

EUROPEAN PARLIAMENT

Working Documents

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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 M. FISCHBACH

121

At its sitting of 3 November 1980 Parliament referred to the Legal Affairs Committee, pursuant to Rule 51(2) of the Rules of Procedure, a request for the immunity of Mrs Luise HERKLOTZ to be waived.

On 26 November 1980 the Legal Affairs Committee appointed Mr FISCHBACH rapporteur.

At its meetings of 27 October 1980, 22 and 23 January 1981 and 18 March 1981 the Legal Affairs Committee considered in depth certain procedural matters connected with the waiving of the immunity of Members of the European Parliament.

At its meeting of 12 May 1981 the Legal Affairs Committee heard Mrs Herklotz, pursuant to Rule 5(2) of the (new) Rules of Procedure (see OJ No. C 90 of 21 April 1981, p. 48 et seq).

At its meeting of 26 and 27 May 1981 the Legal Affairs Committee considered the draft report drawn up by Mr Fischbach and adopted it by 14 votes to 2 with 3 abstentions.

Present : Mr Ferri, chairman; Mr Luster and Mr Turner, vice-chairmen; Mr Fischbach, rapporteur, Mr Dalziel, Mr De Gucht, Mr Gondikas, Mr von Hassel (deputizing for Mr Modiano), Mrs Lentz-Cornette (deputizing for Mr Gonella), Mrs Macciocchi, Mr Megahy, Mr Mertens (deputizing for Mr Malangré), Mr Peters (deputizing for Mrs Gaspard), Mr Plaskovitis, Mr Schwencke (deputizing for Mrs Vayssade), Mr Konrad Schön (deputizing for Mr Janssen van Raay), Mr Simpson (deputizing for Mr Tyrrell), Mr Vetter and Mr Vié.

C O N T E N T S

	<u>Page</u>
A. <u>PROPOSAL FOR A DECISION</u>	5
B. <u>EXPLANATORY STATEMENT</u>	6
I. THE FACTS	6
II. TEXTS GOVERNING THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT	6
III. JUSTIFICATION OF THE PROPOSED DECISION SUBMITTED TO PARLIAMENT	7

ANNEX: Article 46 of the Basic Law of the Federal Republic of Germany ... 8

A

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 Federal Republic of Germany, by letter of 2 October 1980, a request for immunity to be waived,
- 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 concerning the election of the representatives of the Assembly by direct universal suffrage of 20 September 1976,
- having regard to the judgment of the Court of Justice of the European Communities of 12 May 1964¹,
- having regard to Article 46 of the Basic Law of the Federal Republic of Germany,
- having regard to Rule 5 of the Rules of Procedure,
- having regard to the report of its Legal Affairs Committee (Doc.1-321/81),

1. Decides not to waive Mrs Herklotz's immunity;
2. Instructs its President immediately to forward this decision and the report of its committee to the responsible authority of the Federal Republic of Germany

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

B

EXPLANATORY STATEMENT

I. THE FACTS

1. On 28 June 1979 Mrs Herklotz was anonymously accused of irregularities in the management of a civic training association, of which she was President, during the period November 1974 - October 1976.
2. The request for the waiving of Mrs Herklotz's parliamentary immunity, made by the Public Prosecutor's Office of Frankenthal (Palatinate) was forwarded to the President of the European Parliament by the Federal Minister of Justice.

II. TEXTS GOVERNING THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT

3. Article 4(2) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage of 20 September 1976 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;
- (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 in the past been required 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 rules 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.

7. Since the case involves events which occurred on the territory of the Federal Republic of Germany and since she is a Member of the Bundestag, Mrs Herklotz enjoys the immunities accorded to Members of the Bundestag as laid down in Article 46 of the Basic Law of the Federal Republic of Germany².

III. JUSTIFICATION OF THE PROPOSED DECISION SUBMITTED TO PARLIAMENT

8. The Legal Affairs Committee ascertained that the facts underlying the anonymous accusations against Mrs Herklotz are related to her political activity, since supporting activities to promote civic training are linked with political activities.

The Legal Affairs Committee noted that the anonymous nature of the accusations, the fact that they were made such a long time after the activities referred to, and the fact that the accusations were received by the Public Prosecutor's Office in the weeks following the proclamation of the results of the European Parliament elections - by which time the competent authorities had already clarified and settled the matter in question - suggest that this is a tendentious action designed to hamper the exercise of the parliamentary mandate.

9. Having discussed the reasons for and against the waiver of immunity, pursuant to Rule 5(2) and Rule 5(4), second subparagraph, of the Rules of Procedure, the Legal Affairs Committee has decided to recommend Parliament not to waive Mrs Herklotz's immunity.

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 Article 46 of the Basic Law of the Federal Republic of Germany is annexed

ANNEX

Article 46 (Indemnity and immunity of deputies) of the Basic Law of the
Federal Republic of Germany

1. A deputy may not at any time be prosecuted in the courts or subjected to disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a statement made by him in the Bundestag or any of its committees. This shall not apply to defamatory insults.
2. A deputy may not be called to account or arrested for a punishable offence except by permission of the Bundestag, unless he is apprehended in the commission of the offence or in the course of the following day.
3. The permission of the Bundestag shall also be necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article 18.*
4. Any criminal proceedings or any proceedings under Article 18 against a deputy, any detention or any other restriction of his personal liberty shall be suspended upon the request of the Bundestag.

* Article 18 of the Basic Law concerns the forfeiture of basic rights

