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REPORT

on the request for waiver of the parliamentary immunity of Mr António Carlos Ribeiro Campos (procedure 6119/94.TD.LSB)

Committee on the Rules of Procedure, the Verification of Credentials and Immunities

Rapporteur: Mr Ben Fayot

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C O N T E N T S

Page

Procedural page 3

A. PROPOSAL FOR A DECISION 4

B. EXPLANATORY STATEMENT 5

Annex: Article 160 of the Portuguese Constitution 9

At the sitting of 9 June 1997, the President of Parliament announced that he had received a request

for waiver of parliamentary immunity concerning Mr António Carlos Ribeiro Campos forwarded by the judge of the Fifth Chamber of the Lisbon Criminal Court on 2 April 1997 (procedure 6119/94.TD.LSB) and that he had referred it to the Committee on the Rules of Procedure, the Verification of Credentials and Immunities pursuant to Rule 6(1) of the Rules of Procedure.

Having received a prior request from the Member concerned to be heard as a witness in respect of the same facts, the committee had appointed Mrs Palacio Vallelersundi rapporteur on 10 September 1996.

At its meeting of 2 September 1997 it heard Mr Ribeiro Campos, pursuant to Rule 6(3) of the Rules of Procedure, and held an exchange of views on the reasons for or against waiver of immunity.

At its meeting of 8 October 1997, it considered the draft report and adopted the proposal for a decision by 5 votes to 3.

The following were present for the vote: Fayot, chairman; Palacio Vallelersundi, rapporteur; Fabre-Aubrespy, Filippi, Lehne, Rothley, Voggenhuber (for Aglietta), Wibe and Wijsenbeek.

After the vote, Mrs Palacio Vallelersundi resigned as rapporteur, and Mr Fayot was instructed to submit the report in plenary.

The report was tabled on 10 October 1997.

A
PROPOSAL FOR A DECISION

Decision on the request for waiver of parliamentary immunity concerning Mr António Carlos Ribeiro Campos (procedure 6119/94.TD.LSB)

The European Parliament

- having received a request for waiver of parliamentary immunity concerning Mr Ribeiro Campos forwarded by the judge of the Fifth Chamber of the Lisbon Criminal Court on 2 April 1997 and notified in plenary on 9 June 1997 (procedure 6119/94.TD.LSB),
 - 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 in 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 20 July 1986(),
 - having regard to Article 160 of the Portuguese Constitution,
 - having regard to Rule 6 of its Rules of Procedure,
 - having regard to the report of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities (A4-0311/97),
1. Decides not to waive parliamentary immunity;
 2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authorities of the Portuguese 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.

B
EXPLANATORY STATEMENT

I. FACTS

Mr António Carlos Ribeiro Campos stands accused of having committed on 23 May 1994 the offence of defamation provided for and punishable under Articles 64(1), 167(2) and 168(1) of the 1982 Penal Code of the Republic of Portugal and Article 25 of Order in Council No 85-C/75 and currently by Articles 180(1), 183(2) and 184 of the 1995 Penal Code and Article 25 of Order in Council No 85-C/75.

Mr António Carlos Ribeiro Campos stands accused that, on 23 May 1994, during a press conference given at the national headquarters of the Socialist Party, he claimed:

- (a) that the former Agriculture Minister, Mr Arlindo Marques Cunha, had transformed the directorate responsible for the departments of the Ministry of Agriculture into a veritable private empire of political commissars, setting up and protecting an entire network of influence within which the seeking of personal advantage and corruption were rife;
- (b) that Arlindo Cunha and Rosado Fernandes had always worked hand in glove as regards the distribution of favours in exchange for silence;
- (c) that the former Agriculture Minister, Mr Arlindo Marques Cunha, was corrupt.

With regard to the third statement, it has been established that this related to an extrapolation of subsequent press articles and was not made by Mr António Carlos Ribeiro Campos.

II. TEXTS AND GENERAL CONSIDERATIONS CONCERNING PARLIAMENTARY IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT

2. Article 10 of the Protocol on the privileges and immunities of the European Communities(

) annexed to the Treaty establishing a Single Council and Single Commission of the European Communities(

) incorporates the provisions of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, EEC and EAEC and 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;

() annexed to the Treaty establishing a Single Council and Single Commission of the European Communities() See also the text of Article 9 of the 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'.

() incorporates the provisions of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, EEC and EAEC and reads as follows:
() Referred to in Article 4(2) of the Act concerning the election of the representatives in the European Parliament by direct universal suffrage of 20 September 1976.

(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.'

3. Since the offences of which Mr Ribeiro Campos, a Portuguese Member of the European Parliament, is accused were committed in the territory of the Portuguese Republic, Mr Ribeiro Campos therefore enjoys the immunities accorded to Members of the Portuguese Parliament as established by Article 160 of the Portuguese Constitution().

4. The procedure within the European Parliament is governed by Rule 6 of the Rules of Procedure().

⁽¹⁾ Article 160 of the Portuguese Constitution is set out in the annex.

⁽²⁾ Rule 6

'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 announced in Parliament and referred to the committee responsible.

2. The committee shall consider such requests without delay and in the order in which they have been submitted.

3. The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary for it to form an opinion on whether immunity should be waived. The Member concerned shall be heard at his request; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.

4. The committee's report shall contain a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity. However, where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate proposal for a decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other measure which prevents him from performing the duties proper to his mandate.

5. The committee shall not, under any circumstances, pronounce on the guilt or otherwise of the Member nor on whether or not the opinions or acts attributed to him justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.

6. 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. No amendment may be tabled to the proposal(s) for a decision.

Discussion shall be confined to the reasons for or against each proposal to waive or uphold immunity.

The proposal(s) for a decision contained in the report shall be put to the vote at the first voting time following the debate.

7. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned, with a request, if immunity is waived, that he should be informed of any judicial rulings made as a consequence. When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate.

8. 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.'

5. Since the first five-year parliamentary term, the European Parliament has taken a decision on a number of requests for waiver of immunity. Parliament's deliberations have given rise to certain general principles which were recognized definitively in the resolution adopted at its sitting _____ of _____ 10 _____ March 1987(

) on the basis of the report by Mr Donnez 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

6. It might be useful to set out here those principles which apply in this case, while emphasizing that decisions taken with respect to waiver of Members' immunity must have a solid legal basis so that they are not affected by various considerations relating in particular to the political persuasion or even the nationality of the Member involved.

(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. On the basis of this principle, the date of the alleged offences, which may be prior to or after the election of the Member, is irrelevant; account must be taken only of the protection of the parliamentary institution through that of its Members.

(b) Legal ineffectiveness of a renunciation of immunity

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities takes the view that it should not depart from the principle upheld to date by the European Parliament whereby renunciation of parliamentary immunity by the Member concerned is legally ineffective.

(c) Time-limit on immunity

The Court of Justice has twice been called upon to interpret the words 'during the sessions of the European Parliament' set out in Article 10 of the Protocol on the privileges and immunities of the European Communities.

It emerges from these two judgments of the Court of Justice (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) that the European Parliament holds an annual session of one year, during which its Members enjoy the immunity provided for in the Protocol as well as during periods of adjournment of the session.

Moreover, the purpose of the immunity itself implies that immunity is effective for the duration of the mandate and covers commencement of proceedings, preparatory inquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside.

(d) Independent nature of European parliamentary immunity compared with national parliamentary immunity

(_____) on the basis of the report by Mr Donnez 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
(_____) OJ C 99, 13.4.1987, p. 44.

The reference to the immunities accorded to members of national parliaments in Article 10(a) of the Protocol does not mean that Parliament cannot establish its own rules which may eventually develop into a body of 'case law'; as far as the waiving of parliamentary immunity is concerned, one should not confuse parliamentary immunity itself, which is the same for both national and European members of parliament, with the waiving of immunity, which is the prerogative of each individual parliament; these rules, which are derived from decisions adopted on requests for waiver of immunity, create a consistent concept of European parliamentary immunity which, in general terms, is independent of national procedures; if this were not the case, disparities in the treatment of members of one and the same parliament would be accentuated as a result of their nationality. Accordingly, the Committee on the Rules of Procedure takes the view that steps should be taken to establish proper European immunity, autonomous in principle, while retaining the national references provided for in the Protocol on privileges and immunities, with particular regard to procedural questions.

7. 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 waiver of immunity: in all cases where the offences alleged to have been committed by a Member of the European Parliament fall under the heading of political activity, immunity is not waived. This criterion has been supported by other considerations which support a decision for or against waiver of immunity, concerning in particular:

- 'fumus persecutionis', i.e. the presumption that behind the criminal proceedings is the intention to damage the political activities of the Member (just to quote a few examples: anonymous denunciations at the basis of the inquiry, the lateness of the request compared with the allegations);
- the particularly serious nature of the allegations.

8. By the same token, this committee deems it pertinent, when a decision has to be taken on a request for waiver of immunity of a Member, to take account of the fact that the legislations of the Member States other than the State of origin of the Member provide for less severe penalties for the alleged offence - or even do not regard it as a breach of the law.

III. REASONS FOR THE PROPOSAL FOR A DECISION

9. When the remarks of which he stands accused were made, Mr António Carlos Ribeiro Campos was a Member of the Portuguese Parliament and a member of the main opposition parliamentary group. All the remarks he is alleged to have made relate to Mr Arlindo Cunha as a member of the government. At the time when the remarks were made, both Mr António Carlos Ribeiro Campos and Mr Arlindo Cunha were campaigning as candidates for election to the European Parliament.

The Committee on the Rules of Procedure therefore notes that the remarks made by Mr António Carlos Ribeiro Campos were made during an election campaign and that they form part of the political debate between government and opposition.

Mr Arlindo Cunha could have defended himself against these accusations in the same political arena.

IV. CONCLUSION

10. On the basis of the above considerations, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, having considered the reasons for and against waiving parliamentary immunity pursuant to the second subparagraph of Rule 6(6) of the Rules of Procedure, recommends to Parliament that parliamentary immunity should not be waived in this instance

ANNEX

Article 160 of the Portuguese Constitution

1. Members of the Assembly have no civil, criminal or disciplinary liability for the votes they cast and the opinions they express in the performance of their duties.
2. Members shall not be detained or arrested without the Assembly's consent, except when taken in flagrante delicto for an offence punishable with a prison sentence of over three years.
3. Where criminal proceedings are taken against a Member and the latter is formally charged or indicted, the Assembly shall decide whether or not he or she should be suspended for the purpose of allowing the proceedings to carry on, except where the offence at stake is punishable with the sentence mentioned in the preceding paragraph.