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REPORT

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

on the request to waive Mr Roberto CICCIOMESSERE's
parliamentary immunity

Rapporteur: Mr G. DONNEZ

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By letter of 17 January 1985, 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 Roberto Cicciomessere's parliamentary immunity.

On 23 January 1985, Mr Donnez was appointed rapporteur.

At its meeting of 26 and 27 June 1985, the Committee on Legal Affairs and Citizens' Rights heard Mr Cicciomessere pursuant to Rule 5(2) of the Rules of Procedure; at the same meeting, the Committee on Legal Affairs and Citizens' Rights had an exchange of views on the reasons for and against the waiver of immunity.

At its meeting of 25 and 26 September 1985 the Committee on Legal Affairs and Citizens' Rights considered the draft report and adopted the proposal for a decision by 7 votes in favour and one abstention.

The following took part in the vote: Mrs VAYSSADE, chairman; Mr DONNEZ, vice-chairman and rapporteur; Mr ALBER, Mrs BOOT, Mrs FONTAINE, Mr HOON, Mr PROUT and Mr von STAUFFENBERG.

The report was tabled on 27 September 1985.

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A

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 a request for the waiver of Mr Roberto CiccioMessere's parliamentary immunity

The European Parliament,

- having received a request forwarded by the Minister of Justice of the Italian Republic dated 5 December 1984 for the waiver of Mr CiccioMessere'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 1964¹,
- 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. A 2-105/85)

1. Has decided to waive Mr CiccioMessere'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.

¹ CJ EC, 12 May 1964 (Wagner v. Fohrmann and Krier, Case 101-63, (1964) ECR 195)

EXPLANATORY STATEMENTI. THE FACTS

1. On 10 October 1984, the Chief Magistrate of Rome wrote to request the waiver of Mr Roberto CiccioMessere's parliamentary immunity so that he might be charged with committing the offence referred to in Articles 81 and 341 of the Penal Code (insulting a public official).

The Chief Magistrate said that according to the Rome Police headquarters, on 15 October 1981 'a patrol of uniformed police, driving a car marked as belonging to the State Police, was carrying out crime prevention duties in the Piazza di Torre Argentina area and noticed a Renault 4 whose front number plate did not comply with regulations and was different from the rear number plate'. The patrol followed the vehicle but since the narrowness of the streets prevented them from driving up alongside it, they sounded the siren and signalled with the flashing light, but without success. When they finally managed to overtake and stop the vehicle in Piazza Montecitorio, the driver, who said he was Mr Roberto CiccioMessere, a Member of Parliament, protested angrily and said that the police officers were behaving like thugs.

It was later ascertained that, although the front number plate did not comply with regulations, it was the same as the rear number plate.

2. Since at the time Mr CiccioMessere was a Member of the Italian Chamber of Deputies, the Chamber had to come to a decision on a request similar to the one now being submitted to the European Parliament and on 20 June 1984 it approved the proposal made by the appropriate committee to waive his immunity.

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

3. Article 10 of the Protocol on the Privileges and Immunities of the European Communities¹ annexed to the Treaty establishing a single Council and a single Commission of the European Communities² 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 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.'

¹ 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".

² 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.

4. Since the offences of which Mr Cicciomessere, an MEP of Italian nationality, is accused, 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 Constitution¹.

5. The procedure within the European Parliament is governed by Rule 5 of the Rules of Procedure².

6. During its first electoral period and the beginning of the second, the European Parliament decided on a 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 certain number of general principles on which there was widespread agreement.

7. It seems useful to describe in this report certain of 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 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.

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.'

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 Parliament¹. 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 Cicciomessere in a letter written on 22 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 limits 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 of one year during which (and also during the periods of adjournment of the session)² its Members enjoy the immunity provided for in the above Protocol³.

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; in this case there can be no question of Mr Cicciomessere's immunity being challenged on the grounds that the facts in question occurred before he became a Member of Parliament.

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

² It should be noted that a request for a new preliminary ruling on the interpretation of the words "during the sessions of the Assembly" is now pending before the Court of Justice (Case 149/85).

³ 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.

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 sub-paragraph (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, 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 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.

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 Member of the European Parliament 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 or 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. Application of the above-mentioned criteria and principles inclines us to propose that Mr Cicciomessere's parliamentary immunity be waived. It emerges from the charges brought that the alleged offence is not of a political nature. The fact that Mr Cicciomessere's car, which the police car followed from Via dei Cestari, finally stopped in front of the 'Chamber' obviously cannot be construed as having any political significance.

Furthermore, as was pointed out to the Italian Chamber of Deputies when it debated this question on 20 June 1984, there is no reason to suppose that the judge's behaviour is influenced by any intention to prejudice Mr Cicciomessere's political activities.

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 waive Mr Cicciomessere'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 authorisation 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.