



European Communities

**EUROPEAN PARLIAMENT**

# **SESSION DOCUMENTS**

English Edition

20 December 1990

A3-0377/90

## **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 parliamentary immunity of  
Mr Marco PANNELLA to be waived

Rapporteur: Mr José Maria GIL-ROBLES

DOC\_EN\RR\101691

PE 145.181/fin.  
Or. FR

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At the sitting of 15 February 1990, the President of the European Parliament announced that he had received a request for the parliamentary immunity of Mr Pannella to be waived, forwarded by the Minister of Justice of the Italian Republic on 15 January 1990 at the request of the Rome Public Prosecutor, and that he had referred it to the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, pursuant to Rule 5(1) of the Rules of Procedure.

At its meeting of 21 and 22 March 1990, the committee appointed Mr Gil-Robles rapporteur.

At its meeting of 29 and 30 October 1990 it heard Mr Pannella pursuant to Rule 5(2) of the Rules of Procedure and held an exchange of views on the reasons for or against the waiver of immunity.

At its meeting of 17 December 1990 it considered the draft report and unanimously adopted the proposal for a decision.

The following took part in the vote: Galle, chairman; Harrison, vice-chairman; Gil-Robles, rapporteur; Defraigne, Gollnisch, Malangré, Perreau de Pinninck (for Lalor), Peters, Rogalla, Stamoulis and Vecchi.

The report was tabled on 20 December 1990.

PROPOSAL FOR A DECISION

on the request for the parliamentary immunity of Mr Pannella to be waived

The European Parliament,

- having received a request for the parliamentary immunity of Mr Pannella to be waived, forwarded by the Minister of Justice of the Italian Republic on 15 January 1990 and announced on 15 February 1990,
  - 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 68 of the Italian 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 (A3-0377/90),
1. Decides not to waive the parliamentary immunity of Mr Pannella;
  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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<sup>1</sup> See 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. In January 1988 Mr Giorgio La Malfa submitted a complaint against Mr Giacinto Marco Pannella and others. Mr Pannella was accused of having had published in the daily newspapers 'Il Giornale d'Italia' and 'Il Manifesto' on 6 November 1987, in his capacity as co-chairman of the Radical Party and with criminal intent, an article entitled 'La Malfa and the Mafia', which slandered Mr Giorgio La Malfa by imputing a number of acts to him, including the following:

'In a scandalous television advertisement, the Italian Republic Party declares that the victory of the 'yes vote' in the referendum on the civil liability of magistrates will please the members of the Mafia. Leaving aside the shameful and absurd falsity of this statement, let us see whether the Republican Party itself is worthy of conducting such a campaign.

We have made a rapid survey of Sicilian and national newspapers, whose reports reveal an impressive, although by no means complete, array of Republican Party representatives involved in crime. (...)

The Republican Party (whose members launched bitter and venomous attacks against the Radical Party for allowing certain persons under arrest to join the party) is therefore in no position to preach against the Mafia. If it had not been protected by the press, which covered up its activities, it would have come to a sticky end a long time ago and would not have been able to prate about "moral issues".'

The text of the article is given in full in Annex I.

2. The wording and the layout of the article is identical in the two newspapers. In the bottom right-hand corner is the Radical Party's logo in a square, accompanied by the slogan 'Referendum. The Radical Party Favours Voting "Yes".' There is no signature or mention of the author.

An official note forwarded by the Commissioner of Police to the office of Public Prosecutor of the Republic on 29 March 1988 indicates that the editorial boards of the newspapers 'Il Giornale d'Italia' and 'Il Manifesto', when questioned on the subject, stated that they had written the articles referred to above.

3. On 22 April 1988 the Public Prosecutor's office agreed to separate proceedings against the two newspaper directors who, lacking parliamentary immunity, would be obliged to undergo summary proceedings, from proceedings against the other four accused, who, as Members of the Italian Parliament, do have such immunity.

The Public Prosecutor informed the four accused of the existence of the complaint and the article which had given rise to it. One of the accused replied on 29 May 1988, claiming to have nothing to do with these articles, which he had not even read. There are no replies from the others in the file.

4. At the meeting of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, held on 29 and 30 October 1990, Mr Pannella claimed that he had not written the article or had anything to do with its publication; that the college of chairmen of the Radical Party is made up of honorary posts, the party leadership being synonymous with the Secretariat General; that the latter is empowered to arrange the inclusion of articles in publications for publicity purposes; and that in his judgment the text did not constitute a criminal offence; rather, the legal proceedings taken were attributable to a desire for vengeance on the part of the Italian magistrature in response to the positive outcome of the referendum promoted by the Radical Party on the possibility of civil liability for members of the magistrature.

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

5. 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 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.'

6. The offences of which Mr Pannella, a Member of the European Parliament of Italian nationality, is accused, are alleged to have been committed on the territory of the Italian Republic. Mr Pannella therefore enjoys the immunities accorded to Members of the Italian Parliament under Article 68 of the Italian Constitution<sup>4</sup>.

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<sup>2</sup> Also note the wording of Article 9 of the same protocol: 'Members of the Assembly 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'.

<sup>3</sup> Referred to in Article 4(2) of the Act of 20 September 1986 concerning the election of representatives of the Assembly by direct universal suffrage.

<sup>4</sup> Article 68 of the Italian Constitution is annexed.

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

8. Ever since its Members were first elected by direct suffrage, the European Parliament has taken decisions on requests for the waiver of the parliamentary immunity of its Members. It makes every effort to ensure that these are based on general principles and that they are not affected by various considerations relating to the political affiliation or even the nationality of the Member in question.

9. At the sitting of 10 March 1987<sup>6</sup>, the European Parliament adopted a resolution based on Mr Donnez's report 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. A2-121/86).

Those of the above-mentioned principles which are applicable to the case described below:

(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.

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<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 committee's report automatically figures as the first item on the agenda for the sitting after its submission. The debate will deal only with reasons for and against the waiver of parliamentary immunity. The vote will be held immediately afterwards.

5. The President will immediately notify the competent authorities of the Member State concerned of Parliament's decision.

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

(c) Temporal limits on immunity

The Court of Justice has twice 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.

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, 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.

10. In accordance with the above principles, the European Parliament has refrained from waiving immunity in cases where there is clearly no basis for the proceedings taken against the Member, either because there is no evidence of his participation in the acts concerned, or for some other reason which would give rise to the ad limine rejection of the request if such an option existed (in its present form, Rule 5 of the Rules of Procedure makes no provision for this).

11. Another criterion applied by the European Parliament in this field is the fumus persecutionis; that is, parliamentary immunity must be maintained if there are sufficiently serious and precise reasons to presume that the aim is to prejudice the Member's political activities.



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

12. Upon examination of the request for the waiver of Mr Pannella's parliamentary immunity, forwarded to the President of the European Parliament on 15 January 1990, the position is as follows:

- (a) The case is based on a complaint by a private individual, who claims to have been slandered by Mr Pannella. Proceedings were not instituted by the Department of the Public Prosecutor or the judicial authorities in accordance with their duty to prosecute against criminal offences.
- (b) The alleged offence consisted of two articles which offer no proof that they were written or signed by Mr Pannella, who explicitly denies having written them or being responsible for their publication.
- (c) The file contains no proof or evidence whatsoever to indicate that the Member in question is the author of the articles, nor even that he ordered or authorized their publication. The editorial boards of the newspapers concerned claim to have written the articles, according to the only information on the subject in the case documents forwarded.
- (d) There is not sufficient evidence to confirm the existence of fumus persecutionis. However, there is sufficient information to apply the criterion referred to in point 9 of the present Explanatory Statement.

### IV. CONCLUSION

13. In the light of the foregoing, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, having considered the reasons for and against waiving immunity pursuant to the second subparagraph of Rule 5(4) of the Rules of Procedure, recommends that the European Parliament should not waive Mr Pannella's parliamentary immunity.

## 'LA MALFA and THE MAFIA'

In a scandalous television advertisement, the Italian Republican Party declares that the victory of the 'yes vote' in the referendum on the civil liability of magistrates will please the members of the Mafia. Leaving aside the shameful and absurd falsity of this statement, let us see whether the Republican Party itself is worthy of conducting such a campaign.

We have made a rapid survey of Sicilian and national newspapers, whose reports reveal an impressive, although by no means complete, array of Republican Party representatives involved in crime.

We hope that all those who have been arrested and accused of wrongdoing will be proved innocent. We hope, however, that La Malfa (if he does not wish to be dubbed 'La Malfia') will take a close look at his party, act accordingly and, above all, direct his anti-Mafia campaign where it most needed.

Leaving aside the famous case of the Mafia boss GIUSEPPE CRISTINA, which has recently hit the headlines once again, let us mention the following names:

## PAOLO MEZZAPELLE

Regional government officer responsible for cooperatives in the Region of Sicily. National Councillor in Republican Party (PRI). His passport was taken away in October 1985 during the inquiry into bribes for the financing of building cooperatives. Received a summons.

## FRANCESCO MORMINO ARNAO

Appointed a Director of the Cassa di Risparmio through the influence of the PRI. Chairman of the Sicilian PRI's 'good conduct' committee. Private secretary to Paolo Mezzapelle. Arrested for extortion in connection with the COOP bribes.

## STEFANO MARCHINGIGLIO

Leading PRI representative in the Sicilian UIL (a trade union). Member of the PRI's regional headquarters. Arrested in connection with the COOP scandal on charges of extortion.

## GIUSEPPE NICOLETTI

PRI representative for Villarosa (Enna). Arrested on charges of extortion, abuse of his position in the public administration and threatening people in connection with contracts.

## FRANCESCO CHILLE

PRI town councillor in Milazzo. Kidnapped Elena Luisa, aged 16 months, in October 1983. Arrested on 26 November 1983 and subsequently convicted.

## ANTONINO SUGAMELI

Formerly PRI provincial secretary in Trapani. Mayor of Erice. PRI national councillor. Arrested for embezzlement, forgery and concealment of documents in the Cassa Rurale ed Artigiana Ericina.

LUIGI D'ACQUINO

Candidate for the 1985 municipal elections in Catania. When killed on 18 March 1987 in Catania by two hired killers, he was carrying a 7.65 calibre Smith and Wesson pistol. Previously accused of robbery, contempt of court, manslaughter, inflicting injury with a firearm and using fraudulent cheques. He was cautioned and was under special policy surveillance. He was a member of the 'cursoti' clan.

NANDO LO CICERO

PRI town councillor in Palermo from 1970 to 1980. Arrested for living off immoral earnings. Under police surveillance.

It has not been possible to silence the rumours concerning the killings of IGNAZIO MINEO (former PRI senator, killed in September 1984) and PINO FERRO (Secretary of the Marza del Vallo PRI section, killed by a sawn-off shotgun).

Mr La Malfa's attention should also be drawn to the activities of FRANCESCO GRIMALDI (executive member of the Sicilian PRI, arrested in Trapani) and GIACOMO CHIELLO (the first of the non-elected candidates on the PRI list for the Chamber of Deputies, incriminated in various Mafia proceedings) and the building sector activities of the PRI town councillor for Agrigento, CARMELO PICATELLA.

Other edifying examples include various incidents involving PRI members in Calabria (the examining magistrate of Reggio Calabria, Mr Macri, said on 13 March 1990 that there were many members of the 'ndrangheta' in the PRI) and Puglia (for example, the tragic case of the municipal officer in Nardò-Lecce who was assassinated on the orders of a fellow party member, in connection with a matter involving contracts).

The Republican Party (whose members launched bitter and venomous attacks against the radical Party for allowing certain persons under arrest to join the party) is therefore in no position to preach against the Mafia. If it had not been protected by the press, which covered up its activities, it would have come to a sticky end a long time ago and would not have been able to prate about 'moral issues'.

(Article from 'Il Giornale d'Italia' of 6 November 1990)

Article 68 of the Italian Constitution

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 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.