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## R E P O R T

of the Committee on the Rules of Procedure, the Verification  
of Credentials and Immunities

on the request for the parliamentary immunity of  
Mr STAMOULIS to be waived

Rapporteur: Mr José-Maria GIL-ROBLES

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At the sitting of 11 September 1990 the President of the European Parliament announced that he had received a request for the parliamentary immunity of Mr STAMOULIS to be waived, forwarded by the Minister of Justice of the Hellenic Republic on 23 July at the request of the Public Prosecutor of the Court of First Instance of Athens, and that he had referred it to the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, pursuant to Rule 5(1) of the Rules of Procedure.

At its meeting of 17 October 1990, the committee appointed Mr Gil-Robles rapporteur.

At its meeting of 10 January 1991 it heard Mr Stamoulis, pursuant to Rule 5(2) of the Rules of Procedure, and held an exchange of views on the reasons for or against the waiver of immunity.

At its meeting of 20 March 1991 it considered the draft report and adopted the proposal for a decision unanimously.

The following took part in the vote: Galle, chairman; Harrison, vice-chairman; Gil-Robles, rapporteur; Defraigne, Herman (for Janssen van Raay), Lalor, Patterson (for Prout), Pierros, Rogalla, Rothley (for Peters), Stamoulis, Stewart (for Hoon) and von Wechmar (for Salema).

The report was tabled on 22 March 1991.

A

PROPOSAL FOR A DECISION

on the request for the parliamentary immunity of Mr Stamoulis to be waived

The European Parliament,

- having received a request for the parliamentary immunity of Mr Stamoulis to be waived, forwarded by ... on ... and announced on ...,
  - having regard to Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, and to Article 4(2) of the Act concerning the Election of Representatives to the European Parliament by direct universal suffrage of 20 September 1976,
  - having regard to the judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986<sup>1</sup>,
  - having regard to Article 86 of the Greek Constitution,
  - having regard to Rule 5 of its Rules of Procedure,
  - having regard to the report of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities (A3-0066/91),
1. Decides not to waive the parliamentary immunity of Mr Stamoulis;
  2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the Hellenic Republic.

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<sup>1</sup> Judgment of the Court of Justice, in Case 101/63: **Wagner v Fohrmann and Krier** [1964] ECR 397 and Case 149/85: **Wybot v Faure** [1986] ECR 2403

EXPLANATORY STATEMENTI. THE FACTS

1. On 8 June 1990 Mr Ioannis Stamoulis, Mr Efstathios Alexandris and Mr Michail Michopoulou, defence counsel for the accused, Mr Nikolaos Athanasopoulos, read out to the Special Court convened under Article 86 of the Greek Constitution a statement which was entered into the court records. The statement was made immediately after the opening of the discussion of the case and, from the information we have received, it does not appear that the statement was interrupted by the President of the Special Court nor that the latter issued any advice or warning to the above-mentioned lawyers.
2. On the same day the Clerk of the Special Court forwarded, by order of the President of that court, a copy of the above-mentioned statement to the Public Prosecutor of the Supreme Court on the grounds that the statement constituted an illegal act.
3. Following the appropriate legal proceedings, the Public Prosecutor of the Court of First Instance of Athens is requesting authorization to bring criminal proceedings against Mr Stamoulis for contempt of court under Article 181(1)(a) of the Greek Penal Code as replaced by Article 4(3) of Law 1738 1987, which lays down a sentence of up to two years' imprisonment for: '(a) whoever publicly libels the Prime Minister of the country, the government, the Greek Parliament, the President of Parliament, the leaders of the parties recognized by the Greek Parliament's Rules of Procedure or the courts'.
4. The Public Prosecutor's Office draws attention to the following phrases from the statement in question:
  - (a) 'With regret we note that the Special Court has shown total contempt for the rules of procedure to which every trial must be subject;'
  - (b) 'When the Court refuses statements concerning procedural irregularities to be heard, it is in breach of the law and this breach of the law presages an unfair trial;'
  - (c) 'Our appeals were aimed at establishing whether the judges intended to try the case conscientiously. We were amazed to see that the long-running procedure was turned into a childish contest of 'lost appeals' as it was actually described by one experienced journalist. Since we supposed that the decision to reject our appeal was the result of a collective, but sincere mistake on the part of the thirteen members of the Court, we considered it our duty to bring it to their attention, so that when considering our next appeal the Court would not make the same mistake. However, with its new decision, the Special Court showed contempt for and violated the legality of the proceedings but no longer as a result of an oversight. The dilemma facing us was as follows: if the Court

behaves like a fool, how can it be fit to judge? The atmosphere in the palace of law has stifled justice'.

5. At the meeting of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities held on 25 and 26 September 1990, Mr Stamoulis said that the President of the Special Court had not interrupted his statement at any time, that the statement was made at a suitable moment in the proceedings and was therefore entered in the court records and that the aim of the statement was to formulate a legal criticism of the decision and announce the defence counsel's intention of filing an appeal.

## II. IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT: TEXTS AND PRINCIPLES

6. Article 10 of the Protocol on the Privileges and Immunities of the European Communities<sup>2</sup> annexed to the Treaty establishing a single Council and a single Commission of the European Communities<sup>3</sup>, which incorporates the provisions of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, is as follows:

'During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members'.

7. The offences of which Mr Stamoulis, a Greek MEP, is accused, were committed in the territory of the Hellenic Republic. Mr Stamoulis therefore enjoys the immunity conferred upon members of the Greek Parliament under Article 62 of the Greek Constitution.

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<sup>2</sup> See also Article 9 of the Protocol: 'Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties'.

<sup>3</sup> To which Article 4(2) of the Act of 20 September 1976 on the election of Members of the European Parliament by universal suffrage refers.

8. Proceedings within the European Parliament are governed by Rule 5 of the Rules of Procedure<sup>4</sup>.
9. Since the first elections by universal suffrage, the European Parliament has had to decide on a number of requests for the waiver of the parliamentary immunity of its Members and has endeavoured to do so in accordance with general principles to ensure that its decisions are not affected by considerations relating to the political allegiance or nationality of the Member concerned.
10. At its sitting of 10 March 1987<sup>5</sup> the European Parliament adopted a resolution based on the report by Mr Donnez on the draft protocol revising the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 in respect of Members of the European Parliament (A2-0121/86).

These principles, which are applicable to the case in point, are as follows:

(a) The purpose of parliamentary immunity

Parliamentary immunity is not a Member's personal privilege, but a guarantee of the independence of Parliament and its Members in relation to other authorities. On the basis of this principle, the date of the alleged offences is unimportant: it may be before or after a Member was elected; what matters is to safeguard the institution of Parliament through its Members.

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<sup>4</sup> Rule 5:

1. Any request addressed to the President by the appropriate authority of the Member States that the immunity of a Member be waived shall be communicated to Parliament in plenary sitting and referred to the appropriate committee.
2. The committee shall consider such a request without delay. Even if, in so doing, it acquires detailed knowledge of the facts of the case, it may not, under any circumstances, pronounce on the guilt or otherwise of a Member. It will hear the Member concerned at his request. If he is in custody, he may have himself represented by another Member.
3. Should a Member be arrested or prosecuted after having been found in the act of committing an offence, any other Member may request that the proceedings be suspended or that he be released.
4. The report of the committee should be placed at the head of the agenda of the first sitting following the day on which it was tabled.
5. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned'.

<sup>5</sup> OJ No. C 99, 13.4.1987, p. 44

(b) Legal ineffectiveness of a renunciation of immunity by the Member concerned

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities considers that the principle applied hitherto by the European Parliament, whereby the renunciation of immunity by the Member concerned has no legal effect, should continue to be upheld.

(c) The duration of immunity

The words 'during the sessions of the European Parliament', which appear in Article 10 of the Protocol on the Privileges and Immunities of the European Communities, have twice been the subject of interpretation by the Court of Justice of the European Communities.

It emerges from the two rulings of the Court (Judgment of 12 May 1964 in Case 101/63, Wagner v Fohrmann and Krier, ECR 1964, p. 397 and Judgment of 12 July 1986 in Case 149/85, Wybot v Faure, ECR 1986, p. 2403) that the European Parliament holds an annual session of one year during which (and also during the periods of adjournment of a session) its members enjoy the immunity provided for in the Protocol.

Furthermore, the purpose behind parliamentary immunity means that such immunity has effect throughout a Member's term of office, and applies equally to the commencement of proceedings, preparatory inquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside. Immunity ceases at the end of a Member's term of office.

(d) Independent nature of European parliamentary immunity compared with national parliamentary unity

The fact that Article 10(a) of the Protocol refers to the immunities accorded to members of national parliaments does not mean that the European Parliament cannot create its own rules which are developing into a form of 'case-law'. As regards the waiver of parliamentary immunity, it is important not to confuse parliamentary immunity, which is identical for members of national parliaments and Members of the European Parliament, with the waiver of parliamentary immunity, which is the responsibility of each of the parliaments. These rules, based on decisions taken on requests for the waiver of immunity, tend to forge a coherent concept of European parliamentary immunity which, as a general rule, is independent of the various procedures of national parliaments. If this were not the case, the differences between members of the European Parliament owing to their nationality would be accentuated.

11. At its meeting of 17 and 18 September 1990 the Committee on the Rules of Procedure, the Verification of Credentials and Immunities adopted a resolution setting out criteria for the waiver of immunity. The resolution stated that 'any request for the waiver of immunity resulting from the free expression of political ideas or opinions should be



rejected as a matter of principle; the only exceptions to this fundamental right should be incitement to any kind of hatred, slander, libel, offences against fundamental human rights and attacks on the honour and good name of others, whether individuals or groups'.

### III. REASONS FOR THE PROPOSAL FOR A DECISION

12. Upon examination of the request for the waiver of the parliamentary immunity of Mr Stamoulis, which was forwarded to the President of the European Parliament on 23 July 1990, it emerges that the statements attributed to the Member in question were made in the exercise of one of the most important manifestations of the right to freedom of expression.

Such freedom is essential in order to guarantee the right to a legal defence, which forms part of the right to effective legal protection.

Even when the phrases in question are considered in isolation and out of context, they cannot be found to contain anything offensive or to exceed the legitimate level of criticism of legal decisions.

13. Moreover, it is clear that every court has at its disposal adequate procedural measures to ensure that the legitimate limits of the right of defence are not exceeded. Replacing such obligatory procedures by an ex post facto penal indictment, which runs counter to the above-mentioned criterion of respect for freedom of expression, is a course of action which should not be supported by the European Parliament.

### IV. CONCLUSION

14. In the light of the above considerations, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, having considered the reasons for and against the waiver of immunity in accordance with Rule 5(4) of the Rules of Procedure, recommends that the European Parliament should not waive the parliamentary immunity of Mr Stamoulis.

**THE 1975 CONSTITUTION OF THE HELLENIC REPUBLIC**

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Article 62

During a parliamentary term members of parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by parliament. Likewise, a member of a dissolved parliament shall not be prosecuted for political crimes during the period between the dissolution of parliament and the declaration of election of members of the new parliament. Leave shall be deemed as not granted if parliament does not decide within three months of the date on which the request for prosecution was submitted by the public prosecutor to the speaker.

The three month limit shall be suspended during the recess of parliament. No leave is required for members of parliament found in the act of committing an offence.