi* is at once both ordinary and remarkable. In addressing the issue of direct concern, the Court adhered to a test long established in the case decisions of the Court: whether intermediary measures were necessary to lend effect to the contested act.<sup>60</sup> Since none were required, the Court concluded that the direct concern requirement was satisfied.<sup>61</sup> By contrast, the Court's

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<sup>54</sup> The Parliament contended that the documentation substantiating the Greens' claim could not be considered in this action. Opinion of the Advocate General Mancini, *id.* at 354.

<sup>55</sup> The Parliament had argued that a break in the legal continuity of the Green party would bar the suit due to a statute of limitations. *Id.* at 369.

<sup>56</sup> *Id.* at 373-74.

<sup>57</sup> *Id.* at 373. If the act merely delegates a discretionary power to the member states then the Court may hold the direct concern requirement is unfulfilled. *Alcan v. Commission*, 1970 E. Comm. Ct. J. Rep. 385, 393.

There is support for the contention that the Court uses the direct concern provision to ensure that a Community act is ultimately responsible for the alleged harm. Tabaczyk, *supra* note 25, at 160.

<sup>58</sup> [1987] 2 Comm. Mkt. L.R. at 373. If a natural or legal person is harmed by a Community act due to membership in a specific class, this fact is of importance in claiming the act is of individual concern. *See Plaumann v. Commission*, 1963 E. Comm. Ct. J. Rep. 95, 107.

<sup>59</sup> [1987] 2 Comm. Mkt. L.R. at 374.

<sup>60</sup> *See The Greens Scale the Barrier of Article 173 EEC*, 11 EUR. L. REV. 189-90 (1986). *See also* note 27 and accompanying text.

<sup>61</sup> The Court stated that the contested measures constituted "a complete set of rules which are sufficient in themselves and which require no implementing provisions." [1987] 2 Comm. Mkt. L.R. 343, 373.

analysis of individual concern represents a significant departure from previous decisions in this area.<sup>62</sup> To claim individual concern, the Court has generally required that the claimant be affected at the time the act was issued due to characteristics peculiar to the claimant.<sup>63</sup> In *Plaumann v. Commission*, the Court rejected the notion that an "activity which may at any time be practiced by any person" constituted such a personal characteristic.<sup>64</sup> Applying this reasoning from *Plaumann* to *Les Verts* would have defeated the Greens claim of individual concern, for during the time prior to the elections virtually any party or person could have decided to seek election to the Parliament.<sup>65</sup> Rather than follow previous case decisions mechanically, the Court held that policy concerns controlled *Les Verts*. Since the incumbents participated in the adoption of the budgetary measures, they had the opportunity to contest and/or shape the budgetary measures at their inception. To deny unrepresented groups the right to subsequently contest these measures would violate notions of fairness. In the words of the *Les Verts* court, "Such an interpretation would give rise to inequality in the protection afforded by the court to the various groupings competing in the same elections."<sup>66</sup> To avoid the inequitable administration of law, the Court ruled that the act of Parliament individually concerned the Greens.<sup>67</sup> As a result, it is now clear that a determination of individual concern can include policy considerations.

Though the Court's treatment of individual concern is a noteworthy development, the even more significant aspect of the case is the status accorded the European Parliament under Article 173. Absent explicit authority in the Article itself, the Court of Justice consulted other provisions of the Treaties to establish the Parliament's liability under the Article. The Court observed that Articles 173, 184,<sup>68</sup> and 177<sup>69</sup>

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<sup>62</sup> See *The Greens Scale the Barrier of Article 173*, *supra* note 60, at 190. See also note 28 and accompanying text.

<sup>63</sup> See, e.g., K. LIPSTEIN, *THE LAW OF THE EUROPEAN ECONOMIC COMMUNITY* 317 (1984); R. LAUWAARS *supra* note 7, at 262.

<sup>64</sup> *Plaumann v. Commission*, 1963 E. Comm. Ct. J. Rep. 95, 107. The Court stressed that a person needed to be singled out by the contested measure with particularity, as if the measure had been addressed to that person, to satisfy the individual concern requirement of Article 173(2). *Id.*

<sup>65</sup> See *The Greens Scale the Barrier of Article 173*, *supra* note 60, at 190.

<sup>66</sup> *Partie Ecologiste 'Les Verts' (The Greens) v. European Parliament*, [1987] Comm. Mkt. L.R. 343, 374.

<sup>67</sup> *Id.* at 374.

<sup>68</sup> Article 184 provides for the judicial review of regulations issued by the Council

constitute a complete system of judicial review, emphasizing that the general objective of the EEC Treaty was to extend judicial protection to cover the effects of all Community acts intended to have legal force.<sup>70</sup> The Court then noted that Article 38 of the ECSC Treaty provides historical support for applying this thesis to the instant case. In the words of the Court, "Article 38 of the ECSC Treaty shows that where the Parliament was given *ab initio* the power to adopt binding measures . . . measures adopted by it were not in principle immune from actions for annulment."<sup>71</sup> Moreover, the Court made reference to the fact that the ECSC Treaty contains two statutes for annulment actions, as opposed to only one under the EEC Treaty.<sup>72</sup> Since the EEC Treaty had only one annulment statute, the Court declared that it was a provision of "general application," and as such it covered *all* measures which possessed legal force. The Court reasoned that to hold otherwise would be to contravene the spirit of Article 164<sup>73</sup> which gives the Court the mandate to "ensure that . . . the law is observed."<sup>74</sup> Therefore, binding acts of Parliament are subject to judicial review under Article 173.<sup>75</sup>

Following this extended procedural discussion, the Court of Justice ruled that the European Parliament's contested budgetary measures infringed on another provision of the Communities' electoral law.<sup>76</sup>

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and Commission of the European Communities. By reference to Article 173, it allows a party to utilize the four grounds in 173(1) to contest these regulations. Moreover, Article 184 has no statute of limitations; so, a party may invoke Article 184 any time following the promulgation of the contested regulation. EEC Treaty, *supra* note 1, at Art. 184.

<sup>69</sup> Article 177 is the nexus between Community law and that of the member states. This article allows the courts of the member states to refer to the Court of Justice questions about the interpretation of Community law which are germane to the case. EEC Treaty, *supra* note 1, at Art. 177. Functioning in this capacity, the Court of Justice is the supreme interpreter of Community law. This in turn facilitates a uniform application of Community law.

<sup>70</sup> [1987] 2 Comm. Mkt. L.R. 343, 371.

<sup>71</sup> *Id.* at 371-72. In this same spirit, the European Parliament has been held liable for internal decisions which affect its members and support staff. *Lasalle v. European Parliament*, 1964 E. Comm. Ct. J. Rep. 31; *cf.*, EEC Treaty, *supra* note 1, at Art. 179.

<sup>72</sup> [1987] 2 Comm. Mkt. L.R. at 372. This observation/analogy by the Court is curious, for neither of the two ECSC annulment statutes mention natural or legal persons. ECSC Treaty, *supra* note 38, at Arts. 38 & 33.

<sup>73</sup> [1987] 2 Comm. Mkt. L.R. at 372.

<sup>74</sup> EEC Treaty, *supra* note 1, at Art. 164.

<sup>75</sup> [1987] 2 Comm. Mkt. L.R. at 372.

<sup>76</sup> *Id.* at 378.

The Court acknowledged that the Parliament possesses the power to determine its own internal organization and that one aspect of this organization is the dissemination of election information.<sup>77</sup> The Court differed with the Parliament in that it viewed this particular "information campaign" as indistinguishable from a scheme for providing campaign contributions. This being the case, the Court concluded that the budgetary measures affected the electoral process which according to Community law is the exclusive legislative domain of the member states.<sup>78</sup> Consequently, the measures were void.<sup>79</sup>

*Les Verts*, while substantively unexceptional, is a procedural landmark in Community law. This case establishes the right of natural and legal persons to bring suit against the European Parliament pursuant to Article 173(2). Furthermore, the Court broadened the grounds which will satisfy the individual concern requirement. While it has been argued that Article 173 presents an impasse to persons seeking review of Community acts,<sup>80</sup> *Les Verts* is proof to the contrary. Turning to the underlying policy concerns, the European Court of Justice refused to sacrifice substantive justice at the procedural altar.

### CONCLUSION

In recent years, the European Parliament has changed in both form and function. Today, the Parliament aggressively seeks to further expand its legislative role within the European Communities. Its objective is to become a legitimate Parliament in the traditional sense.<sup>81</sup> The path to political legitimacy is an intricate one, and in

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<sup>77</sup> *Id.* at 375. The Court first acknowledged Parliament's power to determine its own internal organization in *Luxembourg v. Parliament*. *Luxembourg v. European Parliament*, [1983] 1 E. Comm. Ct. J. Rep. 255, 287.

<sup>78</sup> As yet, the Community has no legislation controlling campaign funding. See [1987] Comm. Mkt. L.R. at 378. Therefore, the regulation of campaign funding is the domain of the member states. See *supra* note 9 and accompanying text.

<sup>79</sup> [1987] 2 Comm. Mkt. L.R. 343, 378.

<sup>80</sup> See, e.g., Barau, *Direct and Individual Concern: An Almost Insurmountable Barrier to the Admissibility of Individual Appeal to the EEC Court*, 11 COMMON MKT. L. REV. 191 (1974); Rasmussen, *Why is Article 173 Interpreted Against Private Plaintiffs?*, 5 EUR. L. REV. 112 (1980).

<sup>81</sup> One of the most explicit statements of this goal can be found in a resolution passed by the Parliament on January 16, 1986. This resolution was issued in response to the Single European Act (SEA), and it protested the fact that the SEA did not directly confer to the Parliament broader legislative powers. COMMISSION OF THE EUROPEAN COMMUNITIES, 1 BULLETIN OF THE EUROPEAN COMMUNITIES 8-10 (1986). Parliament has even expressed a desire to play a more active role in foreign policy. 3 European Parliament News, Oct. 22-26, 1979, at 1, col. 1.

this respect, it is not at all clear that the incumbent political parties of the Parliament should command any sort of hegemony over the receipt of public campaign funds.<sup>82</sup> Media publicity directly affects voter turnout in the European elections,<sup>83</sup> and campaign funding is a key element in securing media exposure. Thus, the power to allocate public campaign funds is not inconsequential, for the exercise of such a power implicates fundamental political rights.<sup>84</sup> The funding decisions made by Parliament in *Les Verts* were sweeping in nature. Left unchecked they would have infringed upon the rights of natural and legal persons throughout the Community. In light of Parliament's spirited efforts to gain greater influence in the Communities, it would seem probable that such transgressions will become more commonplace in the future.

The holding in *Les Verts* demonstrates the Court of Justice's willingness to grapple with the evolving character of the Parliament and indeed the Community itself. The Community has as its stated goal the political and economic integration of the member states.<sup>85</sup> For this goal to be achieved, the European Court of Justice must maintain a progressive approach to interpreting Community law.<sup>86</sup> The Court's decision in this case represents such an approach; rather than adhere to a strict reading of Article 173, the Court looked for the overall sense of the Treaty in its interpretation of the Article. The decision was an astute one. Since the adoption of the original version of the EEC Treaty, the powers of the European Parliament have expanded to the point where it can now have serious effects on the individuals of the Community. This decision merely extends judicial protection to these individuals commensurate with the extended powers of Par-

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<sup>82</sup> This topic has been the subject of some debate among the commentators. Van den Berghe, *Electoral Law and Direct Elections*, in *THE EUROPEAN PARLIAMENT: TOWARDS A UNIFORM PROCEDURE FOR DIRECT ELECTIONS* 233 (1981).

<sup>83</sup> One author who has studied this phenomena in the European Elections stated that publicity is "critical for voting rates." Blumler, *Communication and Turnout, in COMMUNICATING TO VOTERS* 194 (J. Blumler ed. 1983).

<sup>84</sup> Though unwritten, the rights and principles of representative democracy form an integral part of the Constitutional Law of the Communities. *COMMISSION OF THE EUROPEAN COMMUNITIES, supra* note 30, at 80.

<sup>85</sup> The goal of economic integration is put forth in the original Treaty of Rome. EEC Treaty, *supra* note 1, at Art. 2. More recently, the Single European Act made clear the goal of political unity. *COMMISSION OF THE EUROPEAN COMMUNITIES, SINGLE EUROPEAN ACT*, 2 (Supp. 1986).

<sup>86</sup> Though the Court of Justice is cautious in its rulings, it has consistently used its full powers to further the achievement of the Communities' objectives. 4 *YEARBOOK OF EUROPEAN LAW* 77 (F.G. Jacobs ed. 1984).

liament. By extending the cloak of judicial protection in this manner, the Court ensures that the increasing power of the Community over the individual will be developed in a just and orderly fashion.

Though the Court of Justice of the European Communities does not adhere to the doctrine of *stare decisis*, it retains a sound respect for its prior decisions. Consistency is a fundamental principle of the Community judicial system.<sup>87</sup> This proposition finds support in the Court's treatment of Article 173 following *Les Verts*. In *Council v. European Parliament*, the Court reaffirmed that the acts of Parliament are proper subjects of judicial review under Article 173.<sup>88</sup> Though *Council* did not involve natural or legal persons, the fundamental policy issue was the same: judicial review of Parliamentary acts. In following *Les Verts*, the Court affirmed its dedication to a progressive, policy-oriented approach to the expanding legal system of the European Communities.

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<sup>87</sup> L. BROWN & F. JACOBS, *supra* note 6, at 275-77.

<sup>88</sup> This case, like *Les Verts*, concerned the validity of budgetary decisions of the European Parliament made pursuant to Article 203. Here, unlike *Les Verts*, the Parliament argued that the action was inadmissible under Article 173. Notwithstanding, the Court of Justice ruled the action admissible under the Article. *Council v. European Parliament*, [1986] 3 Comm. Mkt. L.R. 94 (1986).

