EDITORIAL COMMENTS

The European Parliament before the Court of Justice?

The question of the control of the acts of the European Parliament by the Court of Justice has become particularly relevant at the present time following the problems which arose over the adoption of the 1979 Community Budget. The Budget which, in accordance with Article 203 of the EEC Treaty (and corresponding Articles of the ECSC Treaty and the Euratom Treaty), the President of the Parliament declared to have been adopted contains in the opinion of both the Council and the Commission non-obligatory expenditure over and above that which the Parliament could have lawfully adopted without the formal agreement of the Council. The Commission is of the opinion that, though the provisions of the Treaties have not been complied with, until the Budget is either annulled or rescinded it is an existing act. Certain of the Member States, however, refuse to recognize the existence of the 1979 Budget. This kind of inter-institutional dispute over the correct interpretation of the Treaties is an obvious example of one which requires the legal interpretation of the Court of Justice.

Quite clearly, though, not all the "acts" of the Parliament should be the subject of control by the Court. The political resolutions and opinions of the Parliament produce no legal effects and so their content should not be subject to judicial control. Where, however, the Parliament has the power to take legally binding decisions the situation is different. This is now the case as concerns the adoption of the Community Budget. Equally, one could argue that the voting requirements laid down for the adoption of certain acts of Parliament—for example, in Article 144 of the EEC Treaty concerning a motion of censure on the activities of the Commission—should also be the subject of judicial control.

To some, it could at first sight appear startling that the acts of Parliament should be the subject of judicial control; to others, however, who are accustomed to a written constitution which provides for judicial control of acts of parliament, the idea appears perfectly normal. For the correct functioning of the Community such a control is essential, as the treaties establishing the Community transferred certain powers of the Member States to it, and it is vital that there is a judicial control over the respective powers of the institutions under these Treaties and indeed over the obligations of the Member States.

The Community is founded upon the rule of law. There is no case to sustain the idea that the European Parliament should be above the law.

Each of the institutions must act within the limits of the powers conferred upon them by the Treaties and the Court of Justice has been given the role of ensuring that in the interpretation and application of the Treaty the law is observed.

Having stated these general principles, however, what is the situation under the Treaties concerning judicial control of the acts of Parliament? One must remember that the Court has not been accorded a general jurisdiction under the Treaties but rather various articles give jurisdiction to the Court in certain circumstances.

At the present time, certain possibilities do exist for challenging the acts of Parliament, for example under Article 177 of the EEC Treaty which refers to acts of the *institutions*, under proceedings brought before a national Court, or under Article 215 which refers to the non-contractual liability of the Community for acts of its *institutions*. Equally, an act of Parliament could be challenged *indirectly* by, for example, the Council bringing the Commission before the Court on the grounds that the Commission acted to execute an act of Parliament which had been unlawfully adopted (for example, the 1979 Budget).

However, with the exception of Article 38 of the ECSC Treaty, the Treaties do not provide that acts of Parliament may be *directly* challenged before the Court on the grounds that they infringe the Treaties—there is no mention of the Parliament in Article 173 of the EEC Treaty, for example. The reason for this difference between the ECSC Treaty and the EEC and Euratom Treaties lies certainly in the fact that under the ECSC Treaty the Parliament, when that Treaty was drawn up, was already given the power to adopt certain legally binding acts; whereas under the Rome Treaties the Parliament had a purely consultative role. Since the two budgetary Treaties of 1970 and 1975 the situation has of course changed, but the Treaties were never formally amended to take account of this new role of Parliament. As pointed out above, these legally binding acts of Parliament should be open to judicial control in the *same way* as those of the Council and of the Commission.

Two possible solutions may be envisaged to close the gap which *appears* to exist concerning the right to *directly* challenge acts of the Parliament:

— One could seek to rely on the Court of Justice giving a wide interpretation of Article 173 EEC Treaty (and corresponding Articles of the other Treaties);
— The Member States could formally amend the Treaty to include the Parliament within the terms of Article 173 (and corresponding Articles of the other Treaties).

The first possibility would require that the Court accept that the terms

of Article 173 must be interpreted to include *all legally binding* acts adopted within the Community including these of the Parliament. Now that Parliament has acquired a new role in the decision-making process, the Court could, for example, rely on the very general arguments already outlined on why the acts of Parliament should be the subject of judicial control.

It is, however, by no means certain that the Court would adopt such a wide interpretation. On the face of it, Article 173 only refers to acts of the Commission and of the Council. Also, the Court has never adopted a very extensive interpretation of the right of individuals to challenge acts of the Commission or the Council under Article 173.

One must therefore ask whether the more appropriate solution would rather be to formally amend Article 173. Amendments to the Treaty are, of course, always a delicate question but for reasons of legal security vis-à-vis acts of Parliament, there seem to be sufficiently good reasons for doing so. One could also ask whether Article 175 should also be amended so that the Parliament could be challenged for *failing* to act.

These amendments could be acceptable to Parliament on the grounds that they provide a peaceful means of settling inter-institutional disputes. It is hard to imagine that the Parliament could argue that its acts should be beyond judicial control.

Equally, the Parliament should be given an *active* right to challenge the Commission and the Council under Article 173. This would increase the democratic control exercised over the Commission and in particular the Council. Though, of course, the Parliament through a motion of censure could at present force the Commission to resign where it considered the Commission to have itself acted in violation of the Treaty or had failed to bring the Council before the Court for violating the Treaty, such action would in many cases be disproportionate to the seriousness of the violation involved and the act in question would, of course, still remain in existence until repealed or annulled.

In conclusion, therefore, there do seem to be sufficient grounds for seriously considering that the Treaties should be formally amended to bring the Parliament more fully within the system of judicial control laid down in the Treaties.