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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 parliamentary immunity of
Mr Marco Pannella to be waived

Rapporteur: Mr José María GIL-ROBLES

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At the sitting of 23 November 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 29 October 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 of the Rules of Procedure.

At its meeting of 10 January 1991 and the committee appointed Mr Gil-Robles rapporteur.

At its meeting of 5 and 6 February 1991 it considered the request and held an exchange of views on the reasons for or against waiving the parliamentary immunity of Mr Pannella, who had been invited pursuant to Rule 5(2) of the Rules of Procedure but did not attend.

At its meeting of 20 March 1991, the committee considered the draft report and adopted the proposal for a decision unanimously.

The following took part in the vote: Galle, chairman; Gil-Robles, rapporteur; Bru Puron, Defraigne, Herman (for Janssen van Raay), Lalor, Patterson (for Prout), Pierros, Rogalla, Stamoulis, Stewart (for Honn) and von Wechmar (for Salema).

The report was tabled on 22 March 1991.

A

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 29 October 1990 and announced on 23 November 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 concerning the Election of Representatives to the European Parliament by direct universal suffrage of 20 September 1976,
 - having regard to the judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986¹,
 - 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 (A3-0068/91),
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.

¹ Judgment of the Court of Justice, 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 2 February 1990 Mr Guido Paglia, a professional journalist, submitted a complaint against Mr Marco Pannella on the grounds that during a speech at the Radical Party Congress held on 27, 28 and 29 January 1990 he used words injurious to the plaintiff's honour and reputation and accused him of a specific act. The text of the complaint is given in Annex I.

2. The full text of the speech made by Mr Pannella - and broadcast by radio - is given in Annex II. Both the complaint and the Public Prosecutor's letter highlight the following section of that speech:

'I am not surprised that Guido Paglia - and I'm continuing to make myself popular, but the truth must be told - has managed to take Montanelli in, at any rate to do away with Il Giornale's tradition of fearless honesty and passion for controversy by installing himself on that newspaper', and also accusing him of a specific act in the following words 'You have been attacking me for many years, Guido Paglia. I don't know if you actually co-wrote with Giannettini the first attack I received from your corner, during a meeting at the Hotel Jolly in the early sixties, when you produced a pamphlet, paid for by one of the two rivals, Aloia or De Lorenzo, entitled 'Red Hold over the Army', which said that in fact the most dangerous and grasping hands doing the holding were mine and those of the 64/65 Radicals'.

3. The Public Prosecutor, through the official channels, has requested the European Parliament's authorization to proceed against Mr Pannella as the author of an alleged crime punishable under the first paragraph of Article 84, the third and fourth paragraphs of Article 594 and the first paragraph of Article 595 of the Penal Code.

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 Communities², annexed to the Treaty establishing a single Council and a single Commission of the European Communities³ 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:

² Also note the wording of Article 9 of the same protocol: 'Members of the European Parliament 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 Referred to in Article 4(2) of the Act of 20 September 1976 concerning the election of representatives of the European Parliament by direct universal suffrage.

- (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 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 Constitution⁴.

6. The procedure within the European Parliament is governed by Rule 5 of the Rules of Procedure⁵.

7. 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.

8. At the sitting of 10 March 1987⁶, 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

⁴ Article 68 of the Italian Constitution is annexed.

⁵ 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.'

⁶ OJ No. C 99, 13.4.1987, p. 44

8 April 1965 in respect of Members of the European Parliament (Doc. A2-121/86).

The principles applicable to the present case are 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.

(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, 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. At its meeting of 17 and 18 September 1990 the Committee on the Rules of Procedure, the Verification of Credentials and Immunities adopted a resolution setting out a number of criteria governing the waiver of immunity, including the following: 'any request for the waiver of immunity resulting from the free expression of political ideas or opinions should be rejected as a matter of principle; the only exceptions to this fundamental right should be incitement to any kind of hatred, slander, libel, offences against fundamental human rights and attacks on the honour and good name of others, whether individuals or groups'.

III. JUSTIFICATION FOR THE PROPOSAL FOR A DECISION

10. Examination of the request for the waiver of Mr Pannella's parliamentary immunity, forwarded to the President of the European Parliament on 29 October 1990, reveals that the statements attributed to Mr Pannella were made in exercise of the right to freedom of expression.

Even if the words which form the subject of the complaint are taken in isolation and out of context, they do not appear to be offensive or go beyond a legitimate level of criticism of a journalist's conduct.

Evidently, the comments or failure to comment of those who write in the media must be liable to critical appraisal by those concerned, and allegations of bias or of steering a section of the media in a particular direction are not in themselves injurious to a person's honour. Moreover, no such attack arises from the context in the present case.

IV. CONCLUSION

11. 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.

2 February 1990

PUBLIC PROSECUTOR'S OFFICE
AT THE ROME MAGISTRATE'S COURT

CHARGES

I, the undersigned Guido PAGLIA, deputy editor of 'Il Giornale', born on 30 September 1947 in Rome, residing at 8, Via L. Gherzi, Rome, and domiciled in Rome at the offices of Grazia Volo, lawyer

hereby make the following submissions:

In a speech made on 28 January 1990 at the Radical Party Congress held in Rome from 27 to 29 January 1990, Marco Pannella referred to the newspaper 'Il Giornale' and to the plaintiff in a tone and manner seriously injurious to the plaintiff's personal and professional standing. He falsely attributed to the plaintiff deeds and activities which not only have never taken place but never could have taken place, for the simple reason of the plaintiff's age.

'I am not surprised that Guido Paglia - and I'm continuing to make myself popular, but the truth must be told - has managed to take Montanelli in, at any rate to do away with Il Giornale's tradition of fearless honesty and passion for controversy by installing himself on that newspaper. You have been attacking me for many years, Guido Paglia. I don't know if you actually co-wrote with Giannettini the first attack I received from your corner, during a meeting at the Hotel Jolly in the early sixties, when you produced a pamphlet, paid for by one of the two rivals, Aloia or De Lorenzo, entitled 'Red Hold over the Army', which said that in fact the most dangerous and grasping hands doing the holding were mine and those of the 64/65 Radicals'.

It should be pointed out that as Mr Paglia was born in 1947, in the early sixties or in the years 1964-65 he was only between 13 and 17 years old. He was therefore not in a position to deliver political attacks, either with Giannettini or with anyone else, or to write pamphlets of any sort. The pamphlet in question was in fact written by Rauti and Giannettini. All the allegations were therefore the product of Mr Pannella's imagination and his resentment against 'Il Giornale' which (in his opinion) did not give sufficient coverage to the Radical Party Congress.

On top of all this, after the unfounded attack quoted above, when Pannella finally read the article in 'Il Giornale', he realized he had made a serious gaffe. He therefore made a public apology, but addressed to the author of the article, repeating and confirming his comments about the plaintiff.

Clearly, words such as 'the chiefs of Il Giornale ... must stop Indro Montanelli from reading his own newspaper', 'I am surprised ... at how he managed to take Montanelli in by establishing himself on Il Giornale', 'writing a pamphlet entitled ... to deliver political attacks' are seriously injurious to the professional standing of the plaintiff and to his good name, not only as far as his own newspaper is concerned but also in the eyes of other journalists. The allegations were in fact made in the middle of the Radical Party Congress, in the presence of all the parliamentary reporters and political commentators. Moreover, the entire speech was broadcast live, recorded, and then repeated on Radio Radicale. The libel was therefore also committed via the medium of radio.

For the above reasons, the undersigned therefore brings formal charges against Mr Giacinto Marco Pannella for recognizable offences, and in any event for the offences of libel aggravated by the allegation of specific facts.

The undersigned requests that the Public Prosecutor submit forthwith a request for authorization to proceed.

The undersigned reserves the right to institute a civil action.

The presentation of the above action is entrusted to Grazia Volo, lawyer.

Enclosed:

Transcription of part of the cassette recording of the Radical Party Congress. The original cassettes are available at the offices of Grazia Volo, and are obviously also in the possession of Radio Radicale.

(sgd) Guido Paglia

Submitted on 2 February 1990 by Grazia Volo.

TRASCRIZIONE DEL CONTENUTO DELLE CASSETTE DEL CONVE-
GNO DEL PARTITO RADICALE, NELLE PARTI CHE RIGUARDANO
LA QUERELA.

28 gennaio 1990

"Praticamente l'opposto della misera immagine che i
colleghi giornalisti, certo aiutati poi, certo.
Gredazzi ha scritto un pezzo che credo francamente,
non credo...che gli faccia piacere, mostrera' ai
suoi nipoti quando.....

Ma certo scritto poi nel giornale in cui l'ha scrit-
to ha consentito un titolo come quello che ha con-
sentito non parliamo credo dell'anonimo redattore
del pezzo del "Giornale", certo, gli attuali padroni
delle cucine del giornale devono impedire che a
Indro Montanelli di leggere sul suo proprio gior-
nale, che ieri ho di nuovo evocato come quello di un
maestro di liberta'. Il nome di Indro Montanelli a
partire dal momento fondamentale della storia di
questo nostro mezzo secolo, guai!, guai se Indro
l'avesse letto e quindi l'hanno cancellato. Ma na-
turalmente c'e' quasi meno spazio a tutto il nostro
congresso, di quanto non viene dato ad un afferma-
zione di Rauti. Dopo che Il Giornale di Indro Monta-
nelli ha riparato, ma non era per riparazione che lo
faceva, era per rivincita invece di alcune persone

che stanno lì dentro, non era una riparazione, per il congresso del MSI, per nove giorni ha fatto interviste, l'ha tirato, l'ha trainato e via dicendo. Ebbene così passa la gloria e i giornali del mondo.

Non sono stupito che Guido Paglia, così continuo a farmi amici, ma un po' di verità ci vuole, sia riuscito ad ingannare Montanelli, comunque a far fuori la tradizione di drammatica onestà e contraddittorieta' del "Giornale", insediandovisi. Sono molti anni Guido Paglia che mi attacchi io non so se l'hai redatta materialmente con Giannettini il primo attacco che mi è venuto dalla tua area quando riuniti a convegno allo Hotel Jolly agli inizi degli anni sessanta faceste un libretto, pagati da uno dei due contendenti Aloia o De Lorenzo dal titolo "Le mani rosse sull'esercito" e si veniva detto che in realtà quelle più pericolose e rapaci erano le mie e dei radicali '64/'65.

Tutto attraverso e tutto va avanti. Ma allora, compagni comunisti, allora amici liberali, amici laici credenti del periodo che dobbiamo rinaugurare. Non c'è più perché voi non ci siete più o non ci siete mai arrivati contro lo sterminio per fame nel mondo di omaggio al diritto alla vita concreta, non

solo io lo rispetto, l'ho già detto ieri, alla vita
dello zigote o alla vita dell'embrione ma consenti-
temolo anche un po' alla vita della donna e dell'uo-
mo e del bambino perché se no rischiano di compiere
strani scherzi le parole del Papa.

"Sono felicissimo di dover presentare le mie scuse a colui che ha firmato. Perché è stato firmato l'articolo di oggi sul "Giornale". E le mie scuse. Perché ho parlato e confermo di un giudizio su quello che sta accadendo e accade sempre di più in quel giornale ma non avendo letto questa mattina. Ho sentito un momentino solo la rassegna stampa e poi non sono andato ad approfondire il possibile equivoco. Mi accade che avendo letto l'articolo di Federico Guiglia sul "Giornale", restano ovviamente basta guardare le osservazioni sugli spazi dei nuovi padroni interni del Giornale, come vengono amministrati ecc.. È questo e' tanto più doloroso che l'articolo di Federico Guiglia e' di una rarissima anche in termini tecnici se lo consente Guiglia a un collega, di una rarissima puntualità e completezza, fermo restando quella cosa che io ho attribuito non ha a lui la quale cosa su cui ho preso lo spunto di dire forse non si era sottolineata quell'elogio critico che io avevo fatto ad Indro Montanelli. Quindi dovendo e avendo compiuto con molto piacere il dovere di chiedere scusa a Guiglia anche do' una precisazione perché sappiamo benissimo come le cose vanno e molto spesso la nostra solidarietà con i colleghi dei vari giornali e' stata d'altra parte da

ne espressa e quindi per Guiglia la solidarietà e'
confermata.

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.