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REPORT

drawn up on behalf of the Committee on Legal Affairs and
Citizens' Rights

on the request for the waiver of Mr Gerardo GAIBISSO's
parliamentary immunity

Rapporteur: Mr G. DONNEZ

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Or.Fr.

On 13 June 1985 the President of the European Parliament, pursuant to Rule 5(2) of the Rules of Procedure, referred to the Committee on Legal Affairs and Citizens' Rights a request for the waiver of Mr Gerardo GAIBISSO's parliamentary immunity made by the examining magistrate at CIVITAVECCHIA Civil and Criminal Court.

On 27 June 1985 Mr DONNEZ was appointed rapporteur.

At its meeting of 29 and 30 April 1986, the Committee on Legal Affairs and Citizens' Rights heard Mr GAIBISSO pursuant to Rule 5(2) of the Rules of Procedure; at this meeting, and at that of 18 and 19 June 1986, the committee had exchanges of views on the reasons for and against the waiver of immunity.

At its meeting of 16 and 17 September 1986, the Committee on Legal Affairs and Citizens' Rights adopted the motion for a resolution contained in the draft report by 11 votes to 3 with one abstention.

Present: Mrs Vayssade, chairman; Mr Donnez, vice-chairman and rapporteur; Mr Gazis, vice-chairman; Mr Bandres Molet, Mr Bru Puron, Mr De Gucht, Mr Garcia Amigo, Mr Hoon, Mrs Marinaro, Mrs Miranda De Lage, Mr Pegado Liz, Mr Pordea, Mr Rothley, Mr Stauffenberg and Mr Verde I Aldea.

The report was tabled on 19 September 1986.

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

PROPOSAL FOR A DECISION

on the request for the waiver of Mr GAIBISSO's parliamentary immunity made by the examining magistrate at the CIVITAVECCHIA Civil and Criminal Court

The European Parliament,

- having received a request forwarded by the Minister of Justice of the Italian Republic on 29 March 1985 for the waiver of Mr GAIBISSO's parliamentary immunity,
- 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 1964¹ and 10 July 1986²,
- 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 the Committee on Legal Affairs and Citizens' Rights (Doc. A 2-101/86),

1. Has decided to waive Mr GAIBISSO's parliamentary immunity;
2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the Italian Republic.

¹ CJ EC, 12 May 1964 (Wagner v Fohrmann and Krier, Case 101/63, [1964] ECR 195)

² Judgment in Case 149/85 (Wybot v Faure), not yet published in the ECR.

EXPLANATORY STATEMENTI. THE FACTS

1. The examining magistrate at the CIVITAVECCHIA Civil and Criminal Court has asked for the waiver of Mr Gerardo GAIBISSO's parliamentary immunity on the following grounds.

2. Mr GAIBISSO is charged (cf. Articles 81, second indent, 110 and 314 of the Italian Penal Code) with 'having', on 12 December 1974 in New York, 'appropriated or in any case misapplied the sum of 12 500 dollars sent by the Rome EPT (Provincial Tourist Office) to the corresponding Office in New York (ENIT) and delivered to the Italian delegation for expenditure on publicity campaigns in New York, Boston and Chicago', he being at the time a member of the staff of the Regional Tourist Office of Lazio.

In essence, Mr Gaibisso is accused of having, as director of the Civitavecchia Tourist Office (Azienda Autonoma Soggiorno e Turismo) and, in that capacity, as head of a delegation sent to the United States for a tourist publicity campaign, signed a receipt for the sum in question, no trace having been found of that sum when the accounts of the tourist office were investigated by the Civitavecchia tax inspectorate.

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

3. 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:

'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.'

¹ Also note the wording of Article 9 of the same Protocol "Members of the Assembly shall not be subject to any form of enquiry, 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.

4. The offences with which Mr GAIBISSO, a Member of the European Parliament of Italian nationality, is charged are alleged to have been committed on United States territory; there are, however, grounds for proceedings under Italian law, as this is a case of a public official in the service of the Italian State (cf. Article 7 No. 4 of the Italian Penal Code). Mr GAIBISSO therefore enjoys the immunities accorded to Members of the Italian Parliament under Article 68 of the Italian Constitution³.

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

6. During its first electoral period and the beginning of the second, the European Parliament decided on a number of requests for the waiver of the parliamentary immunity of its Members; the proceedings in Parliament established a certain number of general principles on which there was widespread agreement.

7. It seems useful to describe those principles in this report 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. 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 parliamentary institution through that of its Members.

³ Article 68 of the Italian 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 but shall not go into the merits of the case. 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.
5. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned.'

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