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Report

drawn up on behalf of the Legal Affairs Committee

on a request for the parliamentary immunity of
a Member to be waived

Rapporteur: Mr G. DONNEZ

PE 89.379/fin.

Or. Fr.

At its sitting of 14 November 1983, Parliament referred to the Legal Affairs Committee, pursuant to Rule 5(2) of the Rules of Procedure, a request for the immunity of Mr Eric BLUMENFELD to be waived.

On 23 November 1983, the Legal Affairs Committee appointed Mr DONNEZ rapporteur.

At its meeting of 2 February 1984, the Legal Affairs Committee heard Mr BLUMENFELD, pursuant to Rule 5(2) of the Rules of Procedure.

At its meeting of 21 and 22 March 1984 the Legal Affairs Committee considered the draft report and adopted it by 10 votes with 3 abstentions.

Present: Mrs Veil, chairman; Mr Luster and Mr Chambeiron, vice-chairmen; Mr Donnez, rapporteur; Mr D'Angelosante, Mr Ferri, Mr Geurtsen, Mr Gontikas, Mr Janssen van Raay, Mr Kaloyannis, Mr Tyrrell, Mr Vetter and Mr Vié.

The report was tabled on 30 March 1984.

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A

The Legal Affairs Committee 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 parliamentary immunity of a Member to be waived.

The European Parliament,

- having received from the responsible authority of the Federal Republic of Germany, by letter of 28 October 1983, a request for immunity to be waived,
- 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 the representatives of the Assembly by direct universal suffrage of 20 September 1976,
- having regard to the judgment of the Court of Justice of the European Communities of 12 May 1964¹,
- having regard to its decision of 7 July 1981² not to waive the parliamentary immunity of a Member in a similar case (see Doc. 1-321/81),
- having regard to Article 46 of the Basic Law of the Federal Republic of Germany,
- having regard to Rule 5 of the Rules of Procedure,
- having regard to the report of its Legal Affairs Committee (Doc. 1-123/84),

1. Decides not to waive Mr Blumenfeld's immunity;
2. Instructs its President immediately to forward this decision and the report of its committee to the responsible authority of the Federal Republic of Germany.

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

² OJ No. C 234 of 14 September 1981, p. 28.

EXPLANATORY STATEMENTI. THE FACTS

1. The Hamburg Public Prosecutor's Office has begun legal proceedings in connection with the firm of 'Hansa Gesellschaft für Öffentlichkeitsarbeit und Marktforschung mit beschränkter Haftung' (Hansa public relations and market research, a limited company). The Public Prosecutor's Office suspects that Hansa received payments from certain German firms 'for worthless reports and consultations which never took place,' which the firms in question entered on their accounts as legitimate business costs, but which 'were in fact contributions to the Hamburg branch of the CDU (Christlich Demokratische Union Deutschland), and which should only have been tax deductible up to the maximum limits specified in paragraphs 10(b) of the Income Tax Law and 9 of the Corporation Tax Law. Hansa is therefore suspected of collusion to evade tax.

2. Since Mr Blumenfeld was the director of Hansa from 1974 to 1978, the Hamburg Public Prosecutor's Office, after sending him a letter containing the charges against him, asked the European Parliament to waive Mr Blumenfeld's parliamentary immunity, which request was forwarded by the responsible authority of the Federal Republic of Germany.

II. TEXTS GOVERNING THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT

3. Article 4(2) of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage states: 'Representatives shall enjoy the privileges and immunities applicable to members of the Assembly by virtue of the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a single Council and a single Commission of the European Communities.'

4. Article 10 of this Protocol, which is a repetition of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, states:

'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.'

5. The Court of Justice has been called upon to interpret the words 'during the sessions of the Assembly' (judgment of 12 May 1964 - Wagner v Fohrmann and Krier, Case 101/63 - [1964] ECR 195) .

6. 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 protocol¹.

7. Since the case involves events which occurred on the territory of the Federal Republic of Germany and since he is a member of the Bundestag, Mr Blumenfeld enjoys the immunities accorded to Members of the Bundestag as laid down in Article 46 of the Basic Law of the Federal Republic of Germany².

III. JUSTIFICATION OF THE PROPOSAL FOR A DECISION

8. It was argued, in the course of discussion within the Legal Affairs Committee, that it would be in Mr Blumenfeld's interests to be brought to trial, since this would give him the opportunity to prove his innocence of the allegations made against him. It was also argued that the European

¹ This judgment is not affected by Article 10(5) 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.

² Article 46 of the Basic Law of the Federal Republic of Germany is annexed.

Parliament's prestige in all Member States, particularly the Federal Republic of Germany, could suffer if the request for immunity to be raised were refused in circumstances in which the German Bundestag, faced with a similar situation, might decide to waive parliamentary immunity.

9. Parliament's practice forms a consistent line of "case-law" which should be followed strictly to ensure that decisions taken in this sphere are not affected by considerations relating to the political party to which the Member in question belongs or his nationality.

IV. JUSTIFICATION OF THE PROPOSAL FOR A DECISION BY THE EUROPEAN PARLIAMENT

10. In its first legislative term since direct elections, the European Parliament has ruled on seven requests for Members' immunity to be waived. The decisions taken in these cases, in a domain in which Parliament's power vis-a-vis the national authorities is demonstrated most clearly, have always been guided by the same fundamental principle: in all cases in which the acts in question are of a political nature or are linked with political activities, immunity is not waived. This principle derives from the whole purpose of such immunity, which is to safeguard the institution of Parliament and the independence of its Members vis-à-vis the other powers. Immunity is in no way a personal privilege benefiting Members of Parliament.

11. In the case in question, the political nature of the acts to which the request from the Hamburg Public Prosecutor relates is in no doubt: Mr Blumenfeld has become the subject of legal proceedings in his capacity as a politician and not as a private citizen; it was by virtue of his political activities that he was placed in charge of Hansa, and, according to the charges brought against him, the profits of that organization went to the Hamburg branch of the CDU.

12. With regard to the argument that it would be in Mr Blumenfeld's own interest to be brought to trial, (see above, paragraph 8), it must be remembered that even if Mr Blumenfeld were to voluntarily renounce his immunity, this would have no effect in law, as the Legal Affairs Committee

¹ Insofar as this term can be used in respect of bodies other than courts.

concluded at its meeting of 27 March 1980¹; this principle, which was endorsed by the enlarged Bureau at its meeting of 17 April 1980, has been constantly reaffirmed in all the reports approved by Parliament since that time in which this question was raised.²

13. Similarly, the presumption (see above, paragraph 8) that the national parliament would waive immunity if it received a similar demand should not influence Parliament's decision, even if that presumption were justified. The European Parliament is sovereign in the exercise of its powers, and is perfectly free to establish practices which differ from those of the national parliaments with regard to waiving immunity; the European Parliament should, instead, attempt to follow the precedents which have emerged from its own decisions on requests for the waiver of immunity, with a view to creating a concept of parliamentary immunity which is peculiar to the European Parliament, and could not in any event be identical to the concepts of immunity established by the different customs of the various national parliaments.

14. The Legal Affairs Committee considers that particular emphasis should be placed on the fact that the request for immunity to be waived was submitted so much later³ than the acts to which it relates.

V. CONCLUSION

15. 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 Legal Affairs Committee recommends Parliament not to waive Mr Blumenfeld's immunity.

¹ see Minutes (PE 64.548, p.6) and Notice to Members 6/80 (PE 64.630)

² see, for example, the explanatory statement of the report (Doc. 1-766/83) debated at the part-session of 10 October 1983

³ a point which the Legal Affairs Committee also stressed in an earlier report (see Doc. 1-321/81).

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Article 46 (Indemnity and immunity of deputies) of the Basic Law of the
Federal Republic of Germany

1. A deputy may not at any time be prosecuted in the courts or subjected to disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a statement made by him in the Bundestag or any of its committees. This shall not apply to defamatory insults.
2. A deputy may not be called to account or arrested for a punishable offence except by permission of the Bundestag, unless he is apprehended in the commission of the offence or in the course of the following day.
3. The permission of the Bundestag shall also be necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article 18.*
4. Any criminal proceedings or any proceedings under Article 18 against a deputy, any detention or any other restriction of his personal liberty shall be suspended upon the request of the Bundestag.

* Article 18 of the Basic Law concerns the forfeiture of basic rights