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REPORT

drawn up on behalf of the Committee on the Verification
of Credentials

on ~~disputes~~ concerning the validity
of appointments in connection with the 'tourniquet
system'

Rapporteur: Mr H. SIEGLERSCHMIDT

OR-DE

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English Edition

By letter of 11 May 1982 the President of Parliament referred to the Committee on the Verification of Credentials, pursuant to Rule 7(7) of the Rules of Procedure, two letters from Mr Fergusson on the validity of the appointments of Members whose credentials had already been verified.

The committee dealt with these letters at its meeting of 12 May 1982 and decided to submit a report to Parliament.

At its meeting of 15, 16 and 17 June 1982 the committee appointed Mr Sieglerschmidt rapporteur, considered his draft report and adopted the motion for a resolution contained in that report by 5 votes to 1 with no abstentions.

The following took part in the vote:

Mr PROUT, chairman; Mr VERROKEN and Mr MEGAHY, vice-chairmen;
Mr Sieglerschmidt, rapporteur; Mr CHAMBEIRON and Mr MALANGRÉ.

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The Committee on the Verification of Credentials hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on disputes concerning the validity of appointments in connection with the 'tourniquet system'

The European Parliament,

A having regard to the repeated discussions in its plenary sittings as to the compatibility of the 'tourniquet system' with the Act of 20 September 1976 and with its Rules of Procedure,

B on the basis of the disputes brought before it relating both to the validity of the appointments of newly-elected Members and to the validity of the appointments of Members whose credentials have already been verified and based on legal objections to the 'tourniquet system',

C aware that its Members have very differing opinions as to how the 'tourniquet system' should be viewed,

D convinced that it must give its bodies and officers, if they have in future to deal with such occurrences in connection with the 'tourniquet system', a clear basis for their actions in this respect by means of an unequivocal decision on the question,

E having regard to the report of the Committee on the Verification of Credentials (Doc. 1-398/82),

1. Declares that the 'tourniquet system' does not infringe the Act of 20 September 1976 or Parliament's Rules of Procedure;
2. Declares that for this reason disputes concerning the validity of the appointments of newly-elected Members or concerning the validity of the appointment of Members whose credentials have already been verified based on legal objections to the 'tourniquet system' are unfounded;
3. Hopes therefore that its bodies and officers will take into consideration the above findings in future decisions in that connection.

EXPLANATORY STATEMENTI. Introduction

1. At its meeting of 12 May 1982 the Committee on the Verification of Credentials had to deal with two letters of 12 March 1982 sent by Mr Fergusson to the President of Parliament and to the chairman of the Committee on the Verification of Credentials. In the first letter (Annex I) Mr Fergusson took the view that the Committee on the Verification of Credentials needed to verify 'that all Members, but specifically newly appointed Members of the Parliament, have made no undertakings to anybody about terminating their membership before the end of the parliamentary term'. He stated that he was not however clear whether that procedure covered the matter adequately and that in case it did not he would request the President to refer the point to the Committee on the Verification of Credentials 'and to require that its forthcoming report deals fully with it'. He then referred in this connection to the verification of the credentials of Mr Mouchel, who became a Member of Parliament in place of Mr Clement who had resigned.

2. In his letter to the chairman of the Committee on the Verification of Credentials (Annex II) Mr Fergusson referred first of all to the verification of the credentials of Mr Mouchel and asked 'whether, when your committee verified the credentials of Mr Mouchel it satisfied itself that he had given no undertaking to anyone, or taken no instructions, that might inhibit him from remaining a Member until the end of this parliamentary term'. In case the committee 'actually overlooked the current controversy over the Tourniquet' in Mr Mouchel's case he requested that each time the Committee on the Verification of Credentials verified the credentials of a Member in the future that committee should determine 'the ability of every individual ... to remain a Member of the Parliament, unfettered by previous undertakings or future instructions'.

3. Both letters from Mr Fergusson referred to above were referred by the President of Parliament to the Committee on the Verification of Credentials 'pursuant to Rule 7(7) of the Rules of Procedure' on 11 May 1982. This provision reads as follows:

'Any dispute concerning the validity of the appointment of a Member whose credentials have already been verified shall be referred to the appropriate committee, which shall report to Parliament not later than at the beginning of the next part-session'.

Mr Fergusson's letters of 12 March 1982 are, clearly also in the opinion of the President of Parliament, to be regarded as a dispute under Rule 7(7) of the Rules of Procedure. This dispute is, according to those letters, directed against the validity of the appointment of all Members of Parliament in whose case it may be determined that they 'have made ... undertakings ... about terminating their membership before the end of the parliamentary term', and especially, however, against the validity of Mr Mouchel's appointment, which was verified by the Committee on the Verification of Credentials at its meeting of 11 March 1982 the day before Mr Fergusson sent his letters.

4. In his letter to the chairman of the Committee on the Verification of Credentials Mr Fergusson, as a precaution, raises, because of his objections to the 'tourniquet system' mentioned in that letter, objections to the validity of the appointment of the successor to Mr Fanton, who has in the meantime resigned from Parliament. His successor is Mr André Bord. The request in this connection contained in the letter may be regarded as a dispute as to the validity of the appointment of Mr Bord pursuant to Rule 6(1) of the Rules of Procedure. In addition, Mr Fergusson expressed his objections to the 'tourniquet system' in his objection of 11 March 1982 to the establishment of a vacancy in the case of Mr Fanton's seat (Annex III).

At its meeting of 12 May 1982 the Committee on the Verification of Credentials reached the conclusion on the basis of the facts set out above that it was impossible either to reach a decision on the dispute before it pursuant to Rule 7(7) of the Rules of Procedure or on the validity of the appointment of Mr Bord and impossible to report to Parliament as provided in Rules 6 and 7 of the Rules of Procedure without having a detailed written report before it. A minority however took the view that it was unjustifiable to derogate from previous practice in similar cases and that for this reason the validity of the credentials of Mr Bord should have been determined. This practice is moreover in accordance with the legal view expressed in the dismissal of the objection raised by Mr Fergusson to the establishment of a vacancy in the case of Mr Fanton's seat.

5. As regards the procedure in connection with the drawing-up of a report the committee took the view that in the first place it was impossible to verify the validity of individual appointments. On the contrary, it should first be considered whether the 'tourniquet system' infringes the Act of 20 September 1976 and the Rules of Procedure of Parliament. If the compatibility of that system is confirmed the disputes under Rule 6(1) and

Rule 7(7) of the Rules of Procedure are automatically dismissed since these applications are exclusively based on objections to the 'tourniquet system'.

It may seem doubtful as to whether the Committee on the Verification of Credentials is the 'appropriate committee' within the meaning of Rule 7(7) of the Rules of Procedure. It is fact striking that, in contrast to the words quoted above, the Committee on the Verification of Credentials is expressly referred to in Rule 6(2) of the Rules of Procedure. Your rapporteur recommends however that there should be no unnecessary delay in drawing up the report in order first to clarify this question of which committee is responsible.

Finally, it should be pointed out that the Committee on the Verification of Credentials has decided, in view of the decision as to whether to 'report to Parliament not later than at the beginning of the next part-session' (in other words by the June part-session) pursuant to Rule 7(7) of the Rules of Procedure or to deal with this question affecting many Members of Parliament with the necessary care, to request Parliament to be allowed to report to it at the July part-session. Nor, obviously, was the point considered to be particularly urgent, since Mr Fergusson's letters of 12 March 1982 were forwarded to the Committee on the Verification of Credentials by the President of Parliament only on 11 May 1982.

II. The 'tourniquet system'

6. The Gaullist Rassemblement pour la République, abbreviated to RPR, entered the elections to the European Parliament with a Défense des intérêts de la France en Europe list (defence of the interests of France in Europe, abbreviated to DIFE). 81 candidates were put forward for this list corresponding to the number of seats allotted to France; 15 of them were elected on 10 June 1979. As early as January 1979 the chairman of the RPR party, Mr Chirac, announced a system of a revolving list (liste tournante). This later became known as the 'tourniquet system' (a 'tourniquet' is a turnstile, and also a wheel of fortune). The election manifesto of the DIFE list stated as follows:

'Because of the personal undertaking which they have given the 81 members of the Défense des intérêts de la France en Europe list will form a permanent national group. The first candidates elected will give up their seats after one year and the same procedure will take

place each year subsequently so that all members of our list will in turn become Members of Parliament, thus demonstrating the solidarity and equality of all candidates on the list.'

7. The following picture emerges from a study of the conduct of the candidates on the DIFE list on the basis of their entry into and resignation from Parliament:

30 of them have been or still are Members of Parliament. Disregarding in the following figures the chairman of the group, to whom of course special rules apply, it would still be possible in theory for a change to take place twice in the case of 13 seats. The result of this would however be only that 56 candidates on the list would have been Members of Parliament by the end of the parliamentary term. Of the 15 candidates elected on 10 June 1979 (not counting the chairman of the group) only 4 resigned within a year, 6 complied belatedly with the undertaking which they had given and 4 refuse to go through the turnstile, in the same way as 4 other candidates who later became Members of Parliament. Of the 16 members of the DIFE list who resigned 7 were Members of Parliament for one year or less, 7 for between 14 and 15 months and 2 for 20 months. 5 candidates at present on the list have not yet exceeded the period of one year. The 'tourniquet system' has, when all is said and done, only operated with considerable reservations. The 'turnstile' has jammed.

8. The difficulties which have arisen in connection with the 'tourniquet system' could however also clearly be seen in other ways. For example, a member of the DIFE list complained in a plenary sitting of Parliament that the President had informed Parliament of his resignation on the basis of a letter of resignation which he should not yet have received at that time. This letter of resignation had obviously been signed by the member by way of precaution at an earlier date in accordance with the undertaking which he had entered into with his party (see point 6). In addition, the Committee on the Verification of Credentials has found that until recently the wording of almost all the letters of resignation from members of the DIFE list was the same, and had obviously been produced in advance. This is shown by the fact that these letters referred to provisions of the old Rules of Procedure even after the new Rules of Procedure had come into force.

The Committee on the Rules of Procedure and Petitions should therefore, in connection with its report on the interpretation of Rule 7(3) of the Rules of Procedure, examine whether resignations should not in future as a rule have to be announced by the Member himself to the President for entry in the latter's record. This would prevent the practices described above.

III. Compatibility of the 'tourniquet system' with the Act of 20 September 1976 and the Rules of Procedure of Parliament

9. Even after a careful examination of the Act of 20 September 1976, only two of its provisions are relevant for consideration in this connection: Article 3(1) and Article 4(1).

Article 3(1) provides as follows:

'Representatives shall be elected for a term of five years'.

The question arises here whether a candidate who gives, before his election to Parliament, regardless of whether he is at first only a replacement, an undertaking to resign from Parliament before expiry of the parliamentary term, is in breach of this provision. Mr Patijn, a former Member of Parliament, apparently tends to this view. On 30 May 1979 he sent Written Question No. 184/79 to the Council in which he asked the following question:

'Does the Council consider this rule (of the DIFE, referring to the 'tourniquet system') to be compatible with Article 3 of the Act concerning the election of the Members of the European Parliament by direct universal suffrage, which stipulates that Members are to be elected for a term of five years?'

The Council's answer, which is typical, should be mentioned here, particularly since it took almost five months:

'It is not for the Council to comment on the situation referred to by the Honourable Member'.

Nevertheless it is the Council's duty under Article 13 of the Act 'to adopt measures to implement this Act', if necessary. However, even the Commission did not use the question as an opportunity to investigate the matter, as it would have been under a duty to do had it regarded the 'tourniquet system' as a breach of 'measures taken ... pursuant' to the Treaty (Article 155 of the EEC Treaty). This enables the conclusion to be drawn that at least it did not consider it to be an obvious infringement of Article 3 of the Act.

10. In order to reach an objective assessment of the facts it is necessary first of all to examine the question set out in point 9 above only in relation to individual Members of Parliament. In this connection it also seems to be irrelevant whether the undertaking to resign early was given to a party, a parliamentary group, an employer, a wife or any other third person. If Article 3(1) of the Act is considered not only as fixing the period of the parliamentary term but as a legal duty imposed on a Member of Parliament to be a Member of Parliament for that period then even if the Member resigned without previously giving an undertaking to a third person to do so this would be illegal unless 'bona fide reasons for resignation' could be entertained, as Mr Fergusson states, drawing the logical conclusion, in his objection to the establishment of a vacancy with regard to Mr Fanton's seat (Annex III).

11. The above considerations in particular show however that such an interpretation of Article 3(1) of the Act is incorrect. A legal duty on the part of a Member to be a Member of Parliament for the length of the parliamentary term presupposes a restriction on the right to resign. The Act of 26 September 1976 contains no such restriction however because it leaves the task of laying down provisions on the resignation of Members to national legislation. The French law No. 77-729 of 7 April 1977 on the election of Members to the Assembly of the European Communities, which is relevant in this connection, provides for no restriction whatever on the right to resign. Since the election of Members for five years does not therefore create for them a duty to remain until the end of the parliamentary term, but a right according to the provisions of the Act to take their seat for this period, they are not precluded from giving to a third person before their election an undertaking that they will resign early. The fact that a considerable number of Members of the DIFE list have not complied with the undertaking given or only with varying degrees of delay shows that this duty has, moreover, no legal significance.

12. The second provision which should be considered in this connection is, as mentioned above, Article 4(1) of the Act, which provides as follows:

'Representatives shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate'.

Even if the interpretation according to which paragraph (2) refers not only to the voting mentioned in paragraph (1) is correct, the statement made in paragraph (2) means only that a Member is not bound by instructions or a binding mandate but not that a Member may not accept or follow them. A Member who for example accepts instructions from meetings or other bodies in his constituency and complies with them in Parliament is certainly not acting in breach of the Treaty. The same applies to accepting and following a binding mandate contained in the resolutions of a party congress or a group and adopted against the Member's will.

This provision, which has constitutional status in the Federal Republic of Germany, must therefore obviously have a different purpose. Your rapporteur believes that it is chiefly intended to prevent a Member from losing his seat through an electoral law because for example he has joined another group or continually repudiates the objectives of his party, in other words because he has not considered himself bound by instructions or binding mandates. In this connection he should also be protected against the

bringing of criminal proceedings. It may therefore be stated that a Member who accepts a binding mandate according to which he must resign early and complies with it is not in breach of Article 4(1) of the Act of 20 September 1976 or Rule 2(2) of the Rules of Procedure, no matter how the rules laid down by his party and his own conduct may be judged from a political point of view. This naturally means, on the other hand, that no Member is compelled to comply with such binding mandates. The committee has already stressed in the past that every Member of Parliament has the right to involve the provisions of Rule 2(2) of the Rules of Procedure or Article 4(1) of the Act of 20 September 1976 in order to protect himself from the exertion of pressure to urge him to resign before the end of his term of office.

The sole provision of the Rules of Procedure of Parliament with which the 'tourniquet system' might perhaps be incompatible is Rule 2(2). This provision is, however, apart from an unimportant difference in the wording, the same word for word as Article 4(1) of the Act, which was dealt with above. What has already been said in that connection therefore also applies in this respect.

IV. Conclusions

13. The 'tourniquet system' does not infringe the Act of 20 September 1976.
14. The 'tourniquet system' does not infringe the Rules of Procedure of Parliament.
15. Disputes pursuant to Rule 7(7) of the Rules of Procedure concerning the validity of the appointment of Members whose credentials have already been verified and based on the 'tourniquet system' are unfounded.
16. Disputes under Rule 6(1) of the Rules of Procedure as to the validity of the appointments of newly elected Members based on the 'tourniquet system' are unfounded.
17. The committee is very well aware of the difference between the legal and political assessment of a case of this nature. It considers however in this connection that it must bear in mind Rule 96(1) of the Rules of Procedure which limits its powers more than those of other committees and provides as follows:

'Parliament shall set up a Committee on the Verification of Credentials for the purpose of preparing decisions on any objections concerning the validity of elections'.

Because of these limited powers the committee must exercise restraint as regards political value judgements on the 'tourniquet system'.

Letter from Mr Adam FERGUSSON to the President of the European Parliament

Strasbourg, March 12, 1982

To the President of the European Parliament

Sir,

I enclose with this letter a copy of the request I have made to the Credentials Committee in respect of its need, in my view, to verify that all members, but specifically newly appointed members of the Parliament, have made no undertakings to anybody about terminating their membership before the end of the parliamentary term.

I am not clear whether this procedure covers the matter adequately. In case it does not, therefore, may I formally ask you to refer the point to the committee, and to require that its forthcoming report deals fully with it?

In the event that M. Mouchel's case was not dealt with as suggested in my letter to the committee chairman, I shall naturally inform you.

Yours faithfully,

(sgd) Adam FERGUSSON

Letter from Mr Adam FERGUSSON to the Chairman of the Committee on the
Verification of Credentials

Strasbourg, March 12, 1982

Sir,

May I enquire whether, when your Committee verified the credentials of M. Mouchel, who this week took M. Clement's place in the Parliament, it satisfied itself that he had given no undertaking to anyone, or taken no instructions, that might inhibit him from remaining a Member until the end of this Parliamentary term?

In view of what has taken place in the Chamber regarding the Membership of M. Clement and M. Fanton, I should naturally be much surprised if your Committee did not so satisfy itself. However, in case it actually overlooked the current controversy over the Tourniquet, I hereby formally request that the ability of every individual whose case is considered by you to remain a Member of the Parliament, unfettered by previous undertakings or future instructions, be determined by your Committee before you make a report to the Parliament.

And I make this request specifically in the case of whoever may replace M. Fanton, in the event that a vacancy is established in his case.

Yours faithfully,

(sgd) Adam Fergusson

ANNEX III

Text of the written justification of the objection to Mr FANTON's resignation made by Mr FERGUSSON (read out at the sitting of 12 March 1982)

The objection is made, first, because Mr Fanton's resignation is one of a series of systematic changes in the parliamentary composition of Mr Fanton's party. It is suggested that his resignation was made under pressure, or took place in consequence of a promise made in the past on which his inclusion on a party list was contingent. This promise featured in Mr Fanton's party's manifesto of 1979. It appears to infringe Rule 2(2) of the Parliament's Rules of Procedure, which precludes Members from being bound by any instructions and from accepting any binding mandates. That provision in turn derives from the Act of 1976.

Objection is made, secondly, because the resignation infringes the Act. The Act also requires that Members be elected for a five-year term, or for such time as is left of a term. It implies that only bona fide reasons for resignation be entertained.

Objection is made, thirdly, because the practice of systematic rotation, known as the 'tourniquet', derides the Parliament and, if widely followed, would make unsustainable the parliamentary process of understanding, debate and decision.