

European Communities

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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 K. DE GUCHT

PE 76.098/fin.



At its sitting of 16 June 1981 Parliament referred to the Legal Affairs Committee, pursuant to Rule 5 (2) of the Rules of Procedure a request for the immunity of Mrs Luciana CASTELLINA to be waived.

On 15 July 1981 the Legal Affairs Committee appointed Mr DE GUCHT rapporteur.

At its meeting of 2 and 3 December 1981 the Legal Affairs Committee, after hearing an introductory statement by its rapporteur, held a preliminary discussion on the arguments for and against the waiver of parliamentary immunity.

At its meeting of 25 and 26 February 1982 the Legal Affairs Committee considered the draft report drawn up by Mr DE GUCHT and adopted it with 9 votes in favour and 5 abstentions.

The following took part in the vote: Mrs Veil, chairman; Mr Luster, vice-chairman; Mr de Gucht, rapporteur; Mr Dalziel, Mr d'Angelosante, Mr Geurtsen, Mr Gonella, Mr Janssen van Raay, Mrs Macciocchi, Mr Malangré, Mr Poniridis, Mr Prout, Mr Sieglerschmidt 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 Permanent Representative of Italy to the European Communities by letter of 21 May 1981 a request for the immunity of Mrs Luciana Castellina 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 1964<sup>1</sup>,
  - 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- 1082/81),
1. Decides not to waive Mrs Castellina'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.

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

EXPLANATORY STATEMENT

I - THE FACTS

1. Mrs Castellina, accused of the offence contemplated by Article 595 of the Penal Code and Article 13 of Law No. 47 of 8 February 1948, was found guilty by the Rome Tribunal (second section) at the conclusion of two separate sets of proceedings on 12 May 1973 and 3 April 1974 of libel through the press by virtue of her position as the editor of the daily newspaper which published the articles complained of. Mrs Castellina has lodged an appeal against these two judgements with the Rome Court of Appeal.

2. A request for Mrs Castellina's parliamentary immunity to be waived has been made by the Office of the Public Prosecutor of the Republic attached to the Rome Court of Appeal. The documents relating to this request were forwarded by the Ministry of Justice to Italy's Permanent Representative to the European Communities, who has passed them on to 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 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 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 protocol<sup>1</sup>.

### III - JUSTIFICATION OF THE PROPOSED DECISION SUBMITTED TO PARLIAMENT

#### (a) Legal ineffectiveness of a renunciation of immunity

7. 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 Parliament.<sup>2</sup>

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

8. 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, Mrs Castellina enjoys the immunity accorded to members of the Italian parliament under Article 68 of the Italian Constitution<sup>3</sup>.

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 procedures. Moreover, the Italian Chamber of Deputies has consistently said that members of parliament may not themselves waive this constitutional guarantee<sup>4</sup>.

9. This being so, the Legal Affairs Committee has confined itself to taking note of the speech made by Mrs Castellina at the time of the announcement to the House of the request for her parliamentary immunity to be waived<sup>5</sup>, in which she asked Parliament not to grant her immunity.

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<sup>1</sup> 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.

<sup>2</sup> See minutes (PE 64.548, p.6) and Notice to Members No.6/80 (PE 64.630)

<sup>3</sup> Article 68 of the Italian Constitution is annexed

<sup>4</sup> See Parliamentary Proceedings, first electoral period p. 36.115

<sup>5</sup> OJ Annex no. 1-272, p. 68 (sitting of 16 June 1981).

The fact that Mrs Castellina has lodged an appeal and 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 15 below).

(b) Libel through the press and the immunity of Members of the European Parliament

Inapplicability of the 'precedent' of 1964

10. The Legal Affairs Committee has 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 concerned<sup>1</sup>. 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.

11. This single decision on waiver of immunity, which was taken before the direct elections to the European Parliament is irrelevant to the present case since Mrs Castellina is not a member of a national parliament. Moreover, at its meeting of 27 October 1980<sup>2</sup>, 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,

12. 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) Libel through the press and the Italian Law on the press

13. The Legal Affairs Committee has noted that Mrs Castellina was sentenced by virtue of her 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 judgement on the merits of the two cases, that the offences of which Mrs Castellina was found guilty by the Rome Tribunal should be seen as having been inspired by political considerations.

<sup>1</sup> Decision of 15 June 1964 - OJ 9, July 1964, p. 1669

<sup>2</sup> See minutes (PE 68.470, p.4)



14. 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 libel, through the press 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

15. 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 judgements, appeals or applications for judgements to be set aside. In the present case there can be no question of Mrs Castellina's immunity being challenged on the ground that the articles complained of appeared before she became a Member of Parliament.

IV - CONCLUSION

16. 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 Mrs Castellina'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.