OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 22 FEBRUARY 1984 [1]

Mr President,
Members of the Court,

1. One year after the Court's judgment on the places of work of the European Parliament, given on 10 February 1983 (Case 230/81, *Luxembourg* v *Parliament*, [1983] ECR 255), the Court is once again called upon to rule on that question. As on the previous occasion, it is the Grand Duchy of Luxembourg which asks the Court to do so. That State has instituted proceedings against a measure adopted by the Parliament which confirms the wish of that institution to change its staff's place of work so as to improve the functioning of the institution. In this Opinion I shall evaluate that measure from a legal point of view. However, I am compelled to point out that it has a comprehensible and quite serious political basis; the persistent inertia of the governments in carrying out their obligation to determine the seat of the Parliament and the growing organizational difficulties that this unwillingness to act causes.

On 9 March 1983, Mr von Hassel, a Member of the European Parliament, submitted a motion for a resolution on the consequences to be drawn from a measure — better known as the "Zagari Report" — which the Parliament had adopted on 7 July 1981. Dealing with well known facts, the motion begins by stating that all part-sessions are held in Strasbourg, whereas the meetings of the committees and political groups are normally held in Brussels (see letters D and E). On the basis of those premises, it then decides "to proceed to divide up staff of the Secretariat ... between the places of work", basing permanently in Strasbourg the "services that are mainly concerned with the functioning of part sessions" and basing in Brussels those "that are mainly concerned with the functioning of the committees". It then instructs "the Bureau to institute ... structural changes that will permit greater flexibility in the work rate" and "instructs the Secretary General to prepare without delay" the reorganization measures required by the resolution (Document PE 83.731).

The von Hassel motion was submitted under the special procedure provided for in Rule 49 of the Rules of Procedure adopted by the Parliament in 1981, which provides for the entry of the motion in a special register for a certain period of time (two months), during which any member may sign it. In the present case, the motion obtained 238 signatures, which represents more than half the Members of the Parliament. The motion was then forwarded to the President of the Parliament. On 10 March 1983, he stated that the motion would be posted on the notice boards for a period of at least 30 days before being sent to the relevant bodies. The latter, namely the Bureau and the Secretary General, were then to take steps to give effect to it with specific reference

1 — Translated from the Italian.

to the aforementioned judgment of 10 February 1983.

The motion was thus posted on the notice boards and obtained four further signatures, while one Member who had signed withdrew his signature. However, because reservations were expressed about the admissibility of the motion under the procedure which had been followed, the President, by letters of 21 and 23 March 1983, asked the Committee on the Rules of Procedure and Petitions to give an opinion as to the meaning of Rule 49. On the following 20 May, the President of the plenary sitting informed the Assembly that the motion had been forwarded to the Bureau and to the Secretary General while awaiting the opinion of the committee. On 2 June 1983, the latter informed the President that, in its opinion, the procedure under Rule 49 was not applicable to the motion in question. At the sitting on 9 June, however, the Parliament approved a request whose object was to obtain a new opinion from the committee on the meaning of Rule 49.

Finally, at the plenary sitting on 10 October 1983, the President informed the Assembly that the reservations concerning the admissibility of Mr von Hassels's resolution no longer held and confirmed that the relevant bodies would consider the action to be taken on the text with specific reference to the judgment of 10 February 1983 and to the provisions of the Staff Regulations. Up to the present moment, however, those bodies have taken no measures to put it into effect.

By an application of 10 June 1983, the Grand Duchy of Luxembourg instituted proceedings before the Court against the Parliament, seeking a declaration that the contested resolution is null and void for lack of competence.

2. The Luxembourg Government's argument is straightforward. There can be no doubt, it contends, that the Parliament, by virtue of its powers of internal organization, can take the measures necessary to ensure the efficiency of its own work. However, it is no less certain, as the Court itself confirmed in its judgment of 10 February 1983, that such measures must respect the powers of the States, namely the power to determine the seat of the institutions and, until that has been done, the power to designate the provisional places of work. The contested resolution, however, excludes Luxembourg from the list of those places (which is reduced to Brussels and Strasbourg alone: see in particular points D and E). Furthermore, by providing for the division of the staff of the Secretariat between Strasbourg and Brussels (see point 1 (b)), the resolution also implies that Luxembourg will cease to be the seat of the Secretariat.

The defendant institution contends that the application should be dismissed and puts forward two arguments in support of that contention. The contested resolution, it claims first of all, is not a "definitive" act and therefore cannot be challenged since certain Members of the Parliament have contested the procedure used to introduce it and the Committee on the Rules of Procedure, to which the question has been referred, has not expressed a conclusive opinion on the subject. Even if it is considered definitive, it adds, the fact remains that the resolution is not in the nature of a decision. It merely "invites the relevant bodies" (that is to say, the Secretary General and the Bureau) to take practical measures concerning the organization of the work of the Parliament and the place of work of its staff.

3. The first argument seems to me to be fairly weak. Not that its premise is incorrect: in the Assembly reservations were indeed expressed concerning the method used to submit the resolution, and the relevant committee has twice been asked to give its opinion as to the correctness of the method followed. I do not consider, however, that such events affect the definitive character of the act or, therefore, its validity. As the applicant government has rightly pointed out, the opinion of the committee is not limited to the case in point, but is general and abstract. As a rule, therefore, it can in no way affect the proceedings in the context of which it was requested.

To that first remark, which is in itself sufficient to refute the defendant's arguments, must be added a second which I consider to be decisive. The judicial review of acts of the Parliament — which the Court held to be legitimate in its judgment of 10 February 1983 — does not extend, or at least does not normally extend, to the procedures under which such acts come into existence. The lawfulness of those procedures is guaranteed by the institution's own internal organs and in particular by its President; consequently, any defects they may have cannot invalidate the act, which is the final step in the procedure and expresses the will of the institution. It would thus be a useless exercise for me to undertake a minute examination of the method followed by the Parliament in the adoption of the resolution of 20 May 1983. It is sufficient to say that the irregularity complained of, if it actually exists, is not such as to invalidate the resolution.

4. The argument that the contested act is not in the nature of a decision is quite a different matter. In my Opinion in Case 230/81, delivered on 7 December 1982, I expressed the view that the resolution known as the Zagari Report contained a genuine decision to transfer officials from Luxembourg to Strasbourg and, above all, to Brussels. I concluded that, although the resolution instructed the relevant bodies of the Parliament to determine the measures necessary for that purpose, that task was no more than the "implementation" of a measure already capable of producing external legal effects (point 23). The Court did not adopt that view and deduced from its refusal that the act could not be challenged. The measure, it pointed out, did not embody what could properly be described as a "decision on specific measures or in particular upon a transfer of staff". The decision was left "for subsequent consideration" and — and I would emphasize this important point — its adoption would be possible only after the rights and obligations of the governments with regard to the determination of the seats of the institutions, on the one hand, and the power of the Parliament to determine its own internal organization, on the other, had been taken into account (Point 57).

In the present dispute, which covers the same ground as Case 230/81, I do not propose to return to that question, that is to say, consider once again what conditions an act of the Parliament must fulfil if it is to be considered a decision. It is certain that, if it were so considered, the resolution of 20 May 1983 would be impugnable for lack of powers because the Parliament substituted itself for the governments in altering the seat of the Secretariat. In that sense, the contested text is perfectly explicit and no interpre-

tative device can hide its intentions. It is sufficient to recall that the resolution speaks unequivocally of "dividing up" staff between Strasbourg and Brussels. Neither should recital F, in which it is stated that Luxembourg is "dedicated" to remaining the seat of only the Court of Justice and the European Investment Bank, be underestimated. It is true that such statements are, as such, nothing more than a political opinion or expression of political will, but how can it be denied that the wish to withdraw all the officials of the Secretariat from Luxembourg is not clearly expressed in it?

I repeat, however, that I consider the problem solved. Along with Lord Denning, I think that, "like the centurion of the Gospel, I also am a man set under authority". That authority is the unequivocal ruling which the Court, in its wisdom, has given on this point. I will therefore adopt it as the basis for my examination of the second argument put forward by the defendant.

5. That examination calls first of all for an attentive reading of the contested text, which is divided into a preamble, an operative part and a final part dealing with the specific measures to be taken in implementation of the operative part. The preamble, to which I refer principally for the light it throws on the other two parts, begins by referring to the Zagari Report of 7 July 1981 (but not, I regret to say, to the judgment in which the Court reviewed that report and in substance recognized its legality). The preamble then makes three assertions:

(a) the Parliament "is entitled to take, as regards the organization of its work, all necessary decisions that do not require the participation or approval of the Council";

(b) in implementation of the decisions of 7 July 1981, all part-sessions are held in Strasbourg, an official place of work of the European Parliament", while "the meetings of the committees and political groups are normally held in Brussels"; and

(c) Luxembourg is dedicated to remaining the seat of the judicial and financial institutions".

The operative part decides: (a) "to proceed to divide up staff of the Secretariat ... between the places of work" (that means, as the preamble indicates, solely between Strasbourg and Brussels); (b) "to take account of this division of staff when recruiting new staff"; (c) to "take account", evidently in the division between the abovementioned cities of staff already in the service of the Parliament, "of the legitimate interests of staff by applying as broadly as possible the principle of voluntary transfer and by fully involving staff representatives in working out the measures to be taken in implementation of this resolution".

Finally, in the third part of the resolution, the Bureau is instructed "to institute within the administration structural changes that will permit greater flexibility in the work rate" (point 2) and the Secretary General is instructed "to prepare without delay the reorganization measures required by this resolution" (point 3).

I have cited virtually the entire text of the resolution because it is primarily on the basis of that text that the Court must decide whether the act is or is not in the nature of a decision. I would say immediately that — if the definition of

decision given by the Court in its judgment of the Court in its judgment of 10 February 1983 is applied — the contested resolution seems to have no "external" legal effects, that is to say, efects beyond the confines of the institution which affect the legal rights of other persons. Support for that conclusion comes from two sources.

6. The first of these is the final part of the resolution. It is true that the resolution expresses a wish to divide up the officials between the capital of Belgium and the regional capital of Alsace; however, it then (at point 2) instructs the Bureau to institute structural changes within the administration. In order for the resolution to take effect, therefore, the Bureau must adopt a series of practical measures, some being of a general character (such as the restructuring of services), others — taken as a consequence of the former — being of a specific character (transfer of individual officials).

According to the judgment of 20 February 1983, it is precisely the lack of such measures, and in particular of measures concerning the transfer of staff, which prevent the act from being regarded as having effects outside the institution and, thus, capable of being challenged independently. According to the Court, a measure having the characteristics of the measures under consideration is only a part, a mere fragment of the composite procedure, of the gradual process which culminates in the measures to which I have referred. Its legality cannot therefore be "independently" reviewed. Such a review is possible only in relation to the measures which perfect it and which do actually affect the rights of third parties, that is to say, of the States, which have specific rights and obligations in relation to the seats of the institutions.

I have already said that in the present case those acts have not yet been adopted. As a result, the resolution at issue cannot be contested.

7. The provisions of the Parliament's Rules of Procedures concerning staff management lead to the same conclusion. Under Rule 113 (2), it is the Secretary General who "heads" the staff, while the Bureau determines its composition and organization. Under Rule 113 (3) it is also the Bureau which decides, "after consulting the appropriate committee of Parliament, . . . the number of officials and other servants" and lays down "regulations relating to their adminstrative and financial situation".

It seems to me that an important point emerges from those provisions: It is not the Parliament, in the form of the assembly, which adopts the practical measures regarding the organization of its departments and the assignment of staff to places of work. That task is entrusted to two distinct organs, the Secretary General and the Bureau. This clearly provides a further argument against the proposition that the resolution at issue is in the nature of a decision and can be contested. By that I do not mean to say that the assembly cannot directly exercise the powers which Rule 113 confers on the other two organs. I am merely saying that, to achieve such an arrangement (which none of the text books on public administration recommend), it would be necessary at least to amend the Rules of Procedure. It does not appear that, up to the present moment, such an amendment has been made.

Moreover, that such is the case is confirmed by the statements made by the President of Parliament at the plenary

sittings on 10 March and 10 October 1983. In presenting the text of the resolution to the assembly and in informing it of the progress of the approval procedure, Mr Dankert stated and subsequently repeated that, in considering the action to be taken on the resolution, the relevant bodies should, above all, take account of the judgment of 10 February 1983. Those words demonstrate that the disputed act would be put into effect, if at all, within the limits of the principles laid down by the Court. However, what is more important for the purposes of my argument is that those words also prove that the bodies entitled to take decisions in staff maters have not been deprived of their powers in favour of the assembly; consequently, the resolution will only take effect when it is followed by practical measures regarding the organization of the departments and the assignment of staff to places of work.

8. For all the foregoing reasons, I propose that the Court dismiss the action brought by the Grand Duchy of Luxembourg against the European Parliament by an application lodged at the Registry on 10 June 1983.

As regards costs, I consider that there are exceptional circumstances in this case which require that each party should bear its own costs. Those circumstances are to be found essentially in the equivocal wording of the disputed measure. It seems to me that its wording could reasonably lead to the conclusion that the measure was in the nature of a decision and could therefore be contested. A further argument in favour of such a solution — which moreover was the solution adopted by the Court in its judgment of 10 February 1983 (paragraph 65) — is the fact that in the previous case the Court took a different view from the Advocate General on that very question of whether the contested measure was in the nature of a decision.