

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0213/2005

22.6.2005

REPORT

on the request for waiver of the immunity of Ashley Mote
(2005/2037(IMM))

Committee on Legal Affairs

Rapporteur: Klaus-Heiner Lehne

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PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT

on the request for waiver of the immunity of Ashley Mote (2005/2037(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Ashley Mote, submitted, at the Attorney General's request, by the United Kingdom's Permanent Representation to the European Union, and announced in plenary sitting on 23 February 2005,
 - having heard Ashley Mote in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Articles 8, 9, 10 and 19 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities, and to Article 6(2) of the Act of 20 September 1976 concerning the Election of Representatives to the European Parliament by direct universal suffrage,
 - having regard to the judgments of 12 May 1964 and 10 July 1986¹ of the Court of Justice of the European Communities,
 - having regard to Rules 6(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0213/2005),
1. Decides to waive the immunity of Ashley Mote;
 2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the United Kingdom.

¹ Case 101/63: *Wagner v Fohrmann and Krier* [1964] ECR 195 and Case 149/85: *Wybot v Faure and others* [1986] ECR 2391.

EXPLANATORY STATEMENT

I. The procedure

1. Pursuant to Rule 6 of the Rules of Procedure, the President of Parliament informed the House at its sitting of 23 February 2005 that the UK Permanent Representative has submitted an Application with a view to request the waiver of the parliamentary immunity of Mr Ashley Mote.

The application (*supplicatoire*) was submitted by the UK representative for Her Majesty's Attorney General.

Rule 7 (7) allows the competent committee to consider the admissibility of the request and on whether the national authority requesting the waiver is the competent authority.

2. It seems clear-cut in this case that Her Majesty's Attorney General is the competent authority in the UK (point 40 of the ruling on applications to Dismiss, Stay or Adjourn by Hon. Justice Aikens). Moreover the *supplicatoire* was presented by the U K Permanent Representation to the European Union, which is entitled to design the 'competent authority' (in other cases, it has been the representation which has confirmed whether or not a *supplicatoire* had been presented by the right national body: i.e. Matzakis case).

There is no doubt thus that the *supplicatoire* has been properly submitted.

II. The facts

1. Mr Mote has been indicted in relation to the wrongful payment of welfare benefits. This relates to matters some years before Mr Mote's election to Parliament, between February 1996 and September 2002.

During that time Mr Mote received from various government agencies (point 6 and 26 of the Application and Points 3 to 9 of Annex 1 - the Prosecution Case Summary -) 105.699 Euro of benefit money.

The Prosecutor alleges that Mr Mote was dishonest in his applications for benefits in that he failed to declare his business interest in four companies (point 6 of the Application and point 41 to 45 of Annex 2).

The prosecution's case is that Mr Mote lied in his application form and review form for Income Support, Housing Benefit and Council Tax Benefit. He received for years these benefits without declaring his involvement in various businesses, assets and incomes (points

41, 42, 43, 44 of Annex 2).

2. The prosecutor's case is very well substantiated (points 15 onwards of Annex 2).

Mr Mote would risk a sentence of imprisonment for a period of between 18 months and 3 years if found guilty (see point 28 of the Application).

3. The Prosecutor has emphasised the seriousness with which fraud is viewed in the UK. It is also the case in most other Member States of the Union.

The Prosecutor also mentions that Mr Mote's political views or responsibilities in no way influence the prosecution and that the investigations were conducted as expeditiously as possible. There is no ground to doubt these affirmations. The prosecutions seem well engaged.

The Prosecutor emphasised that a Member of the UK Parliament would be liable for prosecution in the same circumstances as in the current case (point 32 of the Application and 28 of the Annex 4).

4. Her Majesty's Attorney requests to the EP:

a) To confirm that the prosecution against Mr Mote may proceed in accordance with the Protocol, in particular Article 8,

b) that in the event that Mr Mote is held to enjoy any privilege, to waive it so that he may be prosecuted and, if convicted, punished.

5. Mr Mote, argues through his lawyer that he would be protected by immunity as established in Article 8 and 10 second paragraph of the 1965 Protocol (see points 2 and 4 of the Application and point 29 its Annex 4). He claims "that the requirement for Mr Mote to attend Court for his trial was incompatible with the free movement of members of the European Parliament under Article 8 of the Protocol."

This interpretation of Article 8 has made the Court hesitate and compelled it to request the waiving of Mr Mote's immunity in case Parliament considers that it does in fact exist under Article 8.

III. Law, Texts and Principles concerning parliamentary immunity of Members of the EP.

1. The law applicable is the Protocol on Privileges and Immunities (PPI) of 8 April 1965, the Rules of Procedure of the European Parliament and the European Parliament practice on

dealing with immunity issues.

It has to be pointed out, in the first place, that there has never been a single request for waiving immunity from the UK. There is also very little case law on Article 8 and nothing relating to Article 8 (1).

2. In essence it has to be considered by Parliament:

a) Whether or not Mr Mote enjoys European immunity under Article 8 or Article 10-second paragraph,

b) In case that he enjoys it, whether it is appropriate or not to waive it,

c) Whether or not he is protected by any other Article of the Protocol or by parliamentary practice,

3. As regards Article 8 and Article 10, -second paragraph, it is useful to note the purpose of immunity as it has been defined since the Donnez report in 1986¹: *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*, and with a view to explore whether immunity has to be waived or not, the principle set by Parliament over the years is that of *the independence of European parliamentary immunity from national parliamentary immunity*.

Therefore, when the effect of the proceedings brought against a Member is to diminish his own or Parliament's independence, immunity should not be waived. It follows from this that the EP must not concern itself with the substance of the criminal proceedings except when considering whether or not "fumus persecutionis" may exist.

Articles 8 and 10, second paragraph protect Parliament's independence, granting Members of Parliament certain rights not necessarily covered by Articles 9 and 10 a) and b)

4. It is important to examine which kind of privileges these two Articles may reasonably cover:

a) With respect to Article 10 second paragraph, it is linked to the first paragraph of Article 10 and completes the immunity granted in letters a) and b). When a Member is in the territory of their own state, she/he enjoys the immunities granted to the Members of her/his Parliament. When in the territory of another state (i.e. giving a conference or in a demonstration), from any measure of detention and from legal proceedings.

Immunity is also applied when the members are travelling to or from the place of meeting of the European Parliament, as it is declared in the second paragraph of Article 10.

¹ Document A2-0121/1986.

Mr Mote was not travelling from England to France when he committed the wrongful acts alleged by the Prosecutor. He was not travelling at all.

This argumentation is also admitted by the Court which does not consider it necessary to request Parliament to waive immunity on the basis of Article 10(2) (see point 44 of Annex 4 of Application).

Mr Mote cannot be reasonably protected by the Article 10, second paragraph.

b) With respect to Article 8 of the Protocol, which is the one strongly invoiced by Mr Mote's Attorney, and at the core of the Prosecutor's Application, it should be considered whether or not this article gives protection to Mr Mote against prosecution in UK.

Article 8 is clearly intended to ensure the freedom of movement of Members. It was drafted at a time when it was not as easy as nowadays for European citizens to move around the Union. Its main purpose is to prohibit restrictions of any kind on the free movement of Members. This Article also provides protection on customs issues and exchange control facilities.

The purpose of the Article 8 was to avoid any impediment when *travelling within the Community in connection with the performance of their duties* from their places of origin to any Parliament or official meeting in connection with their duties. It excluded travelling for personal ends.

These impediments must be those of administrative, police or custom nature. Either inviolability or immunity of Articles 9 or 10 would have covered any other more serious impediment (arrest).

As it is rightly pointed out in point 19 of the Application, Article 8 is not intended to provide an absolute immunity against prosecution during the duration of a trial. Otherwise, the provisions that refer to inviolability (Article 9) and immunity (Article 10) would be without purpose during the duration of Parliament (5 years).

Article 8 should be interpreted in connection with the principle stated above in point 3 and with Article 9 and 10 in a way that these Articles are not deprived of meaning and logical sense.

It can therefore be concluded that Mr Mote does not enjoy protection against prosecution from Article 8 and that the proceedings may be pursued by the Court.

5. Moreover, Mr Mote has only been subject to "unconditional bail", he has not been subject to any form of pre-trial detention.

It can be argued that if the Court intends to use in the future such precautionary measures, the authorisation of Parliament should be required. It can also be argued that the Court has to ensure that Mr Mote may attend the plenary sessions.

This is a possible interpretation, though too expansive and adventurous, of Article 8 (1). Such an interpretation of Article 8 would be completely new and would introduce a new form of immunity for Members with legal basis in an Article until now not seen as intended to provide immunity, but certain privileges that facilitate the freedom of movement of Members and for Members not subject to judicial prosecution: For those situations there exists the provisions of Articles 9 and 10.

When Parliament has decided not to defend immunity (see later cases Pannella or Dupuis) or not to waive immunity (see Florentz or Jeggle cases), it has not envisaged to ask Courts to guarantee Member's rights to assist plenary sessions or other Parliament's meetings.

6. If the House wants to introduce this new possibility (that while a Member is on trial and the waiving of immunity has been requested and accepted by Parliament, the Court should guarantee the right to attend parliament's meetings), then it should consider to do it through the EP's right and autonomy to waive or not immunity or to waive it in a conditional way. This new right of Members would then be established through Article 10 1 a), as it has been done with, for example, the *fumus persecutionis*.

Anyhow, in this particular case the Court has shown its readiness to ensure Mr Mote's attendance to plenary (see point 22 of the Application) and it is not necessary to consider such an extension of immunity rights.

7. Mr Mote has not claimed either way - neither the Court- that he may be protected by Article 9. This Article is not obviously applicable here and we should exclude it right away.

8. On the contrary, Article 10 a) would be applicable to Mr Mote but would not provide him with any kind of immunity. It refers back to British law and we already know that no protection at all is given to British MPs in these circumstances (see point 32 of the Application and point 2 of Annex 4). Mr Mote's defence has also accepted this situation(see point 28 of Annex 4).

It may also be said that the British Judge would have not been obliged, under Article 10 a) to request the waiving of Mr Mote's immunity to proceed against him, except, perhaps, if the Court would have had doubts about the intentions of the Prosecutor or any other actors (which obviously is not the case).

9. Nevertheless, once the request has been presented, there is no obstacle for the European Parliament to consider other issues i.e. whether a Member's immunity should be waived or not, as it has been done. Article 19 of PPI states that the Institutions will cooperate with the authorities of the Member States and Rule 7(2) of the Rules of Procedure says that the committee responsible "shall make a proposal for a decision which simply recommends the adoption or the rejection of the request". It is appropriate then for the Parliament to decide whether or not the request has to be accepted or rejected.

Conclusion

Article 8 (1) does not grant protection against judicial prosecution. Article 8 is not intended to provide an absolute immunity against prosecution during the duration of a trial. Otherwise, the provisions that refer to inviolability (Article 9) and immunity (Article 10) would be useless.

It may be excluded that Mr Mote enjoys protection by inviolability provisions (Article 9 of the PPI) or parliamentary immunity (Article 10 a). Likewise Members of the British Parliament, he does not enjoy immunity from criminal prosecution.

Once the request has been presented, there is no obstacle for the European Parliament to consider any other issues and to waive or not the immunity.

In the light of the foregoing considerations, and pursuant to Rule 7(1) and (2) of the Rules of Procedure, after having considered the arguments for and against waiving immunity, the Committee on Legal Affairs and the Internal Market recommends that the European Parliament waive Mr Ashley Mote's parliamentary immunity.

PROCEDURE

Title	Request for waiver of the immunity of Ashley Mote		
Procedure number	2005/2037(IMM)		
Request for waiver from	Attorney General of the United Kingdom		
Date of request	8.2.2005		
Date announced in plenary	23.2.2005		
Committee responsible	JURI		
Date announced in plenary	23.2.2005		
Basis in Rules of Procedure	Rules 6(2) and 7		
Rapporteur	Klaus-Heiner Lehne		
Date appointed	30.3.2005		
Previous rapporteur			
Discussed in committee	21.4.2005	24.5.2005	20.6.2005
Date adopted	20.6.2005		
Result of final vote	for: 18 against:0 abstentions: 0		
Members present for the final vote	Antonio Di Pietro, Monica Frassoni, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Katalin Lévai, Marcin Libicki, Antonio Masip Hidalgo, Viktória Mohácsi, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroz, Andrzej Jan Szejna, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina		
Substitutes present for the final vote	Barbara Kudrycka, Evelin Lichtenberger		
Substitutes under Rule 178(2) present for the final vote			
Date tabled – A6	22.6.2005	A6-0213/2005	
Comments	...		