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R E P O R T

of the Committee on the Rules of Procedure, the  
Verification of Credentials and Immunities

on the request for the waiver of  
Mr Jean-Marie LE PEN's parliamentary immunity

Rapporteur: Mr J.-M. GIL-ROBLES

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At the sitting of 15 December 1989 the President of the European Parliament announced that he had received and referred to the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, pursuant to Rule 5(1) of the Rules of Procedure, a request for the waiver of Mr Jean-Marie Le Pen's parliamentary immunity, forwarded by the Minister of Justice of the French Republic on 7 December 1989 at the request of the Public Prosecutor at the Paris Court of Appeal.

At its meeting of 21 and 22 March 1990 the Committee on the Rules of Procedure, the Verification of Credentials and Immunities appointed Mr Gil-Robles rapporteur.

By letter of 20 April 1990 Mr Le Pen decided not to request a hearing pursuant to Rule 5(2) of the Rules of Procedure.

At its meeting of 26 and 27 June 1990 the committee considered the request and discussed the reasons for and against the waiver of Mr Le Pen's parliamentary immunity.

At its meeting of 18 September 1990 the Committee on the Rules of Procedure, the Verification of Credentials and Immunities held a further discussion and unanimously adopted the proposal for a decision contained in the report.

The following took part in the vote: Wijzenbeek, vice-chairman; Gil-Robles, rapporteur; Bocklet (for Malangré), Capucho (for Defraigne), Gollnisch, Herman (for Rinsche), Janssen van Raay, Klepsch (for Zeller), Lalor, McIntosh, Patterson, Rogalla and Salema.

The report was tabled on 8 October 1990.

PROPOSAL FOR A DECISION

on the request for the waiver of Mr Jean-Marie Le Pen's parliamentary immunity

The European Parliament,

- having received a request forwarded by the Minister of Justice of the French Republic on 7 December 1989 for the waiver of Mr Jean-Marie Le Pen's parliamentary immunity and announced on 15 December 1989,
  - 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 judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986<sup>1</sup>,
  - having regard to Article 26 of the French Constitution,
  - having regard to Rule 5 of its Rules of Procedure,
  - having regard to the report of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities (Doc. A 3-0247/90),
1. Hereby decides not to waive Mr Jean-Marie Le Pen's parliamentary immunity;
  2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the French Republic.

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<sup>1</sup> In Case 101/63 (Wagner v Fohrmann and Krier), (1964) ECR 397, and Case 149/85 (Wybot v Faure), (1986) ECR 2403.

EXPLANATORY STATEMENTI. THE FACTS

1. On 6 July 1989 Mr Jacques Bruhnes submitted to the Senior Examining Magistrate at the Nanterre Court of First instance an action for damages for defamation by libel of a citizen entrusted with a public office. The action was brought against a number of persons, including Mr Jean-Marie Le Pen, in his capacity as President of the National Front, and was based on the content of a leaflet bearing the initials of his party distributed in Gennevilliers during the week of 26 June to 1 July 1989.

The leaflet does not bear Mr Le Pen's signature, nor does his name appear anywhere in the text. It is headed 'Union for a Gennevilliers of the French'; under this heading appears:

Joseph Jouan  
Town Councillor  
Section Secretary.

The full text of the leaflet is attached as Annex I.

2. On 14 September 1989 the examining magistrate appointed to consider the case ruled that the action for damages was inadmissible in so far as Mr Le Pen was concerned, by reason of his parliamentary status; this did not apply in the case of Mr Jouan and the other defendants.

On 6 October 1989 Mr Bruhnes' lawyer sent a request for the waiver of immunity to the President of the European Parliament, via the Prosecutor of the Paris Appeal Court and the French Minister of Justice.

3. By letter of 20 April 1990 Mr Le Pen declined an invitation to appear before the Committee on Petitions. His exact words were: 'With regard to the fourth request for waiver, this concerns a leaflet protesting at violent attacks by foreigners on French town councillors.'

I am not the author of this text (which does not mean that I disapprove of it).

The action brought against me over this local matter is obviously a case of legal persecution and an attempt by my political opponents to damage my interests. I have nothing else to say on the subject.'

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

4. Article 10 of the Protocol on the Privileges and Immunities of the European Communities<sup>2</sup>, annexed to the Treaty establishing a single Council and a single

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<sup>2</sup> Also note the wording of Article 9 of the same protocol : 'Members of the European Parliament shall not be subject to any form of enquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties'.

Commission of the European Communities<sup>3</sup>, which restates the provisions of Article 9 of each of the Protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, reads as follows:

'During the sessions of the European Parliament, 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 European Parliament.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its members.'

5. The offence of which Mr Jean-Marie Le Pen, a Member of the European Parliament of French nationality, is accused, is alleged to have been committed on the territory of the French Republic. Mr Le Pen therefore enjoys the immunities accorded to Members of the French Parliament under Article 26 of the French Constitution<sup>4</sup>.

6. The procedure within the European Parliament is governed by Rule 5 of the Rules of Procedure<sup>5</sup>.

7. Since the first European elections by direct universal suffrage, the European Parliament has ruled on requests for the waiver of the parliamentary immunity of its own Members. It has dealt with such requests in accordance with general principles designed to ensure that its decisions are not

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<sup>3</sup> Referred to in Article 4(2) of the Act of 20 September 1976 concerning the election of representatives of the Assembly by direct universal suffrage.

<sup>4</sup> Article 26 of the French Constitution is annexed.

<sup>5</sup> 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. Even if, in so doing, it acquires detailed knowledge of the facts of the case, it may not, under any circumstances, pronounce on the guilt or otherwise of the Member. 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. At the end of the debate there shall be an immediate vote.
- 5. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned.'

influenced by such considerations as the political affiliations or even the nationality of the Member concerned.

8. At its sitting of 10 March 1987<sup>6</sup>, the European Parliament adopted a resolution based on the report by Mr Donnez on the draft Protocol revising the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 in respect of Members of the European Parliament (Doc. A 2-121/86).

These principles, which are applicable to the case in question, are as follows:

(a) The 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. Pursuant to this principle, the date of the acts of which the Member is accused is not important: they may occur before or after the Member's election; all that has to be considered is the protection of the institution of Parliament through that of its Members.

(b) Legal ineffectiveness of renunciation of immunity

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities believes that it should not depart from the principle hitherto observed by the European Parliament that renunciation of parliamentary immunity by the Member concerned has no legal effect.

(c) Temporal limits on immunity

The Court of Justice has twice been called upon to interpret the words 'during the sessions of the European Parliament' contained in Article 10 of the Protocol on the Privileges and Immunities of the European Communities.

The Court's two judgments (Wagner v Fohrmann and Krier of 12 May 1964, Case 101/63, [1964] ECR 397, and Wybot v Faure of 10 July 1986, Case 149/85, [1986] ECR 2403) state that the European Parliament holds an annual session of one year during which (and also during the periods of adjournment of the session) its Members enjoy the immunity provided for in the above protocol.

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 against the commencement of proceedings, preparatory enquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside. 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 does not mean that the European Parliament cannot create its own rules - a body of case law, as it were. As for the waiving of parliamentary immunity,

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<sup>6</sup> OJ No. C 99, 13.4.1987, p. 44

there should be no confusion between parliamentary immunity, which is identical for members of national parliaments and of the European Parliament alike, and the waiving of parliamentary immunity, which is a matter for each of the parliaments concerned. 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 in 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.

9. In accordance with these principles, the European Parliament has not waived immunity in those cases where the request brought against the Member manifestly lacks substance due to lack of proof of his participation in the events or to any other factor not at present specified in Rule 5 of the Rules of Procedure which would entail rejection of the request a limine should such a possibility exist.

10. A further criterion employed by Parliament in such cases is that of the fumus persecutionis, i.e. immunity is not waived if there are sufficiently serious and precise grounds for believing that the allegations are designed to prejudice the Member's political activities.

### III. JUSTIFICATION FOR THE PROPOSAL FOR A DECISION

11. Following consideration of the fourth request for the waiver of Mr Le Pen's parliamentary immunity, forwarded to the President of Parliament on 7 December 1989, the following emerges:

(a) This request is a complaint brought by a private individual (albeit occupying a public post) who claims to have been defamed by Mr Le Pen. We are not dealing with an action brought by the Public Prosecutor's office or the judicial authorities within the terms of their obligation to pursue breaches of the law.

(b) The alleged offence is said to have been committed by means of a leaflet neither written nor signed by Mr Le Pen (he expressly denies authorship).

(c) The complainant, who occupies a public post by virtue of his membership of a majority group excluding Mr Le Pen's party, does not provide any evidence, even of an indirect nature, to justify the view that Mr Le Pen is the effective author of the leaflet or even ordered or authorized its distribution. National party presidents do not, as a rule, concern themselves with leaflets on local issues, nor is their assent required for the writing or distribution of such publications.

(d) In the absence of proof, the fact that the complaint has been brought against a political opponent who does not appear to be the author of or to be responsible for the publication means that it must be considered as an act designed to prejudice the Member, rather than to obtain punishment for the offence and compensation for the damage caused. The complainant is free to achieve those objectives by legal action against the other defendants, including the person whose name appears in the leaflet.

(e) It must be borne in mind that French law does not permit either the Public Prosecutor or the Minister of Justice to refuse to forward a request



involving, as in the present case, a private complaint requesting compensation for damage. The act of forwarding has, consequently, not been preceded by an examination of the grounds for the request, nor does it imply that the French authorities either agree or disagree with it.

In view of all the above considerations, it must be concluded that the request should be rejected without further delay, in accordance with the criteria set out in paragraphs 9 and 10 above.

#### IV. CONCLUSIONS

12. In the light of the foregoing, and after examining the reasons for and against the waiver of immunity, pursuant to the second subparagraph of Rule 5(4) of the Rules of Procedure, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities recommends that Parliament should not waive Mr Le Pen's parliamentary immunity.

To the Senior Examining Magistrate at  
the Nanterre Court of First Instance

ACTION FOR DAMAGES IN THE CONTEXT OF CRIMINAL PROCEEDINGS

Mr Jacques BRUHNES, born on 7 October 1934 in Paris 4<sup>e</sup>, teacher and Deputy Mayor of Gennevilliers, acting both in this capacity and in his own name, resident at the Hôtel de Ville, Gennevilliers (92230).

Represented by Maître Patrice COHEN-SEAT, lawyer at the Paris Bar, resident at 69 rue de la Fayette, 75009 Paris, tel. 42.80.41.38, A.518.

With an address for service, for the present proceedings and the follow-up thereto, at the office of Mr USSEGLIO-CHEVALIER, lawyer at the Nanterre Bar, resident at 76 rue des Amandiers, 92000 Nanterre.

Has the honour to present to you the following facts:

A leaflet entitled 'DESPITE THE THREATS, THE NATIONAL FRONT HOLDS THE IMMIGRANT HORDES IN CHECK' was distributed in Gennevilliers in the week of 26 June to 1 July. This leaflet, a copy of which is annexed hereto, bears the initials of the National Front and was issued by the "UNION FOR A GENNEVILLIERS OF THE FRENCH" and, more especially, by Joseph JOUAN, Town Councillor of Gennevilliers and, for the purposes of the leaflet, Section Secretary of the National Front.

After the title, the text of the leaflet begins with the following statement: 'FRIDAY, 23 JUNE. THE MAYOR AND THE MAJORITY OF THE TOWN COUNCIL, SUPPORTED BY SOS RACISM AND OTHER ASSOCIATIONS SUBSIDIZED BY TAXPAYERS' MONEY, ORGANIZED A DEMONSTRATION WITH A VIEW TO PREVENTING THE ELECTED MEMBERS OF THE "UNION FOR A GENNEVILLIERS OF THE FRENCH" LIST FROM SITTING ON THE TOWN COUNCIL'. It ends as follows: 'ELECTED BY THE PEOPLE OF GENNEVILLIERS, THE COUNCILLORS OF THE NATIONAL FRONT, THE VOICE OF THE FRENCH PEOPLE, SHOULD BE ABLE TO EXERCISE THEIR MANDATE FREELY AND WITHOUT CONSTRAINT. SUPPORT THE ELECTED MEMBERS OF THE NATIONAL FRONT, WHO DEFEND THE FRENCH FIRST. WRITE TO US!'

Finally, at the bottom of the page, it gives the following details: 'FN-B.P. 8 - 92235 GENNEVILLIERS CEDEX - TEL. 47.33.23.04'.

After the statement quoted above, in which the Mayor and the majority of the Town Council are alleged to have organized 'A DEMONSTRATION WITH A VIEW TO PREVENTING THE ELECTED MEMBERS OF THE "UNION FOR A GENNEVILLIERS OF THE FRENCH" LIST FROM SITTING ON THE TOWN COUNCIL', the leaflet has this to say: 'AT ABOUT 7 P.M., VANS DRIVEN BY FOREIGNERS STOPPED OPPOSITE THE TOWN HALL. THE LOCAL PEOPLE WERE THOROUGHLY ALARMED WHEN THEY SAW WHAT WAS STACKED INSIDE: TRUNCHEONS, CLUBS, ETC. ...'.

Further down the page, it is stated that 'DESPITE THESE THREATS, THE THREE ELECTED MEMBERS OF THE NATIONAL FRONT, REFUSING TO BE INTIMIDATED BY THE STRONGARM TACTICS OF MR BRUHNES, ARRIVED TO TAKE THEIR SEATS!', that 'AT THE EXIT TO THE TOWN HALL, A NUMBER OF THEIR FRIENDS WERE ATTACKED BY TELE-CONTROLLED THUGS WHO HAD OBVIOUSLY COME TO DO SOME "FRENCH-BASHING", and,

finally, that 'BECAUSE OF THE INTRIGUES OF ITS MAYOR AND ITS MAJORITY, THE TOWN COUNCIL OF GENNEVILLIERS CAN NO LONGER SIT WITH AN EASY CONSCIENCE. IT IS INTOLERABLE THAT DEMOCRACY SHOULD BE HELD UP TO RIDICULE BY PERSONS WHO FRAUDULENTLY CLAIM TO DRAW THEIR INSPIRATION FROM IT.'

This leaflet, and the passages quoted above in particular, contain an accusation against Mr BRUHNES which is damaging to his honour and his esteem.

This is why Mr BRUHNES is fully justified in bringing before you an action for damages in the context of criminal proceedings for defamation by libel of a citizen entrusted with a public office - such defamation being in contravention of Articles 29(1), 31, 42 et seq. of the law of 29 July 1881 - against:

- (1) Mr Joseph JOUAN, Town Councillor, resident at 26 rue Marcel Royer, 92230 Gennevilliers
- (2) The head, if he is other than Joseph JOUAN, of the UNION FOR A GENNEVILLIERS OF THE FRENCH.
- (3) The head, if he is other than Joseph JOUAN, of the Section of the National Front which organized the distribution of the leaflet.
- (4) Mr Jean-Marie LE PEN, President of the NATIONAL FRONT, which appears to be the source of the leaflet.
- (5) All persons whose involvement is disclosed by the investigation of the case.

Mr BRUHNES offers to deposit with you such sum as you may require.

Done at Paris, 5 July 1989

(Patrice Cohen-Seat, acting as the representative of J. Bruhnes)

UNION FOR A GENNEVILLIERS OF THE FRENCH

FN

JOSEPH JOUAN  
Town Councillor  
Section Secretary

DESPITE THE THREATS, THE NATIONAL FRONT HOLDS THE  
IMMIGRANT HORDES IN CHECK

Friday, 23 June

The Mayor and the majority of the Town Council, supported by SOS RACISM and other associations subsidized by the taxpayers' money, organized a demonstration with a view to preventing the elected members of the 'UNION FOR A GENNEVILLIERS OF THE FRENCH' list from sitting on the Town Council.

At about 7 p.m., vans driven by foreigners stopped opposite the Town Hall. The local people were thoroughly alarmed when they saw what was stacked inside: truncheons, clubs, etc.....

Disturbed by the turn of events, shopkeepers lowered their metal shutters.

Despite these threats, the three elected members of the National Front, refusing to be intimidated by the strongarm tactics of Mr BRUHNES, arrived to take their seats!

At the exit to the Town Hall, a number of their friends were attacked by tele-controlled thugs who had obviously come to do some 'French-bashing'.

Because of the intrigues of its Mayor and its majority, the Town Council of Gennevilliers can no longer sit with an easy conscience.

It is intolerable that democracy should be held up to ridicule by persons who fraudulently claim to draw their inspiration from it.

Elected by the people of Gennevilliers, the Councillors of the NF, the voice of the French people, should be able to exercise their mandate freely and without constraint.

SUPPORT THE ELECTED MEMBERS OF THE NF, WHO DEFEND THE FRENCH FIRST

WRITE TO US!

FN - B:P: 8 - 92235 GENNEVILLIERS CEDEX - TEL. 47 33 23 04

Article 26 of the French Constitution

No Member of Parliament may be subject to criminal proceedings, inquiry, arrest, detention or judgment on any account of opinions expressed or votes cast by him in the performance of his duties.

No Member of Parliament may, during the sessions, be subject to criminal proceedings or arrest for a criminal offence, save with the authorization of the House of which he is a Member, except in the case of flagrante delicto.

No Member of Parliament may, outside the sessions, be subject to arrest, save with the authorization of the Bureau of the House of which he is a Member, except in the case of flagrante delicto, authorized criminal proceedings, or final judgment.

The detention or prosecution of a Member of Parliament shall be suspended if the House of which he is a Member so requires.

