



European Communities

EUROPEAN PARLIAMENT

# WORKING DOCUMENTS

English Edition

1985-86

29 May 1985

SERIES A

DOCUMENT A2-46/85

REPORT

drawn up on behalf of the Committee on Legal Affairs and  
Citizens' Rights

on the request for the waiver of Mr Marco PANNELLA's  
parliamentary immunity

Rapporteur: Mr Georges DONNEZ

Fr.-iaj.

WG(2)/1940E

PE 97.963/fin.



By letter of 25 April 1984, the President of the European Parliament referred to the Committee on Legal Affairs and Citizens' Rights, pursuant to Rule 5(2) of the Rules of Procedure, a request for the waiver of Mr Marco Pannella's parliamentary immunity.

The Legal Affairs Committee had not stated its position on the subject by the end of the first parliamentary term.

In a letter dated 12 September 1984 to the President of the European Parliament, the chairman of the Committee on Legal Affairs and Citizens' Rights asked whether requests for the waiver of parliamentary immunity forwarded to Parliament during its first electoral period and on which no decision had been taken by the end of that time should be regarded as having lapsed. Without prejudging the decision on this question, the Committee on Legal Affairs appointed Mr DONNEZ rapporteur on those requests, including that dealt with in this report, on 18 September 1984.

At its sitting of 25 October 1984, the European Parliament decided that those requests had not lapsed, and rejected the interpretation to the contrary submitted to it under Rule 111 of the Rules of Procedure. Moreover, the Minister of Justice of the Italian Republic informed the President of the European Parliament in a telex dated 11 February 1985 that the responsible authorities upheld those requests.

At its meeting of 23 and 24 May 1985 the Committee on Legal Affairs and Citizens' Rights considered the draft report and approved the motion for a resolution by 10 votes to none with one abstention.

Present: Mr Evrigenis, vice-chairman and acting chairman; Mr Donnez, vice-chairman and rapporteur; Mr Barzanti, Lord O'Hagan, Mr Pordea, Mr Price, Mr Rogalla, Mr Schwalba-Hoth, Mr Ulburghs, Mr Vetter and Mr Wijsenbeek.

This report was tabled on 24 May 1985.

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ANNEX Article 68 of the Constitution of the Italian Republic

The Committee on Legal Affairs and Citizens' Rights hereby submits to the European Parliament the following proposal for a decision, together with explanatory statement:

PROPOSAL FOR A DECISION

on the request for the waiver of Mr Marco Pannella's parliamentary immunity

The European Parliament,

- having received a request forwarded by the Minister of Justice of the Italian Republic on 18 February 1984 for the waiver of Mr Pannella's parliamentary immunity,
- 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 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 1964 (1),
- 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 the Committee on Legal Affairs and Citizens' Rights (Doc. A2-46/85),

1. Decides not to waive Mr Pannella's parliamentary immunity;
2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the Italian Republic.

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

EXPLANATORY STATEMENTI. THE FACTS

1. The Florence Public Prosecutor requests the waiver of the parliamentary immunity of Mr Pannella who is accused of having, along with others, helped to terminate the pregnancies of consenting women by referring them to various doctors in Italy and abroad (1). Voluntary interruption of pregnancy was illegal in Italy at the time the acts were committed.

2. On 9 January 1975, a clinic was discovered in Florence which habitually terminated the pregnancies of women referred to it by the CISA (Italian Sterilization and Abortion Centre), an organization reputedly set up with the help of Mr Pannella and the Radical Party. At the time the acts were committed, the Radical Party was conducting an intense political campaign to have the law on the termination of pregnancy amended, and shortly afterwards, following a referendum, a new law on the termination of pregnancy entered into force in Italy.

It should be pointed out that, following extensive inquiries, the examining magistrate stated that he was unable to consider as founded the suggestion that the revenue of the CISA (which requested a contribution of Lit 100,000 for the termination of a pregnancy, except in the case of indigent women, for whom it was free) was intended to finance other activities and other initiatives in other fields; the sole purpose of this revenue was to make the CISA self-financing.

As Mr Pannella is one of its Members, the Italian Chamber of Deputies had to take a decision on requests similar to that now before us on two occasions: on both 19 October 1977 and 23 October 1984, the Chamber decided not to waive Mr Pannella's immunity.

II. PARLIAMENTARY IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT: TEXTS AND PRINCIPLES

3. Article 10 of the Protocol on the Privileges and Immunities of the European Communities (1) annexed to the Treaty establishing a single Council and a single Commission of the European Communities (2), which restates the provisions of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, states:

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- (1) Pursuant on the one hand to Articles 110 and 446 of the Italian Penal Code and on the other to Articles 81, 112, 118, 546 and 555.
- (2) Article 9 of that protocol should also be noted. It states: 'Members of the Assembly shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties'.
- (3) To which reference is made in Article 4(2) of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage.

'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.'

4. Since the charges made against Mr Pannella, an MEP of Italian nationality, are alleged to have been committed on Italian territory, he enjoys the immunities accorded to Members of the Italian Parliament under Article 68 of the Italian Constitution(1).

5. The procedure within the European Parliament is governed by Rule 5 of the Rules of Procedure(2).

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(1) Article 68 of the Italian Constitution is annexed.

(2) Rule 5 reads as follows:

1. Any request addressed to the President by the appropriate authority of a Member State that the immunity of a Member be waived shall be communicated to Parliament in plenary sitting and referred to the appropriate committee.

2. The committee shall consider such a request without delay but shall not go into the merits of the case. It shall hear the Member concerned at his request. If he is in custody, he may have himself represented by another Member.

3. Should a Member be arrested or prosecuted after having been found in the act of committing an offence, any other Member may request that the proceedings be suspended or that he be released.

4. The report of the committee shall be placed at the head of the agenda of the first sitting following the day on which it was tabled.

Discussion shall be confined to the reasons for or against the waiver of immunity.

5. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned.'

6. During its first electoral period and from the beginning of the second, the European Parliament decided on a certain number of requests for the waiver of the parliamentary immunity of its Members; the proceedings in Parliament - in accordance with the proposals submitted by the Legal Affairs Committee - established a number of general principles on which there was widespread agreement.

7. It seems useful to describe in this report those principles which are applicable in this case, whilst stressing the need to ensure that decisions taken on the waiver of parliamentary immunity of members have a firm legal basis and are therefore not affected by various considerations relating in particular to the political party to which the member in question belongs or even his nationality.

#### A. Purpose of parliamentary immunity

Parliamentary immunity is not a member's personal privilege but a guarantee of the independence of Parliament and its members in relation to other authorities.

#### B. Legal ineffectiveness of a renunciation of immunity

Having been consulted by the President of Parliament on certain matters of principle relating to the waiver of parliamentary immunity, the Legal Affairs Committee, at its meeting of 27 March 1980, concluded that the renunciation by a member of his parliamentary immunity had no legal effect and notified its finding to the President of Parliament (1). At its meeting of 17 April 1980, the enlarged Bureau adopted the opinion of the Legal Affairs Committee, which has since followed that principle in its decisions.

Parliament's decision in the case now under consideration should not therefore be affected by the desire expressed by Mr Pannella in a letter dated 24 April 1985 to the chairman of the Committee on Legal Affairs and Citizens' Rights to have his parliamentary immunity waived so as to be able to appear before the court having jurisdiction.

#### C. Temporal limit on immunity

The Court of Justice has been called upon to interpret the words "during the sessions of the Assembly" contained in Article 10 of the Protocol on the Privileges and Immunities of the European Communities (judgment of 12 May 1984 in Case 101/63, Wagner v Fohrmann and Krier, (1964) ECR 195).

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 Protocol (1).

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



It follows, moreover, from the very purpose of parliamentary immunity that it operates throughout the whole of a Member's term of office and is effective as against the commencement of proceedings, preparatory enquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside; in this case there can be no question of Mr Pannella's immunity being challenged on the grounds that the facts in question occurred before he became a Member of Parliament.

Immunity ceases at the end of the Member's term of office.

D. Independent nature of European Parliamentary immunity compared with national parliamentary immunity

The fact that subparagraph (a) of the first paragraph of Article 10 of the Protocol refers to the immunities accorded to members of national parliaments has not prevented the European Parliament from creating its own rules, as it were, a body of case law; these rules, which stem from decisions taken on requests for the waiver of parliamentary immunity, tend to forge a coherent concept of European parliamentary immunity which would on principle be independent of the divergent customs of the national parliaments: otherwise, the differences between members of the same parliament because of their nationality would be accentuated.

8. The application of these principles has given rise to a constant factor in Parliament's decisions which has become a fundamental criterion for the consideration of the action to be taken on each request for the waiver of immunity: in all cases in which the acts of which a European Parliamentarian is accused form part of his political activities, immunity is not waived. Other considerations have been added to this criterion, relating in particular to:

- the fumus persecutionis, in other words the presumption that the criminal proceedings are based on an intention to prejudice the Member's political activities (anonymous information at the basis of the preliminary investigation, belatedness of the request in relation to the acts of which the Member is accused);
- the particularly odious nature of the acts of which the Member is accused.

III. JUSTIFICATION FOR THE PROPOSAL FOR A DECISION

9. On the basis of the above criterion and principles, we propose that Mr Pannella retain his parliamentary immunity. The act of helping to arrange for the termination of pregnancies formed part of the political campaign conducted by the Radical Party to have Italian legislation on the voluntary

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(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.

termination of pregnancy amended. There are therefore adequate grounds for assuming that the acts of which Mr Pannella is accused, which apparently consisted of his lending his political weight to activities contrary to a law whose amendment was being urgently sought through every possible legal channel, are political in nature.

#### IV. CONCLUSION

10. In these circumstances, having considered the reasons for and against waiving immunity, in accordance with the second subparagraph of Rule 5(4) of the Rules of Procedure, the Committee on Legal Affairs and Citizens' Rights recommends that Parliament should not waive Mr Pannella's parliamentary immunity.

Article 68 of the Constitution of the Italian Republic

Proceedings may not be brought against Members of Parliament for opinions expressed or votes cast in the performance of their duties.

No Member of Parliament may, without the authorization of the Chamber to which he belongs, be subjected to criminal proceedings; nor may he be arrested or otherwise deprived of his personal liberty, or served with a search warrant in person or in his home unless he is caught in the act of committing an offence for which an order of arrest is compulsory.

A similar authorization is required to arrest or detain a Member of Parliament in the enforcement of a judgment even if it is final.

