
EUROPEAN PARLIAMENT

Working Documents

1982-1983

8 November 1982

DOCUMENT 1-832/82

Report

drawn up on behalf of the Legal Affairs Committee
on two requests for the parliamentary immunity of
a Member to be waived

Rapporteur: Mr G. DONNEZ

At its sitting of 16 June 1982, the European 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.

At its sitting of 6 July 1982, the European Parliament referred to the Legal Affairs Committee, pursuant to the above-mentioned rule of procedure, a second request for the immunity of Mr Marco PANNELLA to be waived.

On 13 July 1982 the Legal Affairs Committee appointed Mr DONNEZ rapporteur.

At its meeting of 19 and 20 October 1982, the Legal Affairs Committee considered these two requests that immunity be waived and adopted the draft decision drawn up by Mr Donnez nem.-con. with one abstention.

The following took part in the vote: Mrs VEIL, chairman; Mr Chambeiron, vice-chairman; Mr Donnez, rapporteur; Mr Dalziel, Mr D'Angelosante, Mr Gontikas, Mr Goppel, Mr Malangré, Mr Poniridis, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade and Mr Wurtz (deputizing for Mrs Cinciari Rodano).

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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 two requests for the parliamentary immunity of a Member to be waived

The European Parliament,

- having received from the Ambassador of the Italian Republic in Luxembourg two requests sent by letter and dated 14 May 1982 and 25 May 1982 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 judgement 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 its Rules of Procedure,
- having regard to its decisions of 9 March 1982² and 16 June 1982³,
- having regard to the report of its Legal Affairs Committee (Doc. 1-832/82),

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

² OJ No. C 87 of 5 April 1982, p. 37

³ OJ No. C 182 of 19 July 1982, p. 24

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.

EXPLANATORY STATEMENTI. THE FACTS

1.(a) Mr Pannella, accused of libel in his capacity as the editor of a press publication in which a contentious article was published on 7 March 1972, was found guilty on 27 November 1974 by the Rome Court.

(b) Mr Pannella, accused of libel jointly and severally with the editor of a press publication in which certain contentious articles had been published on 15 and 16 January 1976, was found guilty on 21 November 1977 by the Rome Court.

(c) Mr Pannella has lodged appeals before the Court of Appeal, Rome, against these two judgements.

2. In connection with these two actions, the Public Prosecutor of the Republic attached to the Court of Appeal, Rome, has made two requests for Mr Pannella's parliamentary immunity to be waived; these requests and the documents relating to them were sent by the Minister of Justice to the Ambassador of the Italian Republic in Luxembourg who has forwarded them to the European Parliament.

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 restates 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;¹

(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' (judgement of 12 May 1964 - Wagner v Fohrmann and Krier, Case 101/63) [1964] ECR 195.

6. This judgement 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 protocol².

III. JUSTIFICATION OF PARLIAMENT'S PROPOSAL FOR A DECISION

7. The Legal Affairs Committee and the European Parliament recently³ had to consider two very similar requests for the parliamentary immunity of a Member to be waived: in that case, as in this instance, 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.

¹ 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 (see the annex to this report).

² This judgement 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.

³ Report by Mr DE GUCHT (Doc. 1-1082/81) and report by Mr DONNEZ (Doc. 1-298/82).

The principles and considerations on which the Legal Affairs Committee based its proposals for decisions, which were adopted by Parliament on 9 March 1982¹ and 16 June 1982², apply to the requests for waiver of immunity now under consideration, your rapporteur would therefore ask you to refer to the report which he drew up on the first request for the parliamentary immunity of Mr Pannella to be waived (Doc. 1-298/82).

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8. 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.

¹OJ No. C 87 of 5 April 1982, p. 37

²OJ No. C 182 of 19 July 1982, p. 24.

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.