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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

At its sitting of 14 September 1981 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 23 September 1981 the Legal Affairs Committee appointed Mr DONNEZ rapporteur.

At its meeting of 29 and 30 April 1982 the committee held an initial discussion on the reasons for and against waiving parliamentary immunity, after hearing Mr Pannella pursuant to Rule 5(2) of the Rules of Procedure.

At its meeting of 26 and 27 May 1982 the committee considered the draft report drawn up by Mr Donnez and adopted it by 10 votes to 1 with 2 abstentions.

The following took part in the vote: Mrs Veil, chairman; Mr Donnez, rapporteur; Mr D'Angelosante, Mr Ephremidis (deputizing for Mrs Baduel Glorioso), Mr Goppel, Mrs Macciocchi, Mr Megahy, Mrs T. Nielsen (deputizing for Mr De Gucht), Mr Poniridis, Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade and Mr Vié.

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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 25 July 1981 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 1964¹,
- 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. 1-298/82),

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.

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

EXPLANATORY STATEMENTI. THE FACTS

1. Mr Pannella, accused in his capacity as the editor of a press publication which published certain contentious articles on 29 March 1972 of various offences (incitement to disobey the law making voting compulsory in legislative elections, incitement to refuse to perform military service, defamation of the armed forces and contempt of the government)* was found guilty by the third Rome Court of Assizes, on 8 July 1975, on the first of these charges but acquitted on the rest.

Both Mr Pannella and the Public Prosecutor of the Republic have lodged an appeal against the judgment of the Court of Assizes with the Rome Court of Appeal.

2. A request for Mr Pannella's parliamentary immunity to be waived has been made by the Public Prosecutor of the Republic attached to the Rome Court of Appeal; this request was forwarded together with the documents relating to it to the European Parliament by the Minister of Justice of the Italian Republic.

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.'

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;

* See Articles 415, 414, 290 and 110 of the Italian Penal Code

(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 on a previous occasion 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 protocol¹.

III. JUSTIFICATION OF PARLIAMENT'S PROPOSAL FOR A DECISION

7. The Legal Affairs Committee and the European Parliament recently² had to consider a very similar request for the parliamentary immunity of a Member to be waived: in this case an Italian national was accused - in her capacity as editor of a periodical - of press offences which occurred before she became a Member of the European Parliament; she too declared that she wished to waive her immunity.

The principles and considerations on which the Legal Affairs Committee based its proposal for a decision, adopted by Parliament on 9 March 1982³, apply to the request for waiver of immunity now under consideration; your rapporteur has thus deemed it necessary to set them out again in the present report (see paragraphs 8 to 16 below).

¹ 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

² Report by Mr DE GUCHT (Doc. 1-1082/81)

³ OJ No. C 87, 5.4.1982, p. 37

(a) Legal ineffectiveness of a renunciation of immunity

8. Having been consulted by the President of Parliament on certain matters 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 Parliament¹.

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

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 Constitution².

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 guarantee³.

10. This being so, the Legal Affairs Committee has had to confine itself to taking note of the statement made by Mr Pannella at its meeting of 29 and 30 April 1982, outlining his reasons for wishing the legal proceedings to continue and elaborating on the position he had adopted in his statement in the House when the request for his parliamentary immunity to be waived was notified⁴.

The fact that Mr Pannella wishes the proceedings to continue cannot override the rule that immunity is not a Member's personal privilege, but rather it exists for the benefit of the institution (see paragraph 16 below).

¹ See minutes (PE 64.548, p. 6) and Notice to Members No. 6/80 (PE 64.630)

² Article 68 of the Italian Constitution is annexed

³ See Parliamentary Proceedings, first electoral period, p. 36.115

⁴ OJ Annex 1-274 - p. 3 (sitting of 14 September 1981)

(b) Press offences and the immunity of Members of the European Parliament : inapplicability of the 'precedent' of 1964

11. The Legal Affairs Committee has already noted that when on a previous occasion the European Parliament received a request to waive immunity in connection with a case of libel, it decided without prejudice to the question whether the libel was or was not political in character to waive the immunity of the Members concerned¹. This decision was motivated solely by a wish to enable the national parliament to arrive freely at a decision on the request for national parliamentary immunity to be waived.
12. This single decision on waiver of immunity, which was taken before the direct elections to the European Parliament, is irrelevant to the present case, as it was to the case dealt with in the DE GUCHT report, since the Member concerned is not a member of a national parliament. Moreover, at its meeting of 27 October 1980², the Legal Affairs Committee decided in accordance with the conclusions of a working document (PE 67.868/fin.) drawn up by its chairman, Mr Ferri, that in cases of dual mandate it was appropriate to await the decision of the national parliament before bringing the matter before the European Parliament.
13. At its meeting of 20 November 1980 the enlarged Bureau took note of this decision by the Legal Affairs Committee, which thereby turned its back on a 'precedent' that had arisen in a different context. Before direct elections the Members of the European Parliament were appointed by the national parliaments and so their status was in some way an extension of their status as a member of a national parliament.

(c) Press offences and the Italian Law on the press

14. The Legal Affairs Committee has noted that, as in the case dealt with in the report by Mr de GUCHT, the Member concerned is being prosecuted by virtue of his position as the editor of a publication having an exclusively political character. It is for this reason that the Legal Affairs Committee considers, while in no way passing judgment on the merits of the case, that the offences in question should be seen as political in character.

¹ Decision of 15 June 1964 - OJ 9, July 1964, p. 1669

² See minutes (PE 68.470, p. 4)

15. The Legal Affairs Committee has ascertained that under the Italian law on the press a member of the Italian Parliament is precluded from being an editor of a press publication. The fourth paragraph of Article 3 of Law No. 47 of 8 February 1948 provides that 'where the editor (of a press publication) is a Member of Parliament, a deputy editor shall be appointed to act as editor'.

The ratio legis of this provision is clearly to prevent the prosecution of criminal proceedings for press offences from being obstructed by the immunity that would otherwise attach to the editor of a press publication.

(d) Purpose of parliamentary immunity and period covered thereby

16. The purpose of immunity is to safeguard the integrity of a parliament and the independence of its members as regards other authorities. It therefore follows that it cannot be waived for reasons connected with political activity. Its purpose is to protect the institution rather than to grant a privilege benefiting the members of the institution. Parliamentary immunity thus 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. In the present case there can be no question of Mr Pannella's immunity being challenged on the ground that the articles complained of appeared before he became a Member of Parliament.

IV. CONCLUSION

17. 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.

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, nor 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.