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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 Ruiz
Mateos to be waived

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A Series: Resolutions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment



= Cooperation procedure (first reading)



= Parliamentary assent which requires the votes of a majority of the current Members of Parliament

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At the sitting of 12 March 1990 the President of the European Parliament announced that he had received a request for the parliamentary immunity of Mr Ruiz Mateos to be waived, forwarded by the Second Criminal Chamber of the Spanish Supreme Court on 22 February 1990, 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 21 March 1990 the committee appointed Mr Defraigne rapporteur.

At its meeting of 16 and 17 December 1990 it heard Mr Ruiz Mateos 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 5 February 1991 it considered the draft report and adopted the proposal for a decision by 12 votes to 1, with one abstention.

The following took part in the vote:

The report was tabled on 6 February 1991.

A

PROPOSAL FOR A DECISION

on the request for the parliamentary immunity of Mr Ruiz Mateos to be waived

The European Parliament,

- having received a request for the parliamentary immunity of Mr Ruiz Mateos to be waived, forwarded by the Spanish Supreme Court on 22 February 1990,
 - 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 of 20 September 1976 concerning the Election of Representatives of the Assembly by direct universal suffrage,
 - having regard to the judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986¹,
 - having regard to Article 71 of the Spanish 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 (A3-0018/91),
1. Decides to waive the parliamentary immunity of Mr Ruiz Mateos;
 2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the Kingdom of Spain.

¹ 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

B
EXPLANATORY STATEMENT

I. THE FACTS

1. As stated in the request for the parliamentary immunity of Mr Ruiz Mateos to be waived, forwarded by the Second Criminal Chamber of the Spanish Supreme Court, proceedings against Mr Ruiz Mateos were opened following a complaint brought by the Ministry of Taxation on 14 April 1983 concerning alleged monetary offences, unjustified appropriations and fraud.

On 6 July 1983 a decree was issued ordering the detention and prosecution of Mr Ruiz Mateos who was arrested on 25 April 1984 in Frankfurt, Germany.

2. Mr Ruiz Mateos was handed over to the Spanish authorities after extradition on the following charges:

1. Making fictitious credit transaction entries at the beginning of 1983 in accounts whose holders were quite unaware of such transactions, and using these entries primarily for the alleged adjustment of losses made by various banks belonging to the Rumasa Group, and on 24 February 1983 making pre-dated entries in such a way that the entries remained in accounts held in banks belonging to the Rumasa Group.
2. Increasing the asset values (share valuation) in the balance sheet for Holding Rumasa AG during the second half of 1982 while chairman (of the board of directors) of the Holding Rumasa company.

3. As Mr Perreau de Pinninck said at the meeting of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities of 17 and 18 December 1990, there are many other legal proceedings in progress against Mr Ruiz Mateos, but as far as the waiving of his parliamentary immunity is concerned, the request received concerns only the on-going proceedings on the charges set out above, which led to his being extradited from Germany.

Since the provisions of Article 10 of the Protocol on the Privileges and Immunities of the European Communities mean that Mr Ruiz Mateos enjoys the immunity granted to members of the Spanish parliament following the last European elections, the proceedings in question can continue only when his immunity is waived.

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

4. Article 10 of the Protocol on the Privileges and Immunities of the European Communities¹ annexed to the Treaty establishing a single Council and a single Commission of the European Communities², which restates the provisions of Article 9 of each of the Protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, reads as follows:

¹ Also note the wording of Article 9 of the same protocol: 'Members of the Assembly 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'.

² Referred to in Article 4(2) of the Act of 20 September 1976 concerning the election of representatives of the Assembly by direct universal suffrage.

'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.'

5. The offence with which Mr Ruiz Mateos, a Member of the European Parliament of Spanish nationality, has been charged is alleged to have been committed on the territory of the Kingdom of Spain. Mr Ruiz Mateos therefore enjoys the immunities accorded to Members of the Spanish Parliament under Article 71 of the Spanish Constitution³.

6. The procedure within the European Parliament is governed by Rule 5 of the Rules of Procedure⁴.

7. Since the first five-year electoral period, the European Parliament has decided on a number of requests for the waiver of the parliamentary immunity of its Members; the proceedings in Parliament have established a number of general principles, as recognized definitively in the resolution adopted by the European Parliament at its sitting of 10 March 1987⁵ on the basis of the report drawn up by Mr Donnez on the draft Protocol revising the Protocol on the Privileges and Immunities of the European Communities of 8 April 1985 in respect of Members of the European Parliament (A2-0121/86).

³ Article 71 of the Spanish Constitution is annexed.

⁴ Rule 5 reads as follows:

- '1. Any request addressed to the President by the appropriate authority of a Member State 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 the Member. It shall 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 shall be placed at the head of the agenda of the first sitting following the day on which it was tabled. Discussion shall be confined to the reasons for or against the waiver of immunity. At the end of the debate there shall be an immediate vote.
- 5. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned.'

⁵ OJ No. C 99, 13.4.1987, p. 44

8. It seems useful to describe in this report those of the above-mentioned principles which have been applied to this case, whilst stressing the need to ensure that decisions taken on the waiver of parliamentary immunity of Members have a firm legal basis and are not affected by various considerations relating in particular to the political party to which the Member in question belongs or even his nationality.

(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. Pursuant to this principle, the date of the acts of which the Member is accused is not important: they may occur before or after the Member's election; all that has to be considered is the protection of the institution of Parliament through that of its Members.

(b) Legal ineffectiveness of a renunciation of immunity

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities believes that it should not depart from the principle hitherto observed by the European Parliament according to which a renunciation of parliamentary immunity by the Member concerned has no legal effect.

(c) Temporal limits on immunity

The Court of Justice has twice been called upon to interpret the words 'during the sessions of the European Parliament' contained in Article 10 of the Protocol on the Privileges and Immunities of the European Communities.

The Court's two judgments (Wagner v Fohrmann and Krier of 12 May 1964, Case 101/63, [1964] ECR 397 and Wybot v Faure of 10 July 1986, Case 149/85, [1986] ECR 2403) state that the European Parliament holds an annual session of one year during which (and also during the periods of adjournment of the session) its Members enjoy the immunity provided for in the above protocol.

It follows, moreover, from the very purpose of parliamentary immunity that it operates throughout the whole of a Member's term of office and is effective against the commencement of proceedings, preparatory enquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside. Immunity ceases at the end of the Member's term of office.

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

The fact that subparagraph (a) of the first paragraph of Article 10 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, thus developing a body of case-law; as regards the waiving of parliamentary immunity, there should be no confusion between parliamentary immunity, which is identical for members of the national parliaments and of the European Parliament, and the waiving of parliamentary immunity, which is a matter for each of the parliaments concerned; these rules, which stem from decisions taken on requests for the waiver of parliamentary immunity, tend to forge a coherent concept of European parliamentary immunity which is broadly independent of the distinct procedures of the national parliaments; otherwise, the differences between members of the same parliament would be accentuated because of their respective nationality.

The application of these principles has given rise to a constant factor in Parliament's decisions which has become a fundamental criterion for the

consideration of the action to be taken on each request for the waiver of immunity: in all cases in which the acts of which a Member of the European Parliament is accused relate specifically to his political functions, immunity is not waived. Other considerations militating for or against the waiver of immunity have been added to this criterion, relating in particular to:

- the fumus persecutionis, in other words the presumption that the criminal proceedings are based on an intention to prejudice the Member's political activities (for example, anonymous information as the basis of the preliminary investigation or belatedness of the request in relation to the acts of which the Member is accused);
- the particularly serious nature of the acts of which the Member is accused.

9. The Committee on the Rules of Procedure, the Verification of Credentials and Immunities has discussed the appropriateness or otherwise of also taking into account, when deciding on a request for a Member's immunity to be waived, the fact that the laws of Member States other than the Member's own may apply less severe penalties for the same act or even not consider such an act to be an offence. This new criterion will require careful consideration.

III. JUSTIFICATION FOR THE PROPOSAL FOR A DECISION

10. The Committee on the Rules of Procedure, the Verification of Credentials and Immunities was able to ascertain from its examination of the dossier forwarded that the acts with which Mr Ruiz Mateos has been charged are not connected with any political activity relating to his parliamentary mandate.

Mr Ruiz Mateos acquired the status of Member of the European Parliament as a result of the last European elections; the proceedings for which the waiver of parliamentary immunity is requested were initiated long before then.

11. Moreover, there is no evidence of the existence of a fumus persecutionis in the proceedings against Mr Ruiz Mateos. It should be borne in mind that Parliament must not set itself up to judge the substance of the case, but must consider the reasons for or against waiving parliamentary immunity.

In this case, what is under consideration is exclusively a penal legal action of an economic character, for which the waiver of parliamentary immunity must be granted.

Furthermore, it should be noted that criminal courts in the Federal Republic of Germany delivered verdicts on the charges in question when permission for extradition was granted.

IV. CONCLUSION

12. In the light of the foregoing, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, having considered the reasons for and against waiving immunity pursuant to the second subparagraph of Rule 5(4) of the Rules of Procedure, recommends that the European Parliament should waive Mr Ruiz Mateos' parliamentary immunity.

Article 71

1. The Deputies and Senators shall enjoy inviolability for the opinions expressed during the exercise of their functions.
2. During the period of their mandate, the Deputies and Senators shall enjoy immunity and may be arrested only in case of 'flagrante delicto'. They may not be indicted or tried without the prior authorization of the respective Chamber.
3. In actions against Deputies and Senators, the Criminal Section of the Supreme Court shall be competent.
4. The Deputies and Senators shall receive a salary which shall be fixed by the respective Chambers.

