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ARTICLE

DEFENDING DEMOCRACY THROUGH LAW: THE ESTABLISHMENT OF THE LEGAL SERVICE OF THE EUROPEAN PARLIAMENT

Antonio Caiola and Fernanda G. Nicola†©*

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ABSTRACT

Democracy, as well as the rule of law, is one of the founding values of the European Union. With the recent rise of some authoritarian governments in Europe, scholars have focused primarily on the efforts led by the European Commission and the European Court of Justice (“ECJ”)¹ to curb democratic backsliding. While European institutions have struggled defending the rule of law inside the Union through lawsuits and economic sanctions against those governments, the history of integration shows how the European Parliament (“EP”) led the efforts to cure the democratic deficit existing in the European institutional system. Since the end of the 1970s, attempts to democratize the European Communities (“EC”) have put at the center of the integration project the EP representing the citizens of the Member States. However, until the mid-1980s, the EP, because of its heritage, has remained a relatively weak decision-maker compared to its counterparts—the Council and the Commission. The growing role of the EP as a co-equal legislative branch through achieving full legal status remains a relatively unknown history in the struggle to democratize the European Union. This article re-tells the history of how achieving this status became possible, through legal mobilization before the ECJ, to create, inter alia, the conditions to establish the Legal Service of the EP in 1986. By way of the legal action before the ECJ, we trace how the Legal Service, despite support and pushbacks inside their institution, contributed in shaping the constitutional principle of institutional balance in order to empower the EP vis-à-vis the other

1. Now the Court of Justice of the European Union. See MIKAEL RASK MADSEN ET AL., RESEARCHING THE EUROPEAN COURT OF JUSTICE, METHODOLOGICAL SHIFTS AND LAW’S EMBEDDEDNESS 1 (2022).

European institutions. The establishment of an entirely representative EP, equipped with a powerful administration including an independent Legal Service, started to re-balance the asymmetric relation between executive and legislative powers, governments and parliaments, governors and the governed inside the Communities. On the basis of the documents at our disposal, two different legal strategies seemed to arise in Luxembourg. The first one aimed at prioritizing above all the introduction of actions before the ECJ, in order to highlight the increasing role of the EP and probably also driven by the ambition of its Jurisconsult to establish a powerful bureaucracy. In contrast, the second strategy, without denying the importance of the actions before the ECJ when necessary, was based on an incremental attempt to create the conditions that would allow the establishment of an independent Legal Service for a fully accountable EP. This second strategy of democratization through law helped in driving the EP towards its current role as a central player in defending the rule of law and preserving a democratic decision-making process inside the European Union.

I. INTRODUCTION

On February 16, 2022, the Court of Justice of the European Union (“CJEU”) ruling validated the conditionality regulation, which makes the receipt by Member States of funding from the Union budget subject to the respect of the rule of law.² In rejecting the annulment proceeding brought by Poland and Hungary against the regulation that established the conditionality mechanisms when a Member State violates rule of law guarantees,³ both the EP and the Council became defendants in an extraordinarily delicate case before a Court that was the focal point of the fight against rule of law violations.⁴ The Parliament has previously defended the rule

2 . See Judgement in Cases C-156/21 Hungary v. Parliament and Council, ECLI:EU:C:2022:97 (Feb. 16, 2022); see also C-157/21 Poland v. Parliament and Council, ECLI:EU:C:2022:98 (Feb. 16, 2022); Sarah Porgin & Melanie Berger, *ECJ confirms Validity of the Rule of Law Conditionality Regulation*, EUR L. BLOG (Mar. 11, 2022), <https://europeanlawblog.eu/2022/03/11/ecj-confirms-validity-of-the-rule-of-law-conditionality-regulation/> [<https://perma.cc/MHV9-EK3Z>].

3. See Commission Regulation 2020/2092, 2022 O.J. (L 4332) 1 (discussing a general regime of conditionality of the protection of the Union budget).

4. See Fernanda G. Nicola, *Legal Diplomacy in an Age of Authoritarianism*, 27 COLUM. J. OF EUR. L. 152, 195-200 (2021) (explaining in the Polish case how the ECJ anti-

of law guarantees enshrined in the EU Treaties in litigations before the Court in Luxembourg.⁵ For instance, by holding other institutions accountable for “failure to act” against the rule of law violations, the Parliament has revamped its role of protecting democracy and the legal framework established by the Treaties.⁶

Today the EP is the central pillar of a functioning democratic European Union and its legislative process.⁷ The Legal Service, situated in the EP’s General Secretariat, plays an independent role in providing, through its lawyers and their administrative staff, legal assistance to the Parliament’s political and administrative bodies and advice to the Parliamentary Committees on their legislative work.⁸ The Legal Service also acts—under the direction of the Jurisconsult—as the institution’s representative in legal cases before the ECJ and national courts.⁹ The role of the Legal Service is relevant to the defense of the EP and of the acts adopted by the Institution, and under certain conditions, it presents observations in preliminary rulings proceedings before the ECJ concerning the validity of acts adopted by the EP. It has to be pointed out that the most significant achievements, both for the role of the EP and for the evolution of EU law, were the direct continuances of actions brought by the EP before the ECJ against

authoritarian jurisprudence has made an important yet only partially effective contribution in enhancing the rule of law in Poland).

5. See Anne Boerger & Bill Davies, *Imagining the Course of European Law? Parti Ecologiste ‘Les Verts’ v. Parliament as a Constitutional Milestone in EU law*, in *EU LAW STORIES: CONTEXTUAL AND CRITICAL HISTORIES OF EUROPEAN JURISPRUDENCE* 83, 83-102 (Bill Davies & Fernanda G. Nicola eds., 2017); Jean-Paul Jacqu , *Les Verts v. The European Parliament*, in *THE PAST AND FUTURE OF EU LAW* 316, 316-23 (Miguel Poiras Maduro & Loic Azoulay eds., 2010); Koen Lenaerts, *The Basic Constitutional Charter of a Community Based on the Rule of Law*, in *THE PAST AND FUTURE OF EU LAW* 295, 295-315 (Miguel Poiras Maduro & Loic Azoulay eds., 2010).

6. See Case C-144/21 Eur. Parliament v. Eur. Comm’n, (2021); see also Jorge Liboreiro, *European Parliament sues Commission for failing to hold members accountable rule of law*, *EURO NEWS* (Oct. 29, 2021), <https://www.euronews.com/my-europe/2021/10/29/european-parliament-sues-commission-for-failing-to-hold-members-accountable-over-rule-of-l> [<https://perma.cc/B2E2-RH6P>].

7. See generally LE PARLEMENT EUROP EN DANS L’ VOLUTION INSTITUTIONNELLE (Jean-Victor Louis & Denis Waelbroeck eds., 1998) [hereinafter *EU PARLIAMENT IN INSTITUTIONAL EVOLUTION*].

8. See *Legal Service*, *EUR. PARLIAMENT*, <https://www.europarl.europa.eu/the-secretary-general/en/organisation/legal-service> [<https://perma.cc/J293-BTP9>] (last visited Mar. 1 2022).

9. See *id.*

some acts adopted by the Council. While there is some critical literature describing the role of the Legal Service of the EP and its evolution, written mostly by former civil servants from the Service,¹⁰ despite a few exceptions,¹¹ a gap remains regarding the Service's origin and the significance of its establishment in the history of European integration.

A growing academic literature has explored the Commission and Council's Legal Service function, and the significance of those services within the different institutions' institutional constraints in which they operate.¹² This literature has also investigated the overall structure of the Legal Service through their most important actors and legal achievements.¹³ For instance, several scholars have examined and written about the life and career of influential personnel such as Michel Gaudet—former director at the Legal Service of the European Commission¹⁴—who was a key player in shaping direct effect and supremacy doctrines in EC law.¹⁵ Another example, Jean-Claude Piris—former Director-General of the Legal Service of the Council of the European Union—was one of the most influential architects beyond the drafting of the Lisbon Treaty.¹⁶

10. See Jean Paul Jacqu , *The Role of Legal Services in the Elaboration of European Legislation*, in *LAWYERING EUR.: EUR. L. AS A TRANSNAT'L SOC. FIELD* 43 (Antoine Vauchez & Bruno Witte eds., 2013) [hereinafter Jacqu , *The Role of Legal Services*]; Christian Pennera, *Contribution A L'Histoire du Service Juridique du Parlement Europ en* 1, 5 (2014) (on file with the authors) [hereinafter Pennera, *Contribution*]; FRANCESCO PASETTI BOMBARDELLA, *STRUCTURE ET FONCTION DU SERVICE JURIDIQUE DU PARLEMENT EUROPEEN AVEC LES SERVICES JURIDIQUES DES PARLEMENTS DES PAYS MEMBRES DE LA COMMUNAUTE EUROPEENNE* 1-15 (Sarrebruck, Europa-Institut eds., 1989) [hereinafter BOMBARDELLA, *SERVICE AND FUNCTION OF LEGAL SERVICE*].

11. See P IVI LEINO-SANDBERG, *THE POLITICS OF LEGAL EXPERTISE IN EU POLICY-MAKING* 257 (Cambridge Univ. Press 2021); Etienne Deschamps, *Conseiller et represente. Essai sur les origines du Service Juridique du Parlement Europeen*, in *PEROPEPTIES EUROPEENES* (2022).

12. See Jean Paul Jacqu , *The Role of Legal Services*, *supra* note 10.

13. See Peter Gilsdorf, *Le Service Juridique de la Commission* (2003) (unpublished paper) (on file with authors).

14. See Anne Boerger & Morten Rasmussen, *The Making of European Law: Exploring the Life and Work of Michel Gaudet*, 57 *AM. J. LEGAL HIST.* 51 (2017); Julie Bailleux, *Michel Gaudet, a Law Entrepreneur: The Role of the Legal Service of the European Executives in the Invention of EC Law and the Birth of the Common Market Law Review*, 50 *COMMON MKT. L. REV.* 359 (2013).

15. See Roger J. Goebel, *Introduction: A Tribute to Jean-Claude Piris, Director-General of the Legal Service of the Council of the European Union*, 34 *FORDHAM INT'L L. J.* 1189 (2011).

16. See *id.*

The current academic literature approaches the analysis of the legal service of the EU institutions from more than one perspective: a sociological approach reveals how some lawyers were also “legal entrepreneurs” in shaping new doctrines through the creation of transnational social networks,¹⁷ new institutional formations,¹⁸ and the ability of legal advisers to remain objective and independent despite political pressures.¹⁹ Another strand of literature examines the evolution of the legal service from a historical viewpoint showing how these lawyers shaped legal doctrines through either ECJ litigation and Treaty reforms to advance European integration as a constitutional practice.²⁰

While the Commission’s, and to a certain extent, the Council’s Legal Service have been examined from various viewpoints by legal scholars, historians, and lawyers alike, the academic literature on the Legal Service of the EP remains scarce.²¹ Primarily, the authors are lawyers from within the EP Legal Service writing about their own important achievements.²² The early legal entrepreneurs and players in the EP—Francesco Pasetti

17. See Antoine Vauchez, *The Making of the European Union’s Constitutional Foundations: The Brokering Role of Legal Entrepreneurs and Networks*, in TRANSNAT’L NETWORKS IN REG’L INTEGRATION: GOVERNING EUR. 1945, 1945-83 (Wolfram Kaiser et al. eds., 2010); Antoine Vauchez, *The Transnational Politics of Judicialisation: Van Gend en Loos and the Making of EU Polity*, 16 EUR. L.J. 28 (2010).

18. See Lola Avril, *The Genesis of the Institution within the Institution-Studying the Mobilization for the Creation of the Court of First Instance*, in RESEARCHING THE EUR. CT. OF JUST.: METHODOLOGICAL SHIFTS AND L.’S EMBEDDEDNESS 237, 237-42 (Mikal Rask Madsen et al. eds., 2022).

19. See PÄIVI LEINO-SANDBERG, *THE POLITICS OF LEGAL EXPERTISE IN EU POLICY-MAKING* 286 (Cambridge Univ. Press 2021).

20. See Morten Rasmussen, *Establishing a Constitutional Practice of European Law: The History of the Legal Services of the European Executive, 1952–65*, 21 CONTEMP. EUR. HIST. 375 (2012).

21. See Gregorio Garzon Clariana, *Los Servicios Jurídicos de las Instituciones y el Estado de derecho en la Unión Europea*, in SOBERANÍA DEL ESTADO Y DERECHO INTERNACIONAL 679, 679 (Universidad de Málaga ed., 2005).

22. See *id.*; Garzón Clariana, *Le rôle du Parlement européen dans le développement de la Cour de justice*, in UNE COMMUNAUTE DE DROIT (N. Colnesic et al. eds., 2003); NINON COLNERIC, ET AL., *UNE COMMUNAUTE DE DROIT: FESTSCHRIFT FÜR GIL CARLOS RODRIGUEZ IGLESIAS* 21-40 (2003).

Bombardella,²³ Roland Bieber,²⁴ Johann Schoo²⁵, Christian Pennera²⁶, and Kieran Bradley²⁷—have all contributed to a better understanding of the EP Legal Service and its functioning. Nevertheless, while these contributions do shed a valuable light on the structure, functioning, and role of the EP Legal Service, not much has been written about the creation of the service.²⁸

In his *Contribution à l'histoire du Service juridique du Parlement européen*, the former Jurisconsult Pennera details the evolution of the Legal Service since President Piet Dankert's proposal to the *Bureau* at the end of his mandate in 1984 to create a small and separate Legal Service unit working directly under the President's control.²⁹ Until the creation of the Legal Service of the European Parliament in 1986, staff litigations were often assigned by the Secretariat General of the EP to external lawyers or legal scholars who also assisted the EP with institutional litigations.³⁰

23. See Francesco Pasetti Bombardella, *Naissance du service juridique du Parlement Européen* (2015) (on file with authors) [hereinafter Pasetti Bombardella, *Birth of Legal Service*]; Francesco Pasetti Bombardella, *Structure et fonction du Service juridique du Parlement européen compare avec les Service juridiques des Parlements des Pays-Membres de la Communauté européenne*, Presentation at the Europa-Institute of the University of the Saarland (Apr. 30, 1987) [hereinafter Pasetti Bombardella, *Presentation*].

24. See Roland Bieber, *The Establishment of the EP's Legal Service* (Aug. 20, 2021) (unpublished note) (on file with authors) [hereinafter Bieber, *Establishment*].

25. See Johann Schoo, *L'Évolution du Service Juridique et du Rôle du Parlement Européen Devant la Cour de Justice* [hereinafter Schoo *Evolution*]; Johann Schoo, *Das Europäische Parlament und sein Verfassungsgericht-Von der Vormundschaft zur Volljährigkeit*, EuGRZ 525 (Dec. 31, 1990); Johann Schoo, *Vom Strahlenschutz zum Pflanzenschutz-Nichtigkeitsklagen des Europäische Parlaments*, EuZW 58 (1996).

26. See Christian Pennera, *La Cour de Justice et le Parlement Europeen*, in *THE CT. OF JUST. AND THE CONSTR. OF EUR.: ANALYSES AND PERSPECTIVES ON SIXTY YEARS OF CASE-LAW - LA COUR DE JUSTICE ET LA CONSTRUCTION DE L'EUROPE: ANALYSES ET PERSPECTIVES DE SOIXANTE ANS DE JURISPRUDENCE* 121 (Allan Rosas et al. eds., 2012) [hereinafter Pennera, *La Cour*]; Pennera, *Contribution*, *supra* note 10, at 5–7.

27. See Kieran Bradley, *The Variable Evolution of the Standing of the European Parliament in Proceedings Before the Court of Justice*, 8 Y.B. EUR. L. 27 (1988) [hereinafter Bradley, *Variable Evolution*].

28. See Pasetti Bombardella, *Birth of Legal Service*, *supra* note at 23 (analyzing the beginnings of the Legal Service and the appointment of the first Jurisconsult); see also Christian Pennera, *La Cour de Justice et le Parlement Européen*, in *THE CT. OF JUST. AND THE CONSTR. OF EUR.: ANALYSES AND PERSPECTIVES ON SIXTY YEARS OF CASE-LAW - LA COUR DE JUSTICE ET LA CONSTRUCTION DE L'EUROPE: ANALYSES ET PERSPECTIVES DE SOIXANTE ANS DE JURISPRUDENCE* 121 (Allan Rosas et al. eds., 2012) (examining the establishment of the Parliament's right to intervene).

29. See Pennera, *Contribution*, *supra* note 10, at 1, 5.

30. See *id.* at 6.

Towards the end of the 1970s, increasing human resources disputes required the EP to seek legal advice more frequently.³¹ For instance, the accession of the UK, Ireland and Denmark in 1973 led to the creation of a Directorate-General (DG) for research and documentation equipped with a team of lawyers in charge of legal and institutional affairs.³²

Therefore, the decisions of the *Bureau's*—the institutional body taking financial and administrative decisions on the organization of the EP and its Secretariat³³—to appoint the Jurisconsult and Principal Lawyer (*Avocat principal*) of the EP (Pasetti Bombardella) effective September, 10 1985,³⁴ and to later establish the office of the Jurisconsult as a separate administrative unit alongside the existing five Directorates General of its General Secretariat was not the result of a “strategic concept on its internal organization, but rather resulted from the combined effect of

31. *Id.*

32. This was known as the Division for institutional affairs within the DG for research and documentation. *Id.* at 5.

33. See RULES OF PROCEDURE, ACAD. DICTIONARIES AND ENCYCLOPEDIAS, <https://en-academic.com/dic.nsf/enwiki/5456725> [<https://perma.cc/MF54-CNRP>] (last visited Mar. 6, 2022) (“The Bureau of the European Parliament is responsible for matters relating to the budget, administration, organization, and staff. It is composed of the President of the European Parliament along with all 14 Vice-Presidents and the 6 Quaestors (in a consultative capacity). They are elected for two and a half years (renewable term) with the President. . . . [Duties of the tasks of the Bureau are specified as:] 1. The Bureau shall carry out the duties assigned to it under the Rules of Procedure. 2. The Bureau shall take financial, organizational and administrative decisions on matters concerning Members and the internal organization of Parliament, its Secretariat and its bodies. . . . 5. The Bureau shall decide the establishment plan of the Secretariat and lay down regulations relating to the administrative and financial situation of officials and other servants. 6. The Bureau shall draw up Parliament’s preliminary draft estimates. 7. The Bureau shall adopt the guidelines for the Quaestors pursuant to Rule 25. 8. The Bureau shall be the authority responsible for authorizing meetings of committees away from the usual places of work, hearings and study and fact-finding journeys by rapporteurs. . . . 9. The Bureau shall appoint the Secretary-General pursuant to Rule 197. 10. The Bureau shall lay down the implementing rules relating to European Parliament and Council Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding and shall, in implementing that Regulation, assume the tasks conferred upon it by these Rules of Procedure. 11. The President and/or the Bureau may entrust one or more members of the Bureau with general or specific tasks lying within the competence of the President and/or the Bureau. At the same time, the ways and means of carrying them out shall be laid down. 12. When a new Parliament is elected, the outgoing Bureau shall remain in office until the first sitting of the new Parliament.”)

34. See Procès-verbal di Bureau, Réunion du 10 Septembre 1985 (Sept. 10, 1985) 18 (note on file with authors).

external and internal factors.”³⁵ Among these external factors was the fact that some Members of the European Parliament (“MEPs”) were committed to fully exploit the Parliament’s powers in the aftermath of the 1979 Parliament direct election, despite the vagueness about the EP’s legal representation under the then-existing Treaties. However, as Roland Bieber explained in his note: “This determination was confronted to a rather obscure legal environment. The EU Treaties of the time had paid little attention to a coherent constitutional position of the EP. Therefore any ‘constitutional activism’ required imagination and solid legal arguments, especially since it implied the risk of open conflict with the other institutions and Member States governments.”³⁶ In that context, it should be emphasized that the spirit of the times greatly conditioned the ECJ’s case law developments.

This article seeks to offer new insights into the establishment of the EP Legal Service by showing how a small team of European lawyers committed, case after case, to shaping jurisprudence that redefined the balance of powers among European institutions by filling the gap left by the Treaties on the EP legal status. This history in Part II is essential to understand that the ‘democratic deficit’ was built into the Treaties’ structure, and that legal mobilization became a necessary tool to create a Legal Service committed to democratizing the European Communities.

Part III contextualizes and adds complexity to a well-known story in the corridors of Luxembourg and Brussels, where the EP Legal Service currently resides. The story goes that the appointment of the first Jurisconsult to the EP Legal Service was also the result of a competition between two Italian candidates from opposite political parties who contended to become the Secretary-General of the EP. On September 10, 1985, after a secret unanimity vote, the *Bureau* appointed Enrico Vinci as Secretary-General starting in February 1986. In the same meeting, the Bureau approved EP President Pierre Pflimlin’s (1984-1987) proposal to

35. See Bieber, *Establishment*, *supra* note 24, at 1.

36. *Id.*; see also Roland Bieber, *Legal Developments in the European Parliament*, 2 Y.B. OF EUR. L., OXFORD 269, 259-78 (Jacobs, ed., 1982); Roland Bieber, *The Settlement of Institutional Conflicts on the Basis of Article 4 of the EEC Treaty*, 21 COMMON MKT. L. REV. 505 (1984) (discussing the settlement of institutional conflicts on the basis of article 4 of the EEC Treaty).

appoint Mr. Francesco Pasetti Bombardella as Jurisconsult of the Parliament, and later allowed him to consolidate a small administrative unit.³⁷

In this context, the principle of institutional balance emerges in the ECJ jurisprudence as constitutional glue in Community law. Politically, this principle strengthened the EP's prerogatives as an institution participating with the Council in the decision-making process. Thus, the institutional balance was necessary for the democratization of the Community as it emerged in the subsequent drafting of the Single European Act³⁸ and the Maastricht Treaty. Legally, this principle gave the European Parliament full legal status for active and passive representation before the ECJ. However, we show that the legal strategy of equipping the EP with full legal personality was contested for different reasons. On the one hand, some Member States probably disagreed with the EP's standing to litigate an institutional case before the ECJ because the Parliament was a political institution. According to this approach, the Parliament should stay above the law and not take part in a litigation before the Court, especially in support of two private parties.³⁹ On the other hand, the lawyers in favor of legal mobilization for the EP had different legal strategies involving the development of a constitutional practice *versus* an adversarial one seeking victory of the EP at all costs.⁴⁰

37. See Note A L'Attention De M. Le Secrétaire Général from Francesco Pasetti Bombardella (Nov. 25, 1985) (on file with authors) [hereinafter Pasetti Bombardella, Note A L'Attention]; Note Sur L'Essentiel Des Deliberations, from Francesco Pasetti Bombardella, (Nov. 28, 1985) (note on file with authors).

38. "The Single European Act brought amendments to the Treaties establishing the European Communities and established European political cooperation. Once the Single European Act (SEA) entered into force, the title 'European Parliament'(which the Assembly had used since 1962) was made official. The SEA also increased the EP's legislative powers with the introduction of the cooperation and assent procedures." *Building Parliament: 50 Years of European Parliament History*, EUR. Parliament <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/single-european-act> (last visited Dec, 1 2022).

39. See Kieran Bradley, *The European Parliament and the European Court: Litigation and Other Interactions*, in *THE NEW EU JUDICIARY: AN ANALYSIS OF CURRENT JUD. REFORMS* 233, 233-54 (Emmanuel Guinchard and Marie-Pierre Granger eds., 2017); Bradley, *Variable Evolution*, *supra* note 27, at 31-32.

40. See Bieber, *Establishment*, *supra* note 24.

Part III shows how the historic *Isoglucose* case (1980) arrived before the ECJ “out of the blue.”⁴¹ A group of lawyers in the EP Secretariat contributed to winning this case on behalf of the Parliament despite initial resistance.⁴² While initial strategic mobilization of the Parliament before the ECJ happened without a Legal Service, this litigation increased the participation of the EP in cases before the ECJ that overall strengthened the *legal status* of the Parliament through a strategy we call democratization through law.

Part IV explains how the creation of the EP Legal Service was not a momentous accident, but the result of a historical time full of hope for the enhancing the Parliament’s role in European integration. During his mandate as first Jurisconsult of the EP, Pasetti Bombardella enlisted a small team of lawyers and officials at the EP; with specific tasks to professionalize and create greater autonomy from other administrative departments and political influences for the Legal Service. Our conclusion in Part V shows how the litigation strategies before the ECJ and the institutional creation of the Parliament’s Legal Service resulted from a legal necessity, political sensitivity, and democratic deficit awareness. These sentiments grew in the EP, when the significance of defending democracy through law became clear.

Thus, apart from the will of a few lawyers in the European Parliament who understood the spirit of the times and the need to provide this democratic institution with completely independent and high-quality legal assistance,⁴³ the establishment and permanence of the EP’s Legal Service must be sought in its role of representing the Parliament before the ECJ. This representation entailed the ability to bring legal actions against the two other EC institutions participating in the decision-making process, namely the Commission and the Council as a form of checks and balances on the Community legislative power. This peculiarity, typical of the institutional system of the European Communities and later of the European Union, constituted a concrete and unique opportunity of

41. *Id.*

42. *See infra* pp. 23-25.

43. *See* Pennera, Contribution, *supra* note 10, at 7 (mentioning the few lawyers, only men who first joined the Jurisconsult in his early activity for a total of fifteen civil servants including their assistants and secretaries).

asserting the views of the European Parliament while creating a democratic check and balance on the other institutions.⁴⁴ Such legal representation could only be properly done by a stable and independent Legal Service, belonging to the same institution, and certainly not by another Legal Service nor by lawyers outside the institution, who did not have the same knowledge, sensitivity and motivation as the lawyers inside the EP.

One should not believe that an independent EP Legal Service would inevitably be established, just because the *Zeitgeist* made it indispensable. This creation was not an automatic or an inevitable outcome in European Integration.⁴⁵ Rather, it was the result of the institutional developments that occurred after the first direct elections to the European Parliament in 1979,⁴⁶ and the increasingly evident necessity to provide Parliament with sound and outstanding legal assistance.⁴⁷

II. HISTORICAL AND LEGAL CONTEXT OF THE LEGAL SERVICE

A. From the Parliamentary Assembly to a Directly Elected European Parliament

After the entry into force of the Treaties of Rome on January 1958, the European Parliamentary Assembly in Strasbourg began acting as the representative of both the European Economic Community and the European Atomic Energy Community. The Assembly transitioned with the same political groups represented previously – since 1953 – in the European Coal and Steel Community into what—in 1962— became the “European Parliament.”⁴⁸ Between 1960 and the direct election of the

44. See Deschamps, *supra* note 11, at 72; Pennera, *La Cour*, *supra* note 26, at 128.

45. See Bill Davies & Fernanda Nicola, *Introduction to EU Law Stories*, in *EU LAW STORIES: CONTEXTUAL AND CRITICAL HISTORIES* IN EUR. JURIS. 1, 1-18 (2017) (explaining how this work of legal history in EU law shows how there was no necessary path for legal integration and the evolution of EU law doctrines).

46. See Desmon Dinand, *Historiography of the European Parliament*, EUR. PARLIAMENTARY RSCH. SERV. 1, 14 (2018), [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/630270/EPRS_STU\(2018\)630270_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/630270/EPRS_STU(2018)630270_EN.pdf) [<https://perma.cc/XQ6N-4CAG>].

47. See Pennera, *Contribution*, *supra* note 10, at 6.

48. See *Building Parliament: 50 Years of European Parliament History*, EUR. PARLIAMENT 1, 13 (2008),

European Parliament in 1979, the official historical account recounts that the empowerment of the EP happened through the “support of the Member States, although sometimes on its own initiative.”⁴⁹ It is at this confluence of Member States support and resistance, depending on their different views on the nature of the Parliament, together with the political and legal activism of some of the European lawyers working in the Institution that we situate the origins of the creation of the EP Legal Service in the mid-1980s. This development is recent when compared to the Commission and the Council’s long established Legal Service.⁵⁰

The EP’s direct election in 1979 signaled a move from indirect to direct legitimacy. The election highlights the lack of a timetable for this move, which is not surprising considering that it was not a priority for the drafters of the Treaty of Rome.⁵¹ With the support of President Valéry Giscard d’Estaing, the Council of Ministers adopted an Act supporting the viability of direct elections in 1979.⁵² However, the French Constitutional Council (Conseil constitutionnel) approved such a decision with two conditions: first, the direct elections could not increase the EP’s powers; second, only formal reforms in the Treaties would permit direct elections.⁵³ Nevertheless, the European Parliament’s direct elections created greater representation in the Community, even though “communists” members of the national parliaments did not participate as they were “Euro skeptics.” Finally, the double hatting of Members of national parliaments served in both in their domestic parliaments and the EP, severely limited their time in Strasbourg.⁵⁴ With the direct election Parliament gained visibility, but it also comported some costs. For example, the “renouncement

https://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_1_tarihce/50_years_of_europe_an_parliament_history.pdf [<https://perma.cc/FH4W-BMTD>] [hereinafter EUR. PARLIAMENT, *Building Parliament*].

49. *Id.*; Rasmussen, *supra* note 20, at 377.

50. *See* Deschamps, *supra* note 11, at 68-70 (showing how compared to the other EC institutions the creating of the EP legal service of the happens comparatively late in 1986).

51. *See* EUR. PARLIAMENT, *Building Parliament*, *supra* note 47, at 35.

52. *See* Umberto Tulli, *Un Parlamento per l’Europa. Il Parlamento europeo e la battaglia per la sua elezione (1948-1979)* 197 (2017).

53. *See* EUR. PARLIAMENT, *Building Parliament*, *supra* note 47, at 36.

54. *See id.* at 35.

of a uniform electoral procedure”⁵⁵ in the Member States would have produced more homogeneity in the representativeness of its members throughout the Community.⁵⁶

Among the limited legislative powers of the EP in the Rome Treaty was its power of scrutiny over the Council and the Commission as stated in Article 140 EEC.⁵⁷ Yet the EEC Treaty and the Euratom Treaty empowered the EP by making it jointly responsible with the Council over the approval of the budget through a mix of consultation and amendment proposals of the EP to the Council.⁵⁸ Historians have explained that until the 1970s, the EP extended control over these communication procedures with the Council in an “underground” fashion. In other words, through the introduction of questions submitted to the Council or informal procedures requesting a duty of information in trade agreements signed with third party countries.⁵⁹ In contrast, the EP’s control over the budget between 1970 and 1975 happened through Treaty reform. First with the Treaty of Luxembourg and then the Treaty of Brussels in 1975. The EP gained budgetary power over compulsory expenditure, and it could now reject the budget by a 2/3 majority vote of its members.⁶⁰ The momentous change with the direct election of 410 Members of the European Parliament (MEPs) was a turning point in June 1979. The turnout at the polls was almost 63% or 185 million voters.⁶¹ As a result, in December 1979 under the Presidency of Simone Veil, the EP rejected the 1980

55. EUR. PARLIAMENT, *Building Parliament*, *supra* note 47, at 14.; *see* Nicolas Clinchamps, *Parlement Européen et Droit Parlementaire: Essai Sur Law Naissance Du Droit Parlementaire De L’union Européenne* (L.G.D.J. ed., 2006).

56. *See* EUR. PARLIAMENT, *Building Parliament*, *supra* note 47, at 14. The consequence is evident today when EP elections have become “second order” in which national issues piggyback on European ones limiting the debate into pro-Europe versus Euro skeptics.

57. *See* Treaty Establishing the European Economic Community, art. 140, Mar. 25, 1957, 298 U.N.T.S. 11 (“The Assembly shall appoint its President and its officers from among its members. Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission. The Commission shall reply orally or in writing to questions put to it by the Assembly or its members. The Council shall be heard by the Assembly under the conditions which the Council shall lay down in its rules of procedure.”) [hereinafter Treaty of Rome].

58. *See id.*; Treaty Establishing the European Atomic Energy Community, art. 177, Mar. 25, 1957, 298 U.N.T.S. 1667 [hereinafter Euratom Treaty].

59. *See* EUR. PARLIAMENT, *Building Parliament*, *supra* note 47, at 36-37.

60. *See id.*

61. *See id.* at 37.

draft budget as a symbolic attempt to “use its budgetary powers to gain legislative power.”⁶²

Despite this slow and progressive empowerment of the EP until the modification of the Treaties with the Single European Act in 1987, the sluggish European integration was driven by a multiplicity of factors.⁶³ These factors included an excessive bureaucratization of the Communities with their administrative inefficiency⁶⁴ and the lack of legitimacy of the European decision-making process.⁶⁵ This context partially explains the focus on the EP as the central institution that would help solve the “democratic deficit” of the European Economic Communities.⁶⁶ In mid-1980s, the battleground for more European integration entailed the empowering of the Parliament *vis à vis* the Council as a battle over the EC budget and the greater inclusion of the EP in legislative processes, while pushing for further Treaty reforms.⁶⁷ Not surprisingly, some proposals took different paths, such as the “small step” approach of the Genscher-Colombo initiative⁶⁸ by the

62. *Id.*

63. See *Report on European Institutions*, EUR. COUNCIL 1, 11 (1980). This report is colloquially known as the *Report of the Three Wise Men*, compiled by Barend Biesheuvel, Edmund Dell, & Robert Marjolin. Etienne Deschamps, *The Report of the Three Wise Men*, CVCE, (Aug. 7, 2016) <https://www.cvce.eu/en/recherche/unit-content/-/unit/02bb76dfd066-4c08-a58a-d4686a3e68ff/390f84e5-ac22-4909-8a30-081638d68f2d> [<https://perma.cc/8L7X-UG5M>].

64. See *Report on European Institutions*, EUR. COUNCIL 1, 11 (1980).

65. See EUR. PARLIAMENT, *Building Parliament*, *supra* note 47, at 36; DAVID MARQUAND, PARLIAMENT FOR EUROPE 359 (1979).

66. See J.H.H. Weiler, *The Transformation of Europe*, 100 YALE L. REV. 2403 (explaining how the democratic deficit was deeply engrained in the architecture of the European Communities in which the executives of the Member States had more power than their legislative or representative branches of government).

67. See Dinand, *supra* note 45; Wolfram Kaiser, *Shaping European Union: The European Parliament and Institutional Reform, 1979-1989*, EUR. PARLIAMENTARY RSCH. SERV. 1, 14 (2018), [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/630271/EPRS_STU\(2018\)630271_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/630271/EPRS_STU(2018)630271_EN.pdf) [<https://perma.cc/FFM6-5ZFU>].

68. Wolfram Kaiser *supra* 66, p. 21-25, characterizing Christian Democrat Emilio Colombo, a lawyer active in Catholic Action who became President of the EP from 1977-79 after having been Italian prime minister (1970-72) and Minister of Treasury (1974-76), implemented progressive land and social reforms in Italy. He was also a fervent Europeanist and Francesco Pasetti Bombardella worked as his chief of staff in the EP. See Francesco Pasetti Bombardella, *Curriculum Vitae* (1992) (on file with authors) [hereinafter Pasetti Bombardella, *Curriculum Vitae*]; Deschamps, *supra* note 11, at 72 (mentioning that Pasetti Bombardella was the chief of staff of EP President Colombo (1977-79)).

German and Italian foreign ministers focusing mainly on the powers of the Council (1981).⁶⁹ This was followed by the more ambitious proposals by Altiero Spinelli, the Italian Socialist MEP who through the “crocodile motion” between 1981-84 gave new impetus to the EP to achieve a more democratic European Union through a constitution.⁷⁰

In this historical context, the litigation before the ECJ, brought on behalf of the EP, by the first Jurisconsult and his legal team, paved the way for reforms of the Treaty of Rome spearheaded by the Court’s jurisprudence. For instance, in Section 4 of the Treaty of the ECJ, the articles enabling the Court to exercise judicial review of the legality of Community acts, Articles 173⁷¹ and 175 EEC⁷² were reinterpreted by the Court in the aftermath of the Parliament legal mobilization to recognize its full legal status.⁷³ However, the

69. See Deborah Cuccia, *The Genscher-Colombo Plan: A forgotten page in the European Integration History*, 24 J. OF EUR. INTEGRATION HIST. 59, 65 (2018); Kaiser, *supra* note 66, at 25.

70. See Michael Burgess, *Federal Ideas in the European Community: Altiero Spinelli and ‘European Union’, 1981–84*, 19 GOV’T & OPPOSITION 339 (1984).

71. See Treaty of Rome, *supra* note 56, at art. 173 (“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. 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. 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.”).

72. See *id.* at art. 175. (“Should the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other Community institutions may bring an action before the Court of Justice to have the infringement established. The action shall be admissible only if the institution concerned has first been called upon to act. If, within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months. Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.”).

73. See Johann Schoo, *Evolution*, *supra* note 25, in *Liber Amicorium en l’honneur de Gregorio Garzón Clariana, le jurisconsulte di Parlement européen. Au service du droit communautaire*, 1-14 (2006); Roland Bieber, *Unfolding the Interaction between the EP and the ECJ* 16–21 (forthcoming 2022) (on file with authors) [hereinafter Bieber, *Unfolding the Interaction*].

creation of the EP Legal Service in 1986 did not happen as a result of an overt political or legal strategy to mobilize before the ECJ in order to re-shape the balance of power among Community institutions. Rather, this creation was a part of the historical momentum geared towards empowering the Parliament to represent itself before the Court *against* the other institutions by rebalancing the inequalities in the decision-making processes enshrined in the Rome Treaty.⁷⁴

B. The Principle of Institutional Balance in European Law

In the 1980s, the ECJ, in its *Isoglucose case*, made explicit that institutional balance was an integral part of the Community institutions' relationship to each other. However, determining precisely what the Court meant by the concept of institutional balance is more complex, especially for EU lawyers. For instance, Craig and de Búrca describe institutional balance as “*a euphemism which ‘masks an inherent tension’ between intergovernmentalism and supranationalism.*”⁷⁵ Others ground their analysis by comparison or contrast to a classic separation of power system to be found in the Member States.⁷⁶ There is undoubtedly a mix of political and legal aspects contributing to the principle of institutional balance,⁷⁷ while the Union's historical development as an institution plays a role as well.⁷⁸ As a political principle, the institutional balance within the Union is consistently described as a dynamic framework that shifts and moves over time.⁷⁹ For instance, Moskalkenko conceives of the institutional balance as a pendulum that swings across the inherent political tensions in the

74. See Pasetti Bombardella, Structure and Function of Legal Service, *supra* note 10, at 9.

75. PAUL CRAIG & GRÁINNE DE BURCA, THE EVOLUTION OF EU LAW 65 (1999) (quoting Hayes-Renshaw & Wallace, THE COUNCIL OF MINISTERS (1997)).

76. See Gerard Conway, *Recovering a Separation of Powers in the European Union*, 17 EUR. L. J. 304 (2011); Alexander Fritzsche, *Discretion, Scope of Judicial Review and Institutional Balance in European Law*, 47 COMMON MKT. L. REV. 361, 385 (2010).

77. See Jean-Paul Jacqu e, *The Principle of Institutional Balance*, 41 COMMON MKT. L. REV. 383 (2004) [hereinafter Jacqu e, *Institutional Balance*].

78. See Pieter Dankert, *The European Community – Past, Present, and Future*, 21 J. COMMON MKT. STUD. 1 (1982).

79. See Oleksandr Moskalkenko, *The Institutional Balance: A Janus-Faced Concept of EU Constitutional Law*, 45 POLITEJA 125, 127 (2016); Fritzsche, *supra* note 76, at 386; Jacqu e, *Institutional Balance*, *supra* note 77, at 387.

Community structure in a process of perpetual fine-tuning of the institutions' decision-making process.⁸⁰ Fritzsche likewise identifies the institutional balance as shifting over time and depending on the procedure and competences in question.⁸¹ All of these factors play a role, contributing to a nebulous, yet critical, force in the function of the European Union that lawyers, judges and scholars have leveraged as part of their constitutional practice.

From a legal perspective, many scholars describe the idea of institutional balance as a constitutional principle derived from the inherent rule of law and the democratic design of the Union. For instance, Fritzsche describes the institutional balance as “embrac[ing] the totality of written and unwritten legal rules concerning the horizontal relationship between the institutions.”⁸² The written aspects of the principle are found first and foremost in the Treaties, and subsequently in the CJEU's interpretations of them. For example, Article 7(1) EC Treaty, now Article 13(2) TEU,⁸³ is often pointed to as the clearest articulation of the principle.⁸⁴ The Court, for its part, has developed its interpretation of the principle over time; although the Court first expressly articulated the principle in *Isoglucose* (1980),⁸⁵ it identified a balance of powers principle underpinning the Community as far back as *Meroni* (1957).⁸⁶

80. See Moskalenko, *supra* note 79, at 130.

81. See Fritzsche, *supra* note 76, at 386.

82. *Id.* at 381–82.

83. See Treaty on the European Union, June 7, 2016, 2016 O.J. (C 202/22) (“Each institution shall act within the limits of the powers conferred upon it in the Treaties, and in the conformity with the procedures, conditions, and objectives set out in them.”).

84. See Fritzsche, *supra* note 76, at 384–85.

85. See Case 138/79, *Roquette Freres v. Council*, 1980 E.C.R. 3334 [hereinafter *Isoglucose*] (defining the Power of the Parliament in the EC legislative process where “[s]uch power represents an essential factor in the institutional balance intended by the Treaty.”); see also ROGER J. GOEBEL ET AL., *CASES AND MATERIALS ON EUROPEAN UNION LAW* 159 n. 1 (West Acad. Publ'g eds., 2015) (explaining how these principles appear again in the jurisprudence of the ECJ).

86. See *id.* at 382 (discussing Case 9/56 *Meroni v. High Auth.* ECLI:EU:C:1958:7 (June 14, 1958)). This case was litigated on behalf of the European Commission by Giulio Pasetti Bombardella, the brother of Francesco Pasetti Bombardella. See Maria Patrin, *Meroni Behind the Scenes: Uncovering the Actors and Context of a Landmark Judgement*, in *USING THE HISTORICAL ARCHIVES OF THE EU TO STUDY CASES OF CJEU* (Marise Cremona et al. eds., 2021).

This balance of powers corollary to the institutional balance principle creates a useful point of contrast. On the one hand, the principles of institutional balance and balance of powers are underpinned by the same theoretical structure. Through this structure, divested and dispersed institutional powers are combined with rules for institutional cooperation to create systems that control individual and collective institutional power.⁸⁷ However, institutional balance in the EU is unique and departs from the classic separation of powers principle that underpins Member State governments in several ways. For one, the Union's institutions do not map clearly onto the classic tripartite separation of powers framework due to the overlapping functions exercised by the Union institutions.⁸⁸ Additionally, the unique role played by the CJEU in "constitutionalizing" the Treaties further distinguishes the Union's institutional balance from a classic balance of power framework.⁸⁹ Thus, a separation or balance of powers is a possibly helpful but imperfect frame with which to view the legal nature of institutional balance initially in the Community and later on in the Union.

A more useful lens with which to view the unique legal and political aspects of the institutional balance is to focus on how it is most frequently implicated within the Community institutions: the co-decision procedure (today the ordinary legislative procedure) and comitology procedures for law-making within the Union.⁹⁰ The early cases decided by the CJEU regarding the ordinary legislative procedure also clarified the Court's understanding of the institutional balance, as cases such as *Isoglucose* prompted the Court to determine issues such as the right of consultation for the Parliament.⁹¹ Indeed, scholars such as Craig have pointed to the

87. *See id.* at 386.

88. *See* Conway, *supra* note 76, at 319; *id.* at 385.

89. *See* Conway, *supra* note 76, at 313–14, 318 (pointing to, *inter alia*, the doctrines of direct effect and supremacy brought about by the CJEU in *Costa* and *Van Gend en Loos*, respectively, as indicating the Court's active constitutionalizing role).

90. *See* Jacqué, *Institutional Balance*, *supra* note 77, at 385 (explaining that comitology has created a legal dynamic that has brought before the CJEU several cases raising issues of institutional balance between the institutions and the Member State committees. This dynamic forced the Court to clarify issues such as subjecting the Commission's executive powers to the committee process)(citing Case 25/70, *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v. Köster*, 1970 E.C.R. 1161).

91. *See id.*

post-Luxembourg Accord development of comitology, and the CJEU's ensuing ratification of the procedure in *Koster* and *Tedeschi*, as a hallmark development of institutional balance as a guiding principle within the Union.⁹²

From a political perspective, Jean Paul Jacqu  has shown how the principle of institutional balance was shaped by the *ad hoc* nature of the Community's initial governing arrangements and their organic development over time.⁹³ This dynamism reveals, for one, that institutional balance is fundamentally different from the static balance of power legal precepts contained in Member State constitutions. Further, charting the course of the principle can reveal the struggles in European integration. Finally, Jacqu  noted that the path towards a co-equal role for the Parliament with regards to the Commission and Council is cemented in the procedures laid out in the Treaties of Maastricht, Amsterdam, and Nice.⁹⁴ Thus, while the end result today is a more equal institutional balance, this was not always the case; in the context of a novel institutional arrangement where actors were "simply pulled along by the strongest current,"⁹⁵ it took a concerted effort by those involved in the critical early period to develop the Parliament into the institution that it has become today.

For one, the genesis of the Community's legal and political structure was *sui generis* and belied easy comparison to any existing political structure in the Member States.⁹⁶ Subsequently, as the Community took shape after the Treaty of Rome, the Council and Commission were primarily balanced against each other, with the Parliament relegated to an advisory role.⁹⁷ European Parliament President Piet Dankert,⁹⁸ writing in 1982, noted that

92. See Paul P. Craig, *Institutions, Power and Institutional Balance*, in UNIV. OXFORD LEGAL RSCH PAPER SERIES 41, 47-49 (Paul Craig & Grainne de Burca eds., 2011).

93. Jacqu , *Institutional Balance*, *supra* note 76.

94. See Jacqu , *Institutional Balance*, *supra* note 76, at 389; Craig, *supra* note 92, at 58.

95. Jacqu , *Institutional Balance*, *supra* note 76, at 387.

96. See Dankert, *supra* note 78, at 6-7 (1982); Jacqu , *Institutional Balance*, *supra* note 76, at 388 (noting the "unique" set of factors that contributed to the founding of the ECSC).

97. See Jacqu , *Institutional Balance*, *supra* note 77, at 388.

98. EP President Piet Dankert was elected as Member of the EP in 1979 for the Dutch Labor Party and he was also a Dutch MP. He served as President of the European Parliament from January 19, 1982 until July 24, 1984, and in 1994 he returned after being elected as a member of the EP until July 1999. The Associated Press, *Piet Dankert, 69, Former European Official*, N.Y. TIMES (June 30, 2003),

after Rome, further integration and intergovernmental forces were countered by an increasing supranationalism and development of the Parliament.⁹⁹ Although the increasing role of the EP as a legislative body in supranational politics was, according to Dankert, a “jungle of half-implemented treaties,”¹⁰⁰ further revision of the treaties—a solution championed by Dankert¹⁰¹—ushered in the next stage of institutional balance development. Dankert did not exclude the possibility that judicial mobilization was a successful avenue to show the limitations of the Treaty *vis à vis* the legal status of the EP, though this path required caution and a small unit while representing the Parliament before the ECJ.¹⁰²

III. LEGAL MOBILIZATION IN THE EUROPEAN PARLIAMENT

Without a Legal Service until 1986, the Secretariat of the Legal Affairs Committee (JURI) of the European Parliament was called to review any legal question arising from a Commission proposal. Additionally, the JURI Committee was in dialogue with the General Secretariat of the Parliament and with the Legal Service of the European Commission.¹⁰³ This collaborative function with the Commission Legal Service probably reduced the EP’s need for its own Legal Service, even though one of the Community’s other two legislative bodies had a dedicated legal service.¹⁰⁴ The notion that an EP Legal Service could defend the prerogatives of the EP before the ECJ was not seriously contemplated until the late 1970s. Initially, the European Parliament was only involved in a limited number of ECJ cases. Moreover, those cases were not really institutionally or “constitutionally” relevant, even if they presented a certain general interest so that “external” lawyers were hired to

<https://www.nytimes.com/2003/06/30/world/piet-dankert-69-former-european-official.html> [<https://perma.cc/A7CZ-9PLK>].

99. Dankert, *supra* note 78, at 7–8.

100. *Id.* at 8.

101. *Id.* at 10 (“It will be clear that there have to be changes at the institutional level and that in the long term these will have to be sanctioned by an adjustment to the Treaties.”).

102. See Pennera, *Contribution*, *supra* note 10, at 6.

103. See Deschamps, *supra* note 11, at 70.

104. See Bailleux, *supra* note 14, at 359–68.

defend the EP.¹⁰⁵ Before the direct election of 1979, the most frequent cases dealt primarily with administrative issues. However, the European Parliament already had the opportunity to contribute to the resolution of cases before the Court of Justice, as it happened in Case 101/63, "Albert Wagner v Jean Fohrmann and Antoine Krier." In most circumstances, the Secretary-General delegated these litigant's representation to outside lawyers in Luxembourg, who were assisted by the Parliament's staff.¹⁰⁶ But after 1979, the Secretary-General's altered role mobilized lawyers in the Secretariat to represent the Parliament in institutional cases involving MEPs.¹⁰⁷

A. The Isoglucose Case: The Context and the Resistance

In 1979, the *Affaire 138/79 Roquette Frères v. Council* (the *Isoglucose* case) lands in Luxembourg.¹⁰⁸ Two private litigants brought a claim questioning the validity of an Act of the Council because it lacked Parliamentary consultation.¹⁰⁹ On September 7, 1979, Justice Mackenzie Stuart became the reporting judge on the case. On February 13, 1980 with an ordinance the Court allowed the Commission to intervene in support of the defense team represented by its Legal Service under the direction of Director General Claus Dieter Ehlermann (1977-87). The European Parliament asked to intervene in this case. The Court registered the request of intervention based on Article 37.¹¹⁰ On December 13, 1979, President Simone Veil appointed Pasetti Bombardella as main counsel, assisted by Bieber as principal administrator and Teitingen after an EP resolution in favor of its intervention.¹¹¹

105. See Pasetti Bombardella, Structure and Function of Legal Service, *supra* note 10, at 3.

106. See Bieber, *supra* note 24, at 2 (citing Case 1/55, Kergall v. Common Assembly of the ECSC, 1955 E.C.R. 151, at 15; Case 74/77, Allgayer v. Eur. Parliament, 1978 E.C.R. 977, at 977).

107. See, *Isoglucose*, *supra* note 85, at 3341.

108. See *id.*; Case C-139/79, Maizena GmbH v. Council of the Eur. Cmty., 1980 E.C.R. 3394.

109. See *Isoglucose*, *supra* note 85; Maizena GmbH v. Council of the Eur. Cmty., 1980 E.C.R. 3394.

110. See *Isoglucose*, *supra* note 85, at 3333.

111. See *Isoglucose*, *supra* note 85, at 3335 ("European Parliament, represented by the Director-General, Francesco Pasetti Bombardella, assisted by Roland Bieber, Principal Administrator in its legal department and Professor Pierre Henri Teitgen, with an address

In the *Isoglucose case*, two artificial sweetener manufacturers, supported by the Parliament, brought an action against the Council, supported by the Commission. The Parliament challenged the Council's procedure in passing Regulation 1293/79, which amended Regulation 1111/77 regulating isoglucose production.¹¹² In this case, the Commission asserted that the quota imposed for the isoglucose by the decision of the Council was a transitory measure, similar to the those imposed on the sugar market.¹¹³ The plaintiff *Roquette Frères et Maïzena* argued that the Council adopted Regulation 1293/79 without receiving the Parliament's opinion, as required by Article 43(2) of the EEC Treaty, rendering the quota invalid.¹¹⁴

First, the Council contended that the application was unfounded, and that the Parliament's intervention in the case was inadmissible.¹¹⁵ The Council also argued that since the regulation in question applied to parallel markets (sugar and isoglucose), it must become applicable to both industries simultaneously, by July 1 1979.¹¹⁶ Although the EP's Commission Agriculture suggested modifications to the regulation that were rejected by the Parliament and sent back to the parliamentary commission on May 11, 1979, the necessary parliamentary consultation was impossible because the direct elections of the EP in June 1979 delayed the new session of this body. Instead of happening in June, it was postponed until September 1979.¹¹⁷ In its *Mémoire de défense*, the Council explained that despite the importance of universal suffrage of the EP, the notion of "reasonable delay" must prevail to secure a functioning sugar market.¹¹⁸

The Parliament was represented by Director-General Pasetti Bombardella, Director-General of DG II (Committees), because the issue had been raised by the committee for agriculture; Roland

for service in Luxembourg at the General Secretariat of the European Parliament, intervener").

112. *Id.* at 3352.

113. See Council Legal Service, *Mémoire en défense*, in DOSSIER THE PROCEDURE ROQUETTE FRÈRES, at 97).

114. See *Isoglucose*, *supra* note 85, at 3352.

115. See *id.* at 3353.

116. See *id.* at 3354.

117. See Council Legal Service, *supra* at 113, at 103.

118. See Council Legal Service, *supra* at 113, at 105.

Bieber, principal administrator of DG V, who was about to be appointed “Head of division for institutional affairs” in DG V “Research and Documentation”¹¹⁹; and Professor Pierre Henri Teitgen a French constitutionalist and close to President Simone Veil.¹²⁰

The Parliament initially resisted sending its lawyers to litigate this case for two reasons. First, even if the Agricultural committee of the Parliament had not been properly consulted, as it appeared in the exchanges between President Veil and Colombo with the Council, the case remained an action by two private litigants who were skillful enough to entangle their private interests with institutional ones. The isoglucose lobbies presented their economic losses as a “constitutional issue” and were very active in lobbying MEPs to join them in the litigation before the ECJ.¹²¹ Second, some MEPs, especially those from the UK and from the French *Gaullist* party, discouraged the EP from entering into a court of law because of their respective parliamentary traditions.¹²² In fact, according to a strict separation of powers position *à la Montesquieu* or the British principle of parliamentary supremacy,¹²³ a Parliamentary Assembly should not diminish itself by arguing against the executive branch in front of a Court.

To overcome these resistances and to support the ability of the EP to represent itself before the Court, the JURI Committee of the Parliament voted in favor of its participation in the Isoglucose case.¹²⁴ The President of the JURI Committee was the Italian Socialist MEP Mauro Ferri (1979-1982), a lawyer close to Spinelli’s Crocodile club who became in 1995 President of the Italian

119. Bieber, *supra* note 24, at 2 (explaining that the *Isoglucose* ruling wrongly suggests that Bieber was the “Principal administration in its Legal Department” by showing how even the ECJ could not understand the organization of the EP and its lawyers).

120. See *Isoglucose*, *supra* note 85, at 3334–35.

121. See Bieber, *supra* note 24, at 2.

122. See Rapport fait au nom de la Commission Juridique sur l’intervention du Parlement européen devant the Cour de Justice dans les affaires 138/79 and 139/79, Rapporteur Mauro Ferri President de la Commission, EUR. PARL. DOC. 1-478/79, at 17 (1979).

123. See Fernanda G. Nicola, *The Luxembourg Style with or Without the UK*, 40 *FORDHAM INT’L L.J.* 1505, [1523] (2017).

124. See Ferri Report, (Nov. 13, 1979) (on file with authors) (also included in the dossier de procedure of Roquette Frères).

Constitutional Court.¹²⁵ The Report by Ferri on November 13, 1979, was adopted by unanimity by the JURI Committee and strongly advised the Parliament to defend its institutional competences before the Court.¹²⁶ This Report, which is in the dossier de procedure of the Court, contains the key arguments followed by the Court's justification of the Parliament's legal standing explaining that, without standing, the outcome would be a "depoliticization" of the Parliament.¹²⁷ Therefore, the Council's Treaty violation for not consulting the main democratic institution needs to be remedied through an indirect judiciary control on the Council's actions by Parliament.¹²⁸

The Council first referred the matter of amending Regulation 1111/77 to the Parliament via a letter on March 1979.¹²⁹ The letter stated that the Council, pursuant to Art. 43(2) EEC Treaty, "would welcome it if the European Parliament could give an opinion on the proposal at its April session."¹³⁰ The urgency of the consultation stemmed from the transitional arrangements that would be required for any changes in production prior to the beginning of the new marketing year on July 1.¹³¹ The Parliament immediately referred the matter to the Committees on Agriculture and Budget, however, the ensuing resolution was rejected by the broader Parliament in May, and the Parliament did not schedule any extra sessions to take up the matter.¹³² Without any input from the Parliament, the Council adopted Regulation 1293/79 on June 25, 1979.¹³³

125. Mauro Ferri was an Italian lawyer who was member of the Italian socialist party and became Minister of Economic development before being elected as Member of the European parliament from 1979 until 1984 and after that he served in the Italian Constitutional Court for nine years and became its president in 1995-96. *See* Kaiser, *supra* note 67, at 17. During his time in Luxembourg, he was close to Altiero Spinelli's Crocodile Club, which was an "informal, cross party" club founded in 1980 to overcome the paralysis in the Community and propose a much bigger role of the European Parliament in the decision-making process. *See* Kaiser, *supra* note 67, at 17.

126. *See* Ferri Report, *supra* note 124, at 5.

127. *See id.* at 14.

128. *See id.*

129. *See* Isoglucose, *supra* note 85, at 3352.

130. *See id.*

131. *See id.* at 3354.

132. *See id.* at 3355.

133. *See id.*

In sorting through the *Isoglucose case*, the Court took up several lines of analysis. Regarding the Parliament's powers vis-à-vis the Council and Commission, the Court first examined the admissibility of the Parliament's intervention on behalf of *Roquette Frères*.¹³⁴ The Council had contended that the Parliament's intervention was inadmissible under Art. 173 of the EEC Treaty requiring an annulment for "*vice de forme substantielle*" that could be the case for the lack of consultation of the EP.¹³⁵ The Council, however, through a textualist reading of the Treaty of Rome distinguished between consultation *versus* the necessity to receive an opinion by the EP that does appear in the text of the Treaty.¹³⁶ So mere consultation in the form of dialogue between the Council and the EP was sufficient to comply with the formal requirement of Art. 173 EEC.¹³⁷ Finally, the Council relied on a previous Opinion of AG Reischl and prior jurisprudence of the ECJ to affirm that such decision fell within the marge of discretion of the Council in a case highly controversial between the producers of isoglucose and sugar.¹³⁸

The Council also contended that the Parliament's intervention was inadmissible under Art. 20 of the Statute of the Court because the Parliament was not listed in either of those Articles as a party entitled to lodge observations or declarations about a measure.¹³⁹ But the Court followed AG Reischl's opinion which, cited Art. 37.¹⁴⁰ The opinion stated, that all Member States and institutions may intervene before the Court and that "it is not possible to restrict the exercise of that right by one of them without adversely affecting its institutional position as intended by the Treaty and in particular Article 4(1)."¹⁴¹

The ECJ examined the core issue regarding the procedural requirement of consultation under Art. 43(2) of the EEC Treaty, which the Court termed "an essential [sic] formality disregard of

134. *See id.* at 3353, ¶¶19-20.

135. *See* Council Legal Service, *supra* note 113, at 126.

136. *See* Council Legal Service, *supra* note 113, at 127 (1979) (in *Dossier the Procedure Roquette Frères*, at 106).

137. *See id.*

138. *See id.* at 25.

139. *See* *Isoglucose*, *supra* note 85, at 3357.

140. *See id.*

141. *Id.*

which means that the measure concerned is void.”¹⁴² The Court found that the consultation requirement is a “fundamental democratic principle” requiring the input of the people as represented in the Parliament.¹⁴³ The observance of this requirement “*implies that the Parliament has expressed its opinion.*”¹⁴⁴

The Council had argued that the Parliament’s conduct in the circumstances made this requirement impossible, and that the “state of emergency” forced the Council’s early decision based on its commitment to a European “public interest.”¹⁴⁵ In response, the EP argued that the Council may not unilaterally alter procedures to serve the public interest. According to the Treaty, the EP has the main task of protecting and representing the peoples of the Community.¹⁴⁶

Finally, the ECJ noted that the Council had not exercised all of its options to obtain the Parliament’s opinion.¹⁴⁷ Therefore, according to the Court, the consultation requirement contained in Art. 43(2) of the EEC Treaty had not been fulfilled. As a result, in its ruling, the Court declared Regulation 1293/79 void.¹⁴⁸ According to the Court, placing the consultation burden on the institution initiating the regulatory action better preserves the democratic principles of balance of power and popular participation in lawmaking.¹⁴⁹

B. Strategic Mobilization without a Legal Service

Shortly after *Isoglucose*, in *The Right Hon. Lord Bruce of Donington v. Aspden*, the Court was called on to address a dispute

142. *Id.* at 3360.

143. *See id.* at 3360–61.

144. *Id.*

145. Council Legal Service, *supra* note 113, at 145.

146. *See id.*

147. *See Isoglucose*, *supra* note 85, at 3361 (including requesting the application of an emergency procedure in the Parliament or by asking for an extraordinary session of Parliament).

148. *See id.*

149. For a recent example of litigation on access to documents in decision-making processes led by the Council in the case of Trialogues, *see* Emilio De Capitani, *Progress and Failure in the Area of Freedom, Security and Justice*, in *EU LAW IN POPULIST TIMES: CRISES AND PROSPECTS* 375 (Francesca Bignami ed., 2019).

between the United Kingdom's tax collector and one of its MEPs.¹⁵⁰ The European Parliament provided lump-sum allowances for its MEPs to cover their travel and expenses during Parliamentary sessions.¹⁵¹ However, the UK's Tax Inspector assessed the payments to be taxable emoluments under the UK Income and Corporation Taxes Act of 1970.¹⁵² The Parliament, represented by Roland Bieber, noted that Art. 142 of the EEC Treaty, Art. 112(1) of the EAEC, and Art. 25(1) of the ECSC Treaty together "reflects the principle of the organizational independence of the Parliament."¹⁵³ The Parliament further argued that Art. 5 of the EEC Treaty obliges Member States to respect this institutional independence,¹⁵⁴ and that any individual Member State tax on the lump sum payments would constitute unjust discrimination between the MEPs.¹⁵⁵ The UK, for its part, argued that the taxes were justified as there was "nothing which precludes a Member State from taxing so much of the allowances in question as exceeds the expenditure incurred."¹⁵⁶ The UK also invoked the "sovereign right of States to impose taxes . . ." on its own citizens, absent an express exemption agreed to by the Member States.¹⁵⁷

In its decision, the ECJ initially agreed with the UK in finding that there is no support in Community law for the assertion that any payment from the Parliament to MEPs is "*ipso facto* exempt from national taxes."¹⁵⁸ However, the Court quickly pivoted to the Parliament's procedural argument, agreeing with the assertion that the lump sum payments are "a measure of internal organization intended to ensure the proper functioning of the institution . . ." under Art. 142 of the EEC Treaty, Art. 112(1) of the EAEC, and Art. 25(1) of the ECSC Treaty.¹⁵⁹ Under this reasoning, the tax burden imposed by the UK would "form a financial

150. See Case C-208/80, Rt. Hon. Lord Bruce of Donington v. Aspden, 1981 E.C.R. 2206, at 2207.

151. See *id.*

152. See *id.* at 2208.

153. *Id.* at 2213.

154. See *id.*

155. See *id.* at 2214.

156. *Id.* at 2211.

157. See *id.*

158. *Id.* at 2218.

159. See *id.* at 2219.

obstacle” for the MEPs in attending Parliamentary sessions.¹⁶⁰ With this reasoning, the ECJ implicitly preserved the Parliament’s status in relation to the Member States. However, unless there was any doubt, the Court made this explicit later in the decision by stating that “national authorities are bound to respect the decision taken by the European Parliament . . . A review carried out in this area by the national revenue authorities . . . would therefore be likely to impair the effectiveness of the action of the Parliament and *be incompatible with its autonomy.*”¹⁶¹ In the Court’s eye, then, once the Member States have imbued the Parliament with the power to manage its own affairs, those affairs of the Parliament must be respected.

The Rome Treaty created a system of judicial control on acts and institutions under which the Parliament, even as the weakest supranational institution, must assume responsibility for its actions.¹⁶² As Roland Bieber explained in the *Lord Bruce case*, the requirement to defend itself also required the lawyers within the Parliament to elaborate a careful articulation of its “institutional independence.”¹⁶³

Another important judgment of the Court of Justice involving the European Parliament was in Case 149/85, *Wybot* decided by the ECJ on July 10, 1986, following a request for a preliminary ruling concerning the interpretation of Article 10 of the Protocol on the Privileges and Immunities of the European Communities, referred by the Court of Appeal of Paris.¹⁶⁴ In *Wybot*, the ECJ held in paragraph 10 that, “In accordance with Article 21 of the Statute of the Court of Justice of the EEC, the European Parliament was invited to provide information on the conclusions in relation to the scope of parliamentary immunity which in its view follow from the

160. *Id.* at 2219.

161. *Id.* at 2220 (emphasis added).

162. Under Article 173 EEC Treaty the Parliament is not listed as a privilege applicant to review EC legislation and under Article 175 EEC Treaty failure to act cases can be brought by Community “institutions” without including or excluding the EP. See Bieber, *Unfolding the Interaction*, *supra* note 73, at 7.

163. *Id.*

164. Case 148/85, *Roger Wybot v Edgar Faure and others*, 1986 E.C.R. 02391, at 02391.

legal provisions concerning the organization of its sessions and from its own practice in that regard."¹⁶⁵

In the following case *Luxembourg v. Parliament*,¹⁶⁶ the strategic question according to Bieber was whether the EP was ready to accept its full passive legitimacy, namely, its accountability before the Court.¹⁶⁷ The scrutiny of the ECJ over the EP's actions seemed to clash with its increased institutional independence. The result was a compromise that enhanced the role of the EP but did not give the Parliament full passive legitimacy until the famous *Les Verts* case in 1986.¹⁶⁸

In *Luxembourg v. Parliament*,¹⁶⁹ the long-running debate over where to seat the different EC institutions came before the Court. The controversy was born at the inception of the European Community, as the Member States provided in the 1965 Treaty establishing the Council and Commission that, "Luxembourg, Brussels, and Strasbourg shall remain the provisional places of work of the Communities," while the nascent "General Secretariat of the Assembly and its departments shall remain in Luxembourg."¹⁷⁰ However, the Treaty also provided for institutions to hold sessions in other provisional places of work, and the early years of the Parliament were marked by regular practice of holding an increasing number of provisional sessions in Strasbourg.¹⁷¹ After 1981, the Member States endorsed the status quo.¹⁷² Later that year, the Parliament passed a contested

165. *Id.*

166. Case 230/81, *Luxembourg v. Parliament*, 1983 E.C.R. 258 ("European Parliament, represented by its Secretary General, Hans-Joachim Opitz, Francesco Pasetti Bombardella, Director General, and its legal advisor Roland Bieber, acting as agents, assisted by Alessandro Migliazza, Professor at the University of Milan, with an address for service in Luxembourg at the Office of the Secretary General of the European Parliament, Kirchberg, Defendant.").

167. *See* Bieber, *Establishment*, *supra* note 24, at 2.

168. *See* Bieber, *Establishment*, *supra* note 24, at 2 ("The EP was represented by its Secretary General, by the Director General of DG committees and by 'its Legal Advisor' as agents and was assisted by an external professor. My own denomination is not entirely correct. It is true, the notion 'Legal Advisor' had been introduced in the terminology of the EP. This term referred, however, exclusively to my functions in the president's private office ('cabinet'). I was legal advisor to the President.").

169. Case 230/81, *Luxembourg v. Parliament*, 1983 E.C.R. 258, at 286-90.

170. *Id.* at 277-78.

171. *See id.* at 278-79.

172. *See id.* at 279-81.

resolution that asserted its right to determine its meeting locations, and duly chose Strasbourg.¹⁷³

Unsurprisingly, Luxembourg brought an action against the Parliament alleging that, *inter alia*, the Parliament had overstepped its power in the resolution determining its seat of work.¹⁷⁴ Luxembourg's argument by referenced the 1965 Treaty and the 1981 status quo decision taken by the Member States.¹⁷⁵ The Parliament argued that it was acting in accordance with its right to provide for proper administrative functioning and that the Member States had not utilized their power to set the location of the Parliament's functioning.¹⁷⁶ The Court, ruled in favor of the Parliament and emphasized that the Parliament had the power to provide for its own internal organization pursuant to the ECSC, EEC, and EAEC Treaties.¹⁷⁷ The Court also stated the Parliament may enact resolutions on matters affecting Community functioning.¹⁷⁸ Furthermore, the Member States' actions, or inactions, had to be taken in respect of the Parliament's "due functioning."¹⁷⁹ Thus, the Member States' decision to enact a status quo decision about the Parliament's location in the face of a situation identified by the Parliament as unacceptable was a derogation of the Member States' responsibility.¹⁸⁰ In essence, the Court in *Luxembourg* ratified the expansion of Parliament's power as valid in light of an abdication of such power by the Member States.

In the *Transport case* or *Parliament v. Council*,¹⁸¹ the named Community institutions became embroiled in a dispute over the implementation of the common transport policy, as provided for in Articles 74–75 of the EEC Treaty.¹⁸² The Parliament, which was

173. *See id.*

174. *See id.* at 281–85.

175. *See id.* at 285–86.

176. *See id.*

177. *See id.* at 287.

178. *See id.*

179. *Id.*

180. *See id.*

181. Case 13/83, Eur. Parliament v. Council of the Eur. Cmty., 1985 E.C.R. 1556, at 1560; *see* Bieber, *Unfolding the Interaction*, *supra* note 73, at 13.

182. *See* Case 13/83, Eur. Parliament v. Council of the Eur. Cmty., 1985 E.C.R. 1556, at 1584 (showing that article 75(1) instructs the Council to "lay down, on a proposal from the Commission and after consulting . . . the European Parliament: (a) common rules

required to be “consulted” by the Council in its formulation of the transport policy, brought an action against the Council for failure to lay down the framework of a common transport policy after repeated Parliamentary resolutions between 1968 and 1982 demanding the Council introduce a common transport policy for review by the Parliament had been ignored.¹⁸³ The Council responded by pointing to the seventy-one transport measures it had adopted while acknowledging further action was needed.¹⁸⁴ Unsatisfied with this response, the Parliament proceeded with the action against the Council for failing to provide a “definition of position” under Art. 175 and as required by Articles 74–75 concerning the common transport policy.¹⁸⁵

The Council responded with several arguments. First, on the substance, the Council argued that it had significant discretion regarding the formulation of a common transport policy.¹⁸⁶ The Council then reiterated its actions already taken in the area of transport policy with an emphasis on the difficulties enacting policy in this area.¹⁸⁷ The Court acknowledged the Council’s discretion, but concluded that there was “not yet a coherent set of rules which may be regarded as a common transport policy for the purposes of Articles 74 and 75 of the Treaty.”¹⁸⁸ However, whether the deficiency was actionable against the Council rested on the Court’s determination about whether and where in the EEC Treaty the Council was obligated to have acted in the area of transport.¹⁸⁹ Here, the Court cited the combined effect of Articles 59–61 and 74–75 to find that inasmuch as transport policy implicated the freedom to provide services across the EC, the Council’s discretion on transport policy was limited to the “means employed to obtain the result”.¹⁹⁰ In essence, because the EEC Treaty mandated the freedom of services by the end of the

applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States. . .”).

183. *See id.* at 1584–85.

184. *See id.* at 1586.

185. *See id.*

186. *See id.* at 1594–95.

187. *See id.*

188. *Id.* at 1595.

189. *See id.* at 1597.

190. *Id.* at 1599–1600.

transition period (that had long since passed), and a common transport policy implicated freedom of services, the Council could be held liable under Article 175 for failing to enact a common transport policy.¹⁹¹

In addition to the substantive arguments, the initial procedural arguments in the *Transport Case* illuminated the burgeoning legal personality of the Parliament. The Council's first salvo in the case was a two-pronged charge that the Parliament's action was inadmissible due to the Parliament's alleged incapacity to bring proceedings under Article 175 and noncompliance with the necessary pre-action procedures.¹⁹² On the first charge regarding incapacity, the Council cited to several other Treaty Articles governing the Parliament's interactions with the other Community institutions as a reason to disregard Article 175.¹⁹³

However, the Court agreed with the Parliament on the Commission's contention that the plain language of Article 175 permitted the Parliament to bring the action.¹⁹⁴ In regards to the Council's second preliminary objection about pre-action procedures, the Court again found in favor of the Parliament.¹⁹⁵ The Court stated in no uncertain terms that the Parliament's communication to the Council could not be construed as responding to the Parliament's valid request for a definition of position on the transport question.¹⁹⁶ Ultimately, the way in which the Court clearly rejected the Council's procedural arguments, which would diminish the Parliament's legal personality to a secondary level in EC law, underscored the Court's validation of the Parliament as a peer institution of the Council and the Commission in the Communities.¹⁹⁷ The Parliament was represented alongside

191. *See id.* at 1600–01.

192. *See id.* at 1587.

193. *See id.* at 1587 (showing the other ways for the Parliament to “exercise influence on the activities of the Commission and the Council,” including a right of review and actions for annulment (citing to Treaty of Rome, *supra* note, 57, art. 137, 143, 144, 173)).

194. *See id.* at 1588 (“The Court would emphasize that the first paragraph of Article 175, as the Council has recognized, expressly gives a right of action for failure to act against the Council and Commission *inter alia* to ‘the other institutions of the Community.’”).

195. *See id.* at 1588–89.

196. *See id.*

197. *See id.* at 1588 (“[Article 175] thus gives the same right of action to all the Community institutions. It is not possible to restrict the exercise of that right by one of

Pasetti Bombardella, Director General of DG II, by Roland Bieber mistakenly defined as the EP Legal Adviser and by two professors.

Bieber explains that the legal strategy relied on their communication with the Council's Jurisconsult Jean-Louis Dewost (1973-1987).¹⁹⁸ This collaboration was an important change from the *Isoglucose* case, during which the Council did not have a co-equal interlocutor in the EP. As Pasetti Bombardella notes in his brief recollection of the *Naissance du Service juridique du Parlement européen*, the written and oral proceedings before the Court were very animated because the Council attempted to demonstrate the Parliament's lack of legal standing.¹⁹⁹ However, despite the Council's support from Professor Boulouis of the prestigious Sorbonne University, the Court followed the Parliament's thesis.²⁰⁰

Finally, *Les Verts v. Parliament*²⁰¹ is the most relevant constitutional case litigated before the creation of the Legal Service. In *Les Verts*, the ECJ nestled a profound constitutional balance of power question—in the vein of *Marbury v. Madison*²⁰²—in the preliminary questions of the *Les Verts* case, where now the acts of the EP were under the judicial scrutiny of the Court.²⁰³ In this case a French non-profit organization sued the Parliament over its rules for reimbursement of political parties during the 1984 European elections.²⁰⁴ The French organization argued that the Parliament's reimbursement system was unfounded in the EEC Treaty and unfairly benefitted political parties already in

them without adversely affecting its status as an institution under the Treaty, in particular Article 4(1).”).

198. See Bieber, *Establishment*, *supra* note 24, at 2 (explaining how between the two Legal Service there was “no jealousy but collaboration!”).

199. See Pasetti Bombardella, *Birth of Legal Service*, *supra* note 23, at 3 (“La procédure écrite et orale devant la cour fut très animée, puisque le Conseil des Ministres essaya de démontrer l’incapacité juridique du Parlement à plaider sa cause, par la voix du professeur Boulouis de la Sorbonne.»).

200. *Id.* at 3.

201. Case 294/83, *Les Verts v. Parliament*, 1986 E.C.R. 1357, at 1358.

202. *Marbury v. Madison*, 5 U.S. 137 (1803).

203. See Koen Lenaerts, *Les Verts: The Basic Constitutional Charter of a Community Based on the Rule of Law*, in *THE PAST AND FUTURE OF EU LAW: THE CLASSICS OF EU LAW REVISITED ON THE 50TH ANNIVERSARY OF THE ROME TREATY* 295, [298] (Luis Miguel Poiares Pessoa Maduro & Loïc Azoulai eds., 2010).

204. See Case 294/83, *Les Verts v. Parliament*, 1986 E.C.R. 1357, at 1358.

Parliament at the time of the elections.²⁰⁵ The French organization also argued that the Parliament's reimbursement structure violated the concept of a uniform electoral procedure contained in Art. 138(3) of the EEC Treaty, and was thus a power of the national legislatures under Art. 7(2) of the 1976 Act which concerns the election of Parliament representatives by direct universal suffrage.²⁰⁶

The Parliament responded that the reimbursement scheme was principally an information campaign designed to make the EP more widely known during the election,²⁰⁷ and that this power falls under the Parliament's general ability to govern its internal organization, as acknowledged in *Luxembourg v. Parliament*.²⁰⁸ Further, the Parliament argued that the greater proportion of funds allocated to incumbent parties was appropriate because the primary purpose of the reimbursement was an information campaign and the incumbent parties had a greater dissemination capacity.²⁰⁹ It must be noted that during the proceedings of *Les Verts*, the new Presidency of the EP by Pierre Pflimlin added to the legal representation by Pasetti Bombardella, Legal Adviser Bieber, and Principal Administrator Schoo two well-known professors—Jean Paul Jacque' from Strasbourg University, Jürgen Schwarz from Hamburg University—and an external attorney, Mr. Lyon-Caen.²¹⁰ The tension here arose because under the leadership of Pasetti Bombardella, the legal representatives of the European Parliament took the position of defense by all means regardless of the overall institutional and democratic implications of the case.²¹¹ In contrast, as we will show in Advocate General Federico Mancini's Opinion at the end of this chapter, Bieber's position with a group of lawyers of the EP was that "you cannot have the cake and eat it and you cannot have the legal personality without full responsibility."²¹²

205. *See id.* at 1369.

206. *See id.*

207. *See id.* at 1357.

208. *See id.* at 1370 (citing Case 230/81, *Luxembourg v. Eur. Parliament*, 1983 E.C.R. 258).

209. *See id.*

210. *See id.* at 1357; Bieber, *Establishment*, *supra* note 24, at 2–3.

211. *See* Bieber, *Establishment*, *supra* note 24, at 3.

212. *Id.*, at 3.

The ECJ began its consideration of the case by reaffirming the *Luxembourg* precedent of the Parliament's internal governance prerogative, but then quickly pivoted towards an evaluation of the reimbursement scheme.²¹³ Here, the ECJ noted that if the reimbursement scheme was truly for the purpose of covering election-related expenses, it would not fall within the Parliament's power to regulate its internal affairs under the *Luxembourg* precedent.²¹⁴ This prompted a review of the factual record and details surrounding the payment scheme, which the ECJ ultimately determined was "ambiguous" and could "not be distinguished from a scheme providing for the flat-rate reimbursement of election campaign expenses."²¹⁵ Proceeding with this determination that the scheme was for election-related expenses, the ECJ turned to the Art. 7(2) question.²¹⁶ The Court found, unsurprisingly, that since the scheme was designed to reimburse election-related expenses, it infringed upon each Member State's prerogative to govern the Parliamentary election procedure within its borders.²¹⁷

It must be noted as well that beyond the instant dispute over election procedures, *Les Verts* is a landmark decision for another reason. As an initial matter, the ECJ had to determine *sua sponte* whether it had jurisdiction to hear a direct annulment of a Parliamentary action.²¹⁸ The ECJ noted that the Parliament was not included in Art. 173 of the EEC Treaty, which gave the Court jurisdiction to review the legality of measures adopted by the Council and Commission.²¹⁹ The ECJ found that "in its original version, the EEC Treaty merely granted [Parliament] powers of consultation and political control rather than the power to adopt measures intended to have legal effects *vis-à-vis* third parties."²²⁰ However, the ECJ also made clear that, as a general principle, the Community was founded on the rule of law and that the Community institutions cannot escape review and accountability

213. See Case 294/83, *Les Verts v. Parliament*, 1986 E.C.R. 1357, at 1358.

214. See *id.*

215. *Id.* at 1371-72.

216. See *id.* at 1372.

217. See *id.*

218. See *id.* at 1364.

219. See *id.* at 1365.

220. *Id.*

of their actions.²²¹ Thus, even though the Treaty did not explicitly provide for the Court to review the Parliament's actions, the effects of the Parliament's election reimbursement actions *vis-à-vis* third parties required the Court to review the Parliament's actions.²²² Incorporating the constitutional balance of power into this ruling was the first substantive innovation that the Court of Justice made to the system of court actions provided by the Treaties. In fact, this ECJ ruling has clearly constitutional importance for the European Communities. The decision also places the European Parliament in a very different position from the one the Treaties had granted it until then. Therefore, it is precisely the ECJ jurisprudence that triggered some fundamental changes regarding the role and status of the EP before the Court in Luxembourg, even when these changes later found enshrinement in the Treaties.

C. The Cost of Mobilization with a Legal Service

During the process of formulating the 1986 European Community budget, the Council and Parliament reached an impasse over non-compulsory expenditures, leading to the Council seeking an action for annulment before the Court in *Council v. Parliament* (also known as the "Budget Case").²²³ After an initial disagreement over the expenditure limits, governed by Art. 203 of the EEC Treaty, the Council made a compromise offer to the Parliament, subject to Parliamentary acceptance, which the Parliament considered insufficient.²²⁴ The Parliament conducted internal deliberations to arrive at a higher level of expenditure and informed the Council of its consideration that the budget had been "finally adopted".²²⁵ This led the Council to bring an annulment action regarding the Parliament's declaration of the final budget, or in the alternative, an annulment action for the entire budget. In response, the Parliament, represented by Juriconsult Pasetti Bombardella. Lever and Lyon-Caen, took the position that the Council's application was inadmissible, or in the alternative, that

^{221.} *See id.*

^{222.} *See id.* at 1366.

^{223.} Case 34/86, Council of the Eur. Cmty. v. Eur. Parliament, 1986 E.C.R. 2188, at 2189.

^{224.} *See id.*

^{225.} *Id.* at 2193.

the annulment action should relate to the entire budget and preparatory process.²²⁶

The Court's carefully considered opinion began its evaluation by noting that under the precedent set in the *Les Verts* case, the annulment action against the Parliament was admissible under Art. 173 of the EEC Treaty because the budget "ranks among the acts which are capable of producing legal effects *vis-à-vis* third parties."²²⁷ Although the Parliament argued that the complementary nature of the budgetary process precluded an action against only one of the negotiating parties, the Court rejected this argument under the logic that such a situation would render meaningless the constraints Art. 203 EEC Treaty places on the Community institutions involved in the budget process.²²⁸

Having determined that the annulment action was admissible, the ECJ then turned to an adjudication of the dispute on the merits. As an initial finding of fact, the Court noted that the Council and Parliament agreed on the need for an increase in the non-compulsory expenditures, disagreed on the new maximum rate of increase, and that the Parliament's adopted budget exceeded the maximums put forth by the Commission and Council.²²⁹ Proceeding from these findings, the Court determined that Art. 203 of the EEC Treaty mandated a budgetary procedure where the Parliament and Council acted in concert; therefore, the Parliamentary declaration of a final budget that had not been agreed to by the Council was "vitiating by illegality."²³⁰ The ECJ then turned to an examination of the effect of declaring the Parliamentary action illegal, barely masking its frustration with the Parliament and Council over their inability to agree on a budget despite the proximity of their negotiating positions.²³¹ Unsurprisingly, the ECJ ordered the Parliament and Council back to the negotiating table based on the already agreed-upon need for an increase in the non-compulsory expenditures, rejecting an

226. *See id.* at 2195.

227. *Id.* at 2201.

228. *See id.* at 2202-03.

229. *See id.* at 2208-10.

230. *Id.* at 2209-10.

231. *See id.* at 2211-12 ("Looking back on the situation . . . the Court is left with the impression that the respective positions taken by the two institutions could hardly have constituted a serious obstacle to the possibility of arriving at an agreement.").

annulment of the entire budget and forcing the parties to conduct the budgetary process according to the mandate of the Treaties.²³²

Finally, the *Parliament v. Council* or the “Chernobyl” case, was a dispute that erupted between the two constituent bodies over the enactment of a regulation addressing acceptable levels of radioactive contamination in foodstuffs.²³³ During the drafting process, the Council consulted the Parliament pursuant to Art. 31 of the Euratom Treaty, however, the Parliament rejected this legal basis and asked the Commission to submit to it a new proposal under Art. 100(a) of the EEC Treaty.²³⁴ The Commission ignored this request and the Council proceeded to adopt the regulation under Art. 31 of the Euratom Treaty, triggering the Parliament’s annulment action.²³⁵ The Council argued that such action was inadmissible under Art. 91(1) of the Rules and Procedure of the Court in accord with Case 302/87;²³⁶ the Parliament summarily asked the Court to dismiss this objection.²³⁷

In its decision, the ECJ identified the underlying structural tensions animating this dispute. First, the Court noted that by a technical reading of the Euratom and EEC Treaties, the Parliament is not empowered to bring an annulment action against any other institution.²³⁸ However, the Court also noted that the measures contemplated in Case 302/87 and the EEC Treaty by which the Parliament can defend its prerogative “may prove to be ineffective.”²³⁹ The Court then highlighted that the institutions’ prerogatives are “one of the elements of the institutional balance created by the Treaties”, and proceeded with a discussion about the fundamental balance and distribution of powers between the

232. *See id.* at 2211–13.

233. *See* Case C-70/88, *Eur. Parliament v. Council of the Eur. Cmty.*, 1990 E.C.R. I-2067, at I-2069.

234. *See id.* at I-2069.

235. *See id.*

236. *See* Case 302/87, *Eur. Parliament v. Council of the Eur. Cmty.*, 1988 E.C.R. 5615, at 5618-26.

237. *See* Case C-70/88, *Eur. Parliament v. Council of the Eur. Cmty.*, 1990 E.C.R. I-2067, at I-2069–70.

238. *See id.* at I-2071.

239. *Id.* at I-2071–72 (including action for failure to act, submission of a reference for a preliminary ruling, and the Commission’s role in protecting the Parliament’s prerogatives).

different Community institutions.²⁴⁰ The ECJ ultimately found that notwithstanding any procedural gap contemplated by the Treaties in granting the Parliament the affirmative power of annulment, the “fundamental interest in the maintenance and observance of the institutional balance” must be preserved by the Court.²⁴¹ Thus, from the *Chernobyl* case it became clear that, even in instances where the Parliament struggled to exercise its prerogative, the ECJ interpreted the Treaties in an effort to preserve it.

From *Isoglucose* until *Chernobyl*, it became clear that the ECJ was willing to interpret provisions of the Treaties and the Court’s statute in a manner, which was favorable to the European Parliament, even against the position of the Council.²⁴² These victories encouraged a strategy of increasing Parliament’s powers through legal mobilization. However, as Bieber explains, President Dankert was well aware of the risks of this strategy:

On the one hand, he suggested keeping certain questions from a judicial decision whilst on other issues he encouraged pursuing an active role, even if this implied the risk of an uncertain result. He argued that bringing certain open legal questions with significant political implications to Court with the consequence that the issue were “petrified” by a Court decision, might unnecessarily restrain the scope of action for Parliament.²⁴³ [...] On the other hand, it appeared possible to strengthen the European Parliament’s position with the help

240. *See id.* at I-2072–73. Further, the Council’s consultation procedure did not preserve the Parliament’s prerogative in the regulatory drafting process, and, therefore, the annulment action brought by the Parliament in response must be allowed to proceed

241. *See id.* at I-2073–4.

242. *See* Bieber, *Establishment*, *supra* note 24; *Isoglucose*, *supra* note 85, at 3357–58.

243. *Id.* *See* Joint Declaration by the European Parliament, the Council and the Commission on Various Measures to Improve the Budgetary Procedure, 1982 O.J. (C 194) 1. An example of this was the conflict between Council and Parliament over the classification of budgetary expenditure that was deliberately withheld by both institutions from a Court decision and settled by an inter-institutional agreement of June 30, 1982 between the presidents of the Council, the Commission, and the Parliament. Under the supervision of EP president Dankert, the author of this note negotiated this agreement together with the secretary of the EP budget committee, Guccione. The Commission was represented by its Director General of the Legal Service, Dewost, and the by its Director of budgetary affairs, De Koster.

of the Court if Parliament accepted to become an institutional litigant similar to the other institutions.²⁴⁴

Before 1984, under the Dankert presidency of the EP the legal strategy developed by his cabinet consisted of “accepting the Parliament’s legal responsibility for its acts as long as this implied a parallel entitlement to defend its rights in Court.”²⁴⁵ In 1984, this strategy changed under the Presidency of Pierre Pflimlin who took office in 1984 when the *Bureau* nominated Mr. Pasetti Bombardella as First Jurisconsult. Until then, according to Bieber, the strategy of the EP consisted of accepting its “legal responsibility for its acts as long as this implied a parallel entitlement to defend its rights in Court,” but under President Pflimlin this changed as “the only position to be taken by a defendant in a Court would be to aim for a defeat of the other party. He requested that the Parliaments representatives changed the arguments.”²⁴⁶ This change of legal strategy by the European Parliament Legal Service was identified in the *Les Verts* opinion by Advocate General Federico Mancini.²⁴⁷ The opinion pointed out the inconsistencies in the Parliament’s legal strategy regarding the judicial review of its activity:

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

244. Bieber, *Establishment*, *supra* note 24, at 3; As Bieber explained, the legal strategies envisaged by the Parliament were based on the Courts assertion of a “complete system of legal remedies.” *Id.* A coherent interpretation of the Treaty provisions on cases for failure to act (now article 265 TFEU) and on the infringement procedure (article 263 TFEU), could have transformed the Parliament in a party entitled to bring cases for failure to act before the Court.

245. Bieber, *Establishment*, *supra* note 24, at 3.

246. *Id.*

247. See Case 294/83, *Les Verts v. Parliament*, 1986 E.C.R. 1357, at 1358 (Opinion of Advocate General) (“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 based on 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.”)

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.²⁴⁸

This opinion by Advocate General Mancini criticized the Parliament Legal Service's changed interpretation that aimed to use a double standard to describe an essential balance, and exposed this tactic as a failing legal strategy.

IV. THE INTERNAL ORGANIZATION OF THE LEGAL SERVICE

The creation of the Legal Service of the European Parliament in 1986 by the *Bureau* decision²⁴⁹ was due partially to institutional necessity, but also to a specific opportunity created by the growing number of cases before the ECJ, in which the Parliament became an active intervener.²⁵⁰ Moreover, it gradually became clear that Parliament had to ensure an adequate defense of its role and prerogatives, which the Commission could not always adequately defended. In this context, the Legal Service was not established by accident, as the changing historical reality of the European Communities required the Parliament's authorities to set up a service with lawyers who could offer high professional performances of an appropriate legal quality representing the EP both in staff and institutional cases. Progressively, after the direct elections of the European Parliament (1979), it became clear to the President, the *Bureau*, and some MEPs that professional legal advisers in-house and lawyers were necessary to ensure the institution's defense before the ECJ. Unlike the European

248. *Id.*

249. *Appointment of the late Secretary-General, in accordance with the decision of the Bureau of Jurisconsult*, Notice. No. 4635 (July 9, 1985) (on file with author); Francesco Pasetti Bombardella, *Organisation du Service Juridique*, at 1 (Oct. 27, 1986) (note on file with authors)[hereinafter Bombardella, *Organization of Legal Service*] (concerning the organization of the services of the General Secretariat of the European Parliament and the Decision of the Secretary-General of the European Parliament of 24 January 1986 (which took effect, retroactively, on 1 January 1986) on the officials appointed to the Legal Service.)

250. *See* discussion *supra* Part III.

Commission and the Council, the European Parliament, as an autonomous entity, did not have its own Legal Service. This situation could have created problems for the Parliament as its powers and responsibilities constantly progressed, particularly in legislative matters on which legal advice was increasingly necessary. It must be pointed out that the existing institutional framework advocated the establishment of a Parliament's Legal Service.

At first sight, in a democratic system, as experienced by the Member States seems inconceivable that there could be a discrepancy between the will of the representatives of the governments of the Member States and that of the representatives of the peoples who compose them. However, experience shows us that the very application of the rules of the Treaties can be blocked by a disagreement between the Council (and therefore the Member States) and the European Parliament.²⁵¹ Of course, along with the defense of the institution there is also logically the need to have a body of jurists capable of offering high-level professional performances and completely frank, objective, and independent legal analyses.

In addition, the history of the Legal Service of the Council and the Commission illustrates that an international organization based on respect for the law requires an independent judicial body that can be called upon to resolve genuine disputes. In a note on the establishment of the Legal Service of the European Parliament, dated November 1985, the first Jurisconsult pointed out that

The European Parliament and its bodies are increasingly confronted with the examination and solution of legal problems which concern both the institutional position of our institution and the day-to-day parliamentary work and administrative management issues. Added to this is institutional and administrative litigation, i.e. the

251. See Report of Francesco Pasetti Bombardella, *Le Parlement face au Conseil*, in LE PARLEMENT EUROPÉEN DANS L'ÉVOLUTION INSTITUTIONNELLE (Louis & Waelbroeck eds., 1988); Francesco Pasetti Bombardella, *Il Potere Decisionale e L'Evoluzione Demografica nella Comunità Europea*, AFFARI ESTERI 6-7 (1988) [hereinafter Bombardella, *Il Potere Decisionale*].

representation of Parliament as an applicant, defendant or intervener, in cases before the ECJ.²⁵²

However, it must be pointed out that even before the establishment of the Legal Service, there were lawyers in other administrative units of the European Parliament. In particular, the Directorate-General of parliamentary committees, in the Directorate-General dealing with studies and research and in the Directorate-General responsibility for staff.²⁵³ Regardless, the professional attitude of these lawyers would not have been typical of lawyers from a genuine Legal Service, characterized, as the Court of Justice will state, by the production of frank, objective and comprehensive legal advice.²⁵⁴

Thus, the Legal Service of the European Parliament saw the light of day thanks to institutional circumstances that arose from the internal organization of the administrative services of the EP coinciding with senior officials and politicians of high-level legal assistance. In this sense, we can speak of a happy encounter between a need that became evident, thanks to the increasingly important role assumed by the European Parliament. The opportunity was provoked by a series of administrative events that prompted the creation of the post of Jurisconsult and the establishment of an autonomous service. The autonomy of the Legal Service and the quality of its legal assistance were regarded, at least in principle, as being inseparable elements.²⁵⁵ According to the European Parliament, the consistent quality of this legal assistance could only be provided by lawyers who were already officials in the Institution.²⁵⁶ These lawyers in the EP Secretariat were assigned to a specific service, and their work was informed by their respect for the internal rules of the administration of the European Communities, and professional ethics.²⁵⁷ With the passage of time, these elements have become essential to ensuring

252. Pasetti Bombardella, Note A l'Attention, *supra* note 37.

253. See Pennera, *Contribution*, *supra* note 10, at 6-8.

254. See Joined Cases C-39/05 & C-52/05, Kingdom of Sweden, Maurizio Turco v. Council of the Eur. Union, ECLI:EU:C:2008:374, ¶ 42 9 (July 1, 2008).

255. See Francesco Pasetti Bombardella, Note sur la constitution d'un service juridique au Parlement européen (Nov. 1985) (note on file with authors).

256. See *id.* at 3.

257. See *id.*; see also Francesco Pasetti Bombardella, Compte-rendu de la réunion de service du 30 mars 1990 (May 3, 1990) (note on file with authors) (discussing the "competences" and duties of the members of the Legal Service).

the quality of legal assistance that the Legal Service provides to the Institution.

*A. The Founding Decision of the Legal Service and its First
Jurisconsult*

The Parliament's decision to establish its own Legal Service happened during the final negotiations of the Single European Act (1986), when it became clear that the Parliament could play a more important role through institutional factors and legal mobilization before the ECJ.²⁵⁸ As matter of fact, before 1986, there was only a limited number of institutional cases in which the Parliament was involved.²⁵⁹ However, during the mid-1980s the balance of power between the Communities' institutions and their institutional relations began to change. When the Bureau under the presidency of Pflimlin took the decision to establish the Legal Service and appoint Mr. Francesco Pasetti Bombardella, Director General, Jurisconsult and *Avocat Principal* of the Parliament, the plan of creating such service had been conceived well before, but it finally took effect on January 1, 1986.²⁶⁰

At the time, Pasetti Bombardella was Director General of the General Division II (managing intra-parliamentary committees and delegations) and given the novelty from the point of view of Parliament's internal organization. It was undoubtedly necessary for the first Jurisconsult to be a lawyer and proactive official with excellent knowledge of the political balances that existed within the institution.²⁶¹ Mr. Pasetti Bombardella certainly demonstrated that he possessed these qualities and was sensitive to the increasing role among the other Community institutions that the European Parliament should play in the years to come. The choice of Pasetti Bombardella was also justified by his role as an agent of the European Parliament in some previous institutional cases before the Court of Justice.²⁶² Together with the Jurisconsult, other lawyers were seconded from other Directorates-Generals to

258. See EU PARLIAMENT IN INSTITUTIONAL EVOLUTION, *supra* note 7, at 72-73.

259. See *supra* Part III.

260. See Pennera, *Contribution*, *supra* note 10, at 6.

261. See Deschamps, *supra* note 11, at 72.

262. See Isoglucose, *supra* note 85.

establish what we might call the first nucleus of official legal advisers to the European Parliament.²⁶³ The areas of activity of these lawyers ranged from matters relating to the staff of the European Parliament, to those relating to the rights, immunities and privileges of MEPs, to matters relating to contracts concluded by Parliament and to legal studies carried out by the responsible services of the Institution.²⁶⁴ The existence of different legal competences within the European Parliament made it possible to create the new Legal Service staffed with lawyers who already worked in the institution and therefore understood its functioning, the internal procedures, and its administrative culture within the hierarchy of the Parliament's structure.²⁶⁵

The creation of the Legal Service was accelerated by the ambition of Pasetti Bombardella. Probably his appointment was a "consolation prize" for someone who was trained as a lawyer but mostly had political charisma and diplomatic skills developed over many years within the EP.²⁶⁶ During his second run to become the Secretary-General of the EP—first in 1979 against Hans-Joachim Opitz and later in 1986 against Enrico Vinci—Mr. Pasetti Bombardella faced a formidable political opponent from his home country.²⁶⁷ As a result of his second campaign for Secretary-General, he was offered the position of First Jurisconsult of the European parliament in 1986, a role that had no clear vision nor institutional weight at that time.

Pasetti Bombardella was born in Venice in 1924 and when he was nineteen years old, he joined the Italian Resistance with his older brother Giulio against the fascist regime until April 1945. He became a lawyer after studying at the University of Padua and writing a thesis on international law and exercised the legal

263. See Pennera, *Contribution*, *supra* note 10, at 7.

264. See Pasetti Bombardella, Note A l'Attention, *supra* note 37; Francesco Pasetti Bombardella, Report of the Legal Service to the attention of the Secretary-General of the European Parliament (July 29, 1987) (on file with authors) [hereinafter Bombardella, Report of the Legal Service] (concerning the estimation of the posts for the Legal Service).

265. See Deschamps, *supra* note 11, at 73 (explaining the direct accountability of the Jurisconsult to the EP President).

266. See Pasetti Bombardella's Resume from 1992 (on file with authors) (showing how since his degree in Bruges in 1953 he occupied high level political and civil servant roles initially within the Common Assembly of the ECSC from 1954 and later in the 1970s in the European Parliament).

267. See Deschamps, *supra* note 11, at 72.

profession in Venice. Soon after he began travelling in the United Kingdom to improve his language skills, he then enrolled to the newly created College of Europe in Bruges where he obtained his graduate degree.²⁶⁸ Pasetti Bombardella jumped at the opportunity to obtain a degree in international and comparative law from one of the most prestigious institutions in Belgium preparing the future civil servants of the Communities. In 1954, Pasetti Bombardella joined the secretariat of the Common Assembly of the Steel and Coal Community for the Commissions and the research service.²⁶⁹ He not only had the legal and language skills required for a European career inside the Parliament speaking fluently French, German and English but had also been a member of the cabinet of Alcide De Gasperi, the Italian prime minister who was one of the founding fathers of the Coal and Steel Community Treaty of 1951.²⁷⁰ While working in Luxembourg, Pasetti Bombardella maintained his ties with the Union of Catholic Jurists in Italy and like his brother Giulio who eventually joined the Legal Service of the European Commission they were close to Judge Alberto Trabucchi who had been also their civil law professor back in Padua.²⁷¹

As an ambitious Christian Democratic politician, Pasetti Bombardella was an advocate for the creation of the Legal Service that would enhance the role of the Parliament²⁷² and strengthen the overall democratization of the European Communities.²⁷³ However, becoming the first Jurisconsult of the Parliament was not the first career goal of Mr. Pasetti Bombardella. In fact, after trying for the second time to become Secretary General of the EP,²⁷⁴

268. See Pasetti Bombardella, *Curriculum Vitae*, *supra* note 68, at 1.

269. See *id.*

270. See Treaty Establishing the European Coal and Steel Community, April 18, 1951, 261 U.N.T.S. 140; see also *Alcide De Gasperi: An Inspired Mediator for Democracy and Freedom in Europe*, EUR. UNION, https://european-union.europa.eu/principles-countries-history/history-eu/eu-pioneers/alcide-de-gasperi_en [https://perma.cc/F2YR-EAU6] (last visited Mar. 18, 2022).

271. See Vera Fritz, *Judges and avocats generaux de la Court de Justice de l' union europeenne 1952-1972* 326 (2018).

272. See Pasetti Bombardella, *STRUCTURE AND FUNCTION OF LEGAL SERVICE*, *supra* note 10.

273. See Pasetti Bombardella, *Le Parlement face au Conseil*, *supra* note 251, at 18.

274. See *Biography of The Secretary-General*, EUR. PARLIAMENT, <https://www.europarl.europa.eu/the-secretary-general/en/biography-andresponsibilities>

Pasetti Bombardella finally became the first Jurisconsult of the Parliament until his retirement in 1989 and replaced by the Portuguese Jorge Campinos, who served until 1993.²⁷⁵

The most prestigious position went to the Italian Enrico Vinci who was nominated at unanimity by the Bureau and replaced Hans Joachim Optiz (1979-1986) as Secretary General of the Parliament.²⁷⁶ Vinci was the liberal candidate²⁷⁷ close to the Italian Foreign affairs Minister Gaetano Martino (1955)²⁷⁸ who also became the third President of the European Parliament (1962-1964). Vinci was a lawyer and already chief of staff of the first French President Simone Veil of the directly elected EP and then Pierre Pflimlin, the French Christian Democrat who had replaced the Dutch Socialist Piet Dankert.²⁷⁹ Vinci's long term appointment as Secretary General from 1986 until 1997 made him one of the most powerful "*éminence grise*" of the EP committed to its empowerment from the Single European Act until the Treaty of Maastricht (1992)²⁸⁰ and a true promoter of federal ambitions such as *esprit européen*.²⁸¹ Francesco Pasetti Bombardella was the Director General of the commissions and the inter-parliamentary delegations and had been a member of the Alcide De Gasperi cabinet when he was President of the Assembly of the European Steel and

[<https://perma.cc/7CRA-MGME>] (last visited Mar. 3, 2022). The Secretary-General is the European Parliament's most senior official. He heads the Parliament's administration. The Secretary-General is appointed by Parliament's Bureau, a political body consisting of the President, the 14 Vice-Presidents and the five Quaestors, under Rule 207 of Parliament's Rules of Procedure.

275. See Pennera, *Contribution*, *supra* note 10, at 8-9.

276. See Deschamps, *supra* note 11, at 72.

277. See Giulia Iapichino, *Un'idea d'Europa: Spunti e Riflessioni sul contributo di Enrico Vinci*, 7 *HUMANS* 81, 90-91 (2018).

278. See *id.* at 81 ("[F]rom the Archives du Parlement Européen, Luxembourg, Vinci "worked in the office of Mr. Gaetano Martino, a liberal politician from Messina, in the Ministry of National Education and the Ministry of Foreign Affairs, where he was involved in preparatory work for the Messina conference and Treaties of Rome.").

279. See Deschamps, *supra* note 11, at 72.

280. See Radio Télévision Belge Francophone (RTBF), *Interview of Enrico Vinci, former General Secretary of the European Parliament* (1997), https://www.euscreen.eu/item.html?id=EUS_9D3C03E3B9F007A724908E3636E3F497 [<https://perma.cc/46KD-EAHN>] (explaining the role of the EP Secretary General in administering a bureaucracy of about 4,000 civil servants and also giving advice to the President of the EP and to the Bureau of the EP).

281. See Jacob Kornbeck, *Entretien avec Enrico Vinci*, *EUROPA PLURILINGUE : REVUE DE L'ASSOCIATION POUR LA RAYONNEMENT DES LANGUES EUROPEENNES* [ARLE], 168 (1997).

Coal community in 1954 and then chief of staff of EP President Emilio Colombo (1977-79). Pasetti Bombardella had the support of the Italo-German Christian Democratic and was nominated by the *Bureau* the first *Juriconsulte et Avocat Principal du Parliament Européen*, a function that was independent and directly connected to the authority of President Pflimlin.²⁸²

In 1986, Pasetti Bombardella took office as the first Jurisconsult in what appeared to be a relatively weak administrative unit with no hierarchical structure,²⁸³ but he possessed political connections and a reputation as litigator.²⁸⁴ Pasetti Bombardella was able to leverage some of his key legal victories before the ECJ and deploy his political skills very effectively in creating what was the embryonic Legal Service of the EP.²⁸⁵

During his mandate, Pasetti Bombardella enlisted a small team of lawyers with specific tasks to professionalize and create greater autonomy in the Legal Service. He knew how to surround himself with extremely competent legal experts.²⁸⁶ In short, the diplomatic and political ability of Pasetti Bombardella enabled him and his team to gain continuous visibility before and after becoming the Parliament's First Jurisconsult which led him to litigate some fundamental cases that have shaped the jurisprudence of the ECJ— from *Isoglucose* to *Chernobyl*—and that have become personal achievements of his life's work.²⁸⁷

Pasetti Bombardella also positioned the Parliament as a diplomatic actor in conversation with Member States' Parliaments, the United States, and the Soviet Union.²⁸⁸ In Washington, Pasetti Bombardella was introduced at Brookings to members of Congress

282. See Deschamps, *supra* note 11, at 73.

283. See Pennera, *Contribution*, *supra* note 10, at 7-8.

284. See Bieber, *Establishment*, *supra* note 24, at 3.

285. See *id.*

286. See Pennera, *Contribution*, *supra* note 11, at 7 (It was this embryonic Legal Service with eight lawyers including Roland Bieber, Johann Schoo and Yannis Pantalis from the DG commission and division of legal and institutional affairs together. With other lawyers from DG Human Resources (personnel) such as Manfred Peter, Peder Kyst, Costas Stratigakis, Didier Petersheim, and Jan De Wachter. These individuals constituted the first nucleus of the Legal Service.)

287. See Pasetti Bombardella, *Curriculum Vitae*, *supra* note 68, at 2.

288. See Francesco Pasetti Bombardella, Note for the Attention of the President (January 19, 1989) (on file with authors).

where he noted that the Committee on the Judiciary of the House of Representative had a staff of twenty five lawyers at his disposal.²⁸⁹ These reports demonstrate the visionary outlook of Pasetti Bombardella in laying the foundation of the European Parliament Liaison Office created in 2010 foster ties between the Parliament and the U.S. Congress, and in contributing to transatlantic legislative and political cooperation,²⁹⁰ and his political ability to explain how a well-staffed Legal Service functioned in the US Congress.

B. The First Structure and Organization

The original structure of the European Parliament Legal Service naturally reflected the limited scope of its action at the outset of its experience (during its first year, 1986) and the need to adapt its structure taking into account the relatively small number of lawyers who became members of this new body in the General Secretariat's administration. A note of the Jurisconsult Pasetti Bombardella of October 27, 1986, which was also received by the Secretary-General of the European Parliament, presented the internal organization of the Legal Service and the allocation of the responsibilities to the lawyers of the Service.²⁹¹ This note seems to manifest a proactive attitude on the part of Jurisconsult. The starting point of that note was the consideration that the Legal Service had to cope with the different tasks assigned to it by the Bureau of the European Parliament when the Service was established.²⁹²

In the same note, Pasetti Bombardella explained in detail the organization and structure of the Legal Service at the time of its foundation, which included a small number of lawyers and few secretaries, reflecting its limited number of specific responsibilities.²⁹³ The Jurisconsult noted that it was necessary to create a more homogeneous organization of the Legal Service

289. *See id.* at 2.

290. *See Liaison Office in Washington DC*, EUROPEAN PARLIAMENT (last accessed Mar. 3, 2022), <https://www.europarl.europa.eu/unitedstates/en/liaison-office-in-washington-dc> [https://perma.cc/C95T-8EYC].

291. *See* Pasetti Bombardella, *Organization of Legal Service*, *supra* note 249 at 1.

292. *Id.* at 1.

293. *Id.*

based on the experience gained during the first year of activity.²⁹⁴ He stated that some specialization for the Legal Service was desirable and inevitable, while keeping a spirit of collaboration and close to all agents in carrying out their duties.²⁹⁵ Consequently, the organization of the Legal Service had to remain sufficiently flexible so that each lawyer could make their professional contribution in every area within their competence, irrespective of the specific tasks assigned to them.²⁹⁶

The note also reveals that the first task of the Legal Service was to assist parliamentary committees, or more correctly “pay attention” to the work of those committees, determining the division of the workload between lawyers, in anticipation of a more adequate division of the workload.²⁹⁷ This reveals that it was already clear at the time that a fair division of the workload was a prerequisite for doing the job effectively. Finally, in this note, emerges a rule that will distinguish the work of the Legal Service from other departments, namely the control of the Jurisconsult on the work of his team of lawyers with a view to ensuring the necessary coordination and consistency in the taking of their legal positions.²⁹⁸

The Legal Service was organized into three units: (i) legal studies, (ii) Members’ rights, staff rights and administrative matters, (iii) human rights. This first work-sharing in the Legal Service by subject clearly showed that, over and above the need to follow parliamentary committees, the work of the Legal Service was characterized by two particular elements: dealing with issues relating to the treatment of Member of the European Parliament and the Institution’s staff and carrying out specific studies in various areas. This reflected not only the needs of the European Parliament, but also the professional background of most of the European lawyers of the Legal Service. One element suited the other.²⁹⁹

294. *Id.* at 1-2.

295. *Id.*

296. *See* Deschamps, *supra* note 11, at 74 (addressing three functions in advising the institution, participate inside and outside the institutions on legal issues and finally representing the EP before the court).

297. Pasetti Bombardella, *Organization of Legal Service*, *supra* note 246, at 2-3.

298. *See id.*

299. *See id.* at 2.

In order for the Legal Service to monitor the legal issues that could be raised in the various parliamentary committees and to be able to answer any questions for legal opinions quickly and in full knowledge of the political context, the division of competences by parliamentary committee was formalized.³⁰⁰ The presence of lawyers at committee meetings was limited exclusively to points of direct concern to the work of the Legal Service.³⁰¹

Finally, the Legal Service was called upon to advise the President of the European Parliament, the Presidium of Parliament, the College of Quaestors and parliamentary committees.³⁰² In this context, the Legal Service appeared primarily to draft research notes and studies either on its own initiative or at the request of the recipients. In addition, the Legal Service provided legal assistance to the General Secretariat of the Institution.³⁰³

The original definitions of tasks of the Legal Service in administrative matters were clear and precise because this was the area in which certain lawyers in the European Parliament had the most experience.³⁰⁴ This meant that the Legal Service handled all files relating to claims or requests for assistance from officials or other agents. In addition, the Legal Service legally monitored all cases requiring legal assistance, including the conclusion of the Institution's leases and proposals for contracts negotiated under the authority of the various units of the Institution. Parliament's Legal Service provided legal defense to the Institution in litigation cases before the ECJ.³⁰⁵

Even if the establishment of the Parliament's Legal Service was to provide legal assistance and defense of the Institution before the judiciary it was decided that, in addition to market integration topics, it must also address human rights issues. This latter competence seemed to imply that the Legal Service was also in charge of human rights research and studies. With regard to the protection of human rights, the Legal Service managed hundreds

300. *See id.* at 3.

301. *See id.* at 4.

302. *See* Bombardella, Report of the Legal Service, *supra* note 264, at 2.

303. *See id.* at 2-3.

304. *See id.*

305. *See id.* at 3.

of individual cases monitored by the European Parliament and established the necessary contacts within the Institution, with other European Institutions and with national bodies.³⁰⁶

At the beginning of its activity, the Legal Service did not have all the necessary instruments to carry out its tasks properly. Not only was it necessary to find other lawyers and assistants, but also to obtain the technical instruments in sufficient numbers (included, where possible, a small legal library).³⁰⁷ As the Note indicated,

[. . .] the actions brought against Parliament before the Court of Justice are the result of initiatives taken either by third parties totally foreign to the Institution or by officials or agents exercising a statutory prerogative.³⁰⁸

This statement had a significant impact on the workload of the Legal Service.³⁰⁹ The Note underlined the fact that the progressive increase in the activity of the European Parliament, as well as the issues that could arise from the interpretation and application of the rules concerning MEPs and officials, could also lead to an increase in litigation before the ECJ. By expanding its competence on human rights issues and its ability to intervene before the Court, the Legal Service was seeking opportunities to prove its relevance in protecting the institutional and democratic role of the Parliament.

C. An Evaluation of the 'First' Legal Service

The existence of a parliamentary committee on legal affairs (“the JURI Committee”) in the European Parliament indicated to some that the creation of a full-fledge Legal Service in 1986 was not necessary.³¹⁰ This belief constituted one of the most important

306. *See id.* at 4.

307. *See* European Parliament, Rapport A L'Attention De Monsieur Le Secretaire General, 2 (July 29, 1987) (note on file with authors).

308. *Id.* at 7-8.

309. By the end of the first year the Legal Service had dealt with at least twenty administrative cases and a similar amount of institutional ones and about fifty civil service disputes. *See* European Parliament, Rapport A L'Attention De Monsieur Le Secretaire General, 2 (July 29, 1987) (note on file with authors).

310. *See* Interview with Saverio Baviera, former Head of the Secretariat of the JURI Committee (video teleconference) April 16, 2021.

challenges for the Legal Service, which was to make its interlocutors understand that its jurists ought to distinguish themselves for their independence and their undisputed skills that they inevitably shared with other lawyers of the Institution.³¹¹

From its establishment and during the first years of life of the Legal Service of the Parliament was rather different from the current more established Legal Service that underwent several important legal transformations.³¹² Despite the obvious continuity with today's Legal Service, in its initial period, the Legal Service tried to define precisely its functions to affirm its role and defend the still precarious institutional competences of the Parliament *vis à vis* other European institutions.³¹³ The increasingly relevant role of the EP in the Communities' decision-making process was the result of the Parliament's first legal battles focused on defending its proper consultation by the Council and on finding its *locus standi* before the Court of Justice.³¹⁴

One of the main features of this early period of the Legal Service was the attempt to achieve a certain specialization beyond the important representation of the Parliament before the ECJ.³¹⁵ However, human resources were limited, and the main activity of the Service was, above all the assistance provided to the institution in the field of administrative complaints as well as judicial appeals of the Parliament's staff.³¹⁶ In this respect, the activity of legal advice of an institutional nature proved to be marginal in the first years of the Service's life.

311. See Gregorio Garzón Clariana, Building a Role for the Jurisconsult of the European Parliament and the Legal Service, Presentation to the Max Planck Institute for European Legal History Annual Conference (June 2019) [hereinafter Clariana, Building a Role for the Jurisconsult]. Moreover, the Court of Justice has recalled in various judgments of the duty of the Institutions to base their legislative and administrative activities on an independent legal service which gives frank, objective, and comprehensive advice. See, e.g., Judgment of the Court of Justice (Grand Chamber) of July 1, 2008, in Joined Cases C-39/05 & C-52/05, Kingdom of Sweden, Maurizio Turco v. Council of the Eur. Union, ECLI:EU:C:2008:374, ¶ 42 9 (July 1, 2008).

312. See Garzón Clariana, Building a Role for the Jurisconsult, *supra* note 311.

313. See Deschamps, *supra* note 11, at 74.

314. See *Isoglucose* judgement and the related litigation *supra* Part II of this article.

315. See *Lord Bruce of Donington* judgement and the related litigation *supra* Part II of this article.

316. See *Lord Reed* judgement and the related litigation *supra* Part II of this article.

This first Legal Service managed to build, slowly but surely, its reputation and its authority by virtue of factual circumstances beyond its control. These included both the charismatic and diplomatic skills of Pasetti Bombardella as first Jurisconsult as well as the strategy elaborated by his team of lawyers expressing legally valid, logical, and coherent positions, thus subtracted from external influences. Moreover, the small number of lawyers who were members of the Service necessarily required a certain distance from the political and administrative bodies of the institution, which inevitably entailed more autonomy and authority.³¹⁷ From the initial official documents mentioned above, it emerges that resources available to the Legal Service was disproportionately limited compared to the objectives declared by the first Jurisconsult. This asymmetry between resources and objectives was only overcome with time and thanks to the acquisition of greater legal sensitivity that only made its way into the European Parliament after the appointment of the third Jurisconsult Gregorio Garzón Clariana in 1994.³¹⁸

Based on the archival documents at our disposal, it was clear that at the beginning of its activity, the EP Legal Service seemed far removed from any ideological influence³¹⁹ and mostly determined on affirming and defending the prerogatives of the Parliament as the sole representative of the citizens of the Member States in the European decision-making process.³²⁰ This highly inspired mission to defend democracy through legal means of a small group of lawyers in the Legal Service is not surprising given the abuses in the European Communities decisions-making process sometimes

317. See *Lord Reed* judgement and the related litigation *supra* Part II of this article.

318. See Garzón Clariana, Building a Role for the Jurisconsult, *supra* note 311.

319. See EUR. PARLIAMENT, *supra* note 8, at 285. Notice the striking contrast from the assessments of today's Legal Service that emerges from Päivi Leino-Sandberg's insightful account, stating that "Overall, the EP Legal Service's main role is to enable the realization of the political ideas that the Parliament proceeds not to oppose everything or question them, Parliamentarians do not wish to be inhibited but the limits of the law."

320. See Consolidated version of the Treaty on European Union - TITLE III: PROVISIONS ON THE INSTITUTIONS – Art. 14, Official Journal 115, Sept. 5, 2008, P. 0022 – 0023 (establishing that "The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be progressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.").

committed by the Council, which has shown an attitude to reduce the Parliament into a chamber only intended to ratify decisions taken by other institutions.³²¹ It is hard to deny that this approach has sometimes characterized the attitude of Member States and of the Council toward the EP, even in contradiction to the letter and spirit of the Treaties. Of course, this finding justifies even more the need for a professional and independent Legal Service in the EP.

V. CONCLUSION

It cannot be denied that for an institution like the European Parliament, the creation of its own Legal Service, independent and capable of providing the appropriate assistance to the institution itself, was an important and significant achievement. In the dialectic that characterizes the life of the European institutions involved in the decision-making process, the presence of lawyers who can provide all the necessary legal analyses is certainly vital in better guiding the Parliament's stances. Especially when it is recalled that the Communities and the Union are founded on respect for the rule of law.

The difficulties that the Legal Service of the Parliament encountered in the first years of its activity, from 1986 to the beginning of the 1990s, were devoted to defending its autonomy and expanding its competence in related areas including market integration, human rights, and constitutional questions, while at the same time, finding a way to manifest its growing usefulness inside the institution.³²² This struggle to assert its relevance inside the Parliament and with respect to the more established Legal Service of the Commission and the Council was not an easy task for the lawyers inside the Service. This task looked more like a balancing act led by an incredibly ambitious Jurisconsult who, in only four years, led a skillful and creative team of jurists who undertook the mission of democratizing the European Communities by enhancing the role of its most representative and democratic institution.

321. See Bieber, *Unfolding the Interaction*, *supra* note 73, at 7.

322. See John Morijn, *Formation and Funding of European Parliament Political Groups, Political Parties and Political Foundations v. EU-Level Political Rights* (In A. Pahladsingh & R. Grimbergen eds., 2019).

In an institution such as the European Parliament, in which MEPs are organized in European-wide political parties,³²³ and therefore considered as being ‘political’ by definition, it was always a struggle to maintain the autonomy of its administrative entities to reflect the general interest of the Parliament as a representative of the peoples of Europe.³²⁴ In a Union founded on democratic values, the existence of an autonomous Legal Service attentive to the Parliament’s democratic prerogatives was from its incept an indispensable condition for guaranteeing the assessment of the legality of European decision making procedures and processes. Similarly, it was important to ensure the representation of the EP before the ECJ to defend its rights and prerogatives, including and especially in the decision-making process and in the legislative procedures of the Communities and of the European Union. In defending the prerogatives of the Parliament, its Legal Service could ensure the defense of the institution internally and externally through its standing before the Court.³²⁵ This consideration can serve to prove how the defense of the principle of democracy can and must be achieved not through the usual political instruments and practices, but also through law. By securing the full legal status of the European Parliament which entailed the Legal Service’s ability to provide an independent interpretation of Community and Union’s law, the ECJ highlighted the democratic role of the Parliament in providing a check and balance on the activities of the Commission and the Council. Ultimately, the establishment of the Legal Service of the European Parliament appeared to be necessary at a precise historical moment when the Parliament began to play a more important role in the Community’s decision-making process. On some occasions, the Legal Service helped to lay the groundwork for an effective safeguarding of the role assumed by the Parliament, which, given its democratic nature within the unique architecture of the

323. See THE CHARTER AND THE COURT OF JUSTICE OF THE EUROPEAN UNION: NOTABLE CASES FROM 2016–2018, 257–72 (Ramona Grimbergen & Aniel Pahladsignh eds., 2019).

324. See Kalypto Nicolaidis, *We the peoples of Europe*, 83 FOREIGN AFFS. 97 (Nov. 2004), <http://kalyptonicolaidis.com/wpcontent/uploads/2015/02/Wethepeoplesofeurope1.pdf> [https://perma.cc/ZTF9-ME7R].

325. See Pasetti Bombardella, STRUCTURE AND FUNCTION OF LEGAL SERVICE, *supra* note 10, at 7 (explaining comparatively in other Member States the reasons for the establishment of a Legal Service within thv.eir national parliaments).

European Communities, required to be defended by appropriate and consequential legal means.