

European Communities

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EUROPEAN PARLIAMENT

# Working Documents

1983-1984

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29 September 1983

DOCUMENT 1-766/83

## Report

drawn up on behalf of the Legal Affairs Committee

on a request for the parliamentary immunity of  
a Member to be waived

Rapporteur: Mr G. DONNEZ

PE 86.122/fin.



At its sitting of 9 June 1983 Parliament referred to the Legal Affairs Committee, pursuant to Rule 5(2) of the Rules of Procedure, a request for the immunity of Mr Marco PANNELLA to be waived.

On 21 June 1983 the Legal Affairs Committee appointed Mr DONNEZ rapporteur.

At its meeting of 20 and 21 September 1983, the committee approved the proposal for a decision with six votes in favour and one abstention.

The following were present: Mr Chambeiron, vice-chairman and acting chairman; Mr Donnez, rapporteur; Mr Alber, Mr Forth, Mr Janssen van Raay, Mrs Nielsen, Mr Ouzonidis and Mr Sieglerschmidt.

This report was tabled on 26 September 1983.

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The Legal Affairs Committee hereby submits to the European Parliament the following proposal for a decision, together with explanatory statement:

PROPOSAL FOR A DECISION

on a request for the parliamentary immunity of a Member to be waived

The European Parliament,

- having received from the Minister of Justice of the Italian Republic by letter of 12 May 1983 a request for the immunity of Mr Marco PANNELLA to be waived,
  - having regard to Article 10 of 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 judgment of the Court of Justice of the European Communities of 12 May 1964<sup>1</sup>,
  - having regard to Article 68 of the Italian Constitution,
  - having regard to Rule 5 of the Rules of Procedure,
  - having regard to the report of its Legal Affairs Committee (Doc. 1-766/83),
1. Decides not to waive Mr PANNELLA's immunity;
  2. Instructs its President immediately to forward this decision and the report of its committee to the responsible authority of the Italian Republic.

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<sup>1</sup> CJEC, 12 May 1964 (Wagner v Fohrmann and Krier, Case 101/63) (1964) ECR 195.

EXPLANATORY STATEMENTI. THE FACTS

1. By report of 20 January 1978 the Naples-Vicaria 'office of the police superintendent' denounced certain persons for contempt of the Constitutional Court, which had been described on placards displayed at a demonstration as a "Fascist court" which ensured that "Fascist laws" were observed and was responsible for the "coup d'etat". The placards also bore the following slogans: "Who paid the Constitutional Court?", and "Those who do not respect the Constitution want the blood of P38's,"<sup>1</sup>

In order to institute criminal proceedings against those who have committed 'vilipendio' contempt of the Constitutional Court, leave must be obtained from that Court (see Articles 290 and 313 of the Italian Penal Code). The Constitutional Court granted such leave with regard to the last two slogans by decision ('decreto') of 6 April 1978.

2. During the preliminary inquiry the defendants exonerated themselves inter alia by declaring that the wording of the slogans had been decided at a meeting held in Rome at the national secretariat of the Radical Party at which Mr Pannella, among others, had been present.

The Naples Public Prosecutor, having ascertained that Mr Pannella was a Member of the European Parliament, submitted to the European Parliament a request for his parliamentary immunity to be waived.

II TEXTS GOVERNING THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT

3. Article 4(2) of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage states: 'Representatives shall enjoy the privileges and immunities applicable to members of the Assembly by virtue of the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a single Council and a single Commission of the European Communities.'

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<sup>1</sup> N.B. During this period the Constitutional Court had declared inadmissible four of the eight referenda proposed by the Radical Party.

4. Article 10 of this Protocol, which is a repetition of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, states:

'During the sessions of the Assembly, 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 Assembly.

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

5. The Court of Justice has been called upon to interpret the words 'during the sessions of the Assembly' (judgment of 12 May 1964 - Wagner v Fohrmann and Krier, Case 101/63). (1964) ECR 195.

6. This judgment states that the European Parliament holds an annual session during which and also during the periods of adjournment of the session, its Members enjoy the immunity provided for in the above protocol<sup>1</sup>.

### III. JUSTIFICATION OF THE EUROPEAN PARLIAMENT'S PROPOSAL FOR A DECISION

#### (a) Legal ineffectiveness of a renunciation of immunity

7. By letter of 28 June 1983 to the chairman of the Legal Affairs Committee, Mr Pannella pointed out that his fundamental views on parliamentary immunity had not changed and that "the corporate prerogative of an institution should not always automatically take precedence over the fundamental right of an individual to be tried by his people and to be publicly acquitted".

8. Having been consulted by the President of Parliament on certain matters of principle relating to the waiver of parliamentary immunity, the Legal Affairs Committee at its meeting of 27 March 1980 found that the renunciation by a Member of his parliamentary immunity had no legal effect and notified its finding to the President of Parliament<sup>2</sup>.

At its meeting of 17 April 1980 the enlarged Bureau adopted the opinion of the Legal Affairs Committee.

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<sup>1</sup>This judgment is not affected by Article 10(3) of the Act of 20 September 1976, which, without prejudice to Article 22 of the ECSC Treaty, Article 139 of the EEC Treaty and Article 109 of the EAEC Treaty, fixes the date when the Assembly meets without requiring to be convened following a general election.

<sup>2</sup>See minutes (PE 64.548, p.6) and Notice to Members No. 6/80 (PE 64.630).

9. It should be borne in mind that in the present case, which concerns an Italian member and acts committed in the territory of the Italian Republic, Mr Pannella enjoys the immunity accorded to members of the Italian parliament under Article 68 of the Italian Constitution<sup>1</sup>.

This provision of the Constitution does not allow members of parliament to renounce their immunity should they so wish. What it actually says is that no member may, without the authority of the Chamber to which he belongs, be subjected to criminal proceedings. Moreover, the Italian Chamber of Deputies has consistently said that members of parliament may not themselves waive this constitutional guarantee<sup>2</sup>.

10. This being so, the fact that Mr Pannella has expressed the wish that the legal proceedings should continue cannot by itself call in question the rule that immunity is not a Member's personal privilege but that it was introduced for the benefit of the institution (see paragraph 12 below).

(b) Purpose of parliamentary immunity and period covered thereby

11. The cases of waiver of immunity hitherto examined show that the European Parliament has taken a consistent view in this respect, analagous to a line of case-law.

12. In such cases Parliament first appraises the political nature of the action. In view of the purpose of immunity, which is to safeguard Parliament as an institution and to guarantee the independence of its Members in relation to other authorities, immunity is not waived where the act is recognized as being of a political nature<sup>3</sup>.

13. This position could not be challenged on the additional grounds that, in this case, the events in question took place before Mr Pannella became a Member of Parliament. Not least because of its purpose, to protect Parliament as an institution, immunity operates throughout the whole of a member's term of office and is effective as against the institution of proceedings, preparatory enquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside.

IV CONCLUSION

14. In these circumstances, having considered the reasons for and against the waiver of immunity, in accordance with the second subparagraph of Rule 5(4) of the Rules of Procedure, the Legal Affairs Committee recommends Parliament not to waive Mr Pannella's immunity.

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<sup>1</sup> Article 68 of the Italian Constitution is annexed.

<sup>2</sup> See Parliamentary Proceedings, first electoral period, p. 36.115.

<sup>3</sup> See for example the report on a request for the parliamentary immunity of a Member to be waived (Doc. 1-298/82) in which the conclusion was reached, in view of the purpose of safeguarding the institution's integrity, that immunity "cannot be waived for reasons connect with political activity". (See paragraph 16).



Article 68 of the Constitution of the Italian Republic

Article 68. Members of Parliament may not be proceeded against for opinions expressed or votes given in the exercise of their duties.

No member of Parliament may, without the authority of the Chamber, to which he belongs, be subjected to criminal proceedings, nor be arrested or otherwise deprived of his personal liberty, not subjected to search warrants on his person or in his home unless he be caught in the act of committing an offence for which an order of arrest is compulsory.

A similar authority is required to arrest or keep in a state of detention a member of Parliament in the execution of a sentence even if it be irrevocable.

