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# REPORT

on the request for waiver of the immunity of Mr Jean-Marie Le Pen

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

Rapporteur: Mr Wibe

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At the sitting of 27 May 1998 the President of Parliament announced that he had received a request for waiver of the immunity of Mr Jean-Marie Le Pen, forwarded by the Ministry of Justice of the Federal Republic of Germany on 17 April 1998 at the request of the Public Prosecutor's Office of Munich I, 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.

The committee appointed Mr Wibe rapporteur at its meeting of 30 June 1998.

At its meeting of 7 September 1998 it heard Mr Jean-Marie Le Pen pursuant to Rule 6(3) and held an exchange of views on the reasons for and against the waiver of immunity.

It considered the draft report at its meeting of 21 September 1998 and adopted the proposal for a decision by 16 votes to 3, with 1 abstention.

The following were present for the vote: Fayot, chairman; Filippi, first vice-chairman; Janssen van Raay, second vice-chairman; Evans, third vice-chairman; Wibe, rapporteur; Corbett (for Verde i Aldea), Dell'Alba, Brendan Patrick Donnelly, Ephremidis, Fabre-Aubrespy, Féret (for Hager), Ford, Gollnisch, Lambraki, Lehne, Nordmann, Rothley, Spiers (for Manzella), Wieland and Wijzenbeek.

The report was tabled on 23 September 1998 .

**A**  
**PROPOSAL FOR A DECISION**

**Decision on the request for waiver of the immunity of Mr Jean-Marie Le Pen**

The European Parliament,

- having received a request for waiver of the immunity of Mr Jean-Marie Le Pen, forwarded by the Ministry of Justice of the Federal Republic of Germany on 17 April 1998 and announced in plenary sitting on 27 May 1998,
  - 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 to the European Parliament by direct universal suffrage,
  - having regard to the judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986(),
  - 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 (A4-0317/00),
1. Decides to waive the immunity of Mr Jean-Marie Le Pen;
  2. Instructs its President immediately to forward this decision and the report of its committee to the appropriate authority of the Federal Republic of Germany.

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<sup>(b)</sup> See 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

1. At the request of the Munich I Public Prosecutor's Office, dated 31 March 1998, the Ministry of Justice of the Federal Republic of Germany forwarded to the President of Parliament on 17 April 1998 a request for the waiver of the immunity of Mr Jean-Marie Le Pen, Member of the European Parliament. By letter of 10 June 1998 the President of Parliament referred this question to the Committee on the Rules of Procedure, the Verification of Credentials and Immunities pursuant to Rule 6 of the Rules of Procedure.

The request from the Public Prosecutor's Office of Munich I relates to the views expressed by Mr Le Pen on 5 December 1997 in Munich at a press conference held to launch a book entitled 'Le Pen, the Rebel' by Mr Franz Schönhuber, a former Member of the European Parliament and Chairman of the 'Republikaner'. During the subsequent discussion, Mr Le Pen, MEP, replied as follows to a question put to him by a journalist:

'... what I said was, and I'll say it again, ... the gas chambers were a detail in the history of the Second World War ... If you take a thousand-page book written about the Second World War you will see that 50 million died ... and if in the thousand pages there are two pages which mention the gas chambers and the issue of the gas chambers is referred in only 10 to 15 lines on those two pages, that is what you might call a detail'.

The requesting authority maintains that Mr Pen, in making that statement, was guilty of misrepresentation and of claiming 'that the extermination of those who were killed in the gas chambers is to be considered as merely an insignificant part of the history of the second world war'.

) On that basis, and on the basis of the authoritative literature (Schönke-Schröder, Criminal Code, 25th edition, paragraph 130, marginal no. 21, Leipzig

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

2. Articles 9 and 10 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(), read as follows:

9. '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';

10. 'During the sessions of the European Parliament, its Members shall enjoy:

(  
) On that basis, and on the basis of the authoritative literature (Schönke-Schröder, Criminal Code, 25th edition, paragraph 130, marginal no. 21, Leipzig commentary, paragraph 130, marginal no. 44), it alleges that Mr  
) see Notice to Members of 10 June 1998, PE 226.932, p.3  
(, read as follows:) Referred to in Article 4(2) of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, of 20 September 1976

- a. in the territory of their own State, the immunities accorded to members of their parliament;
- b. in the territory of other Member States, immunity from any measure or 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. The procedure in the European Parliament is governed by Article 6 of the Rules of Procedure.()

#### (l) Rule 6 Waiver of immunity

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.

4. Since its first five-year legislative period, the European Parliament has ruled on a number of requests for the waiver of immunity. From Parliament's debates on these requests have emerged some general principles which were given definitive recognition in the resolution adopted by Parliament 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 in r

5. It seems useful to set out here some of the principles which apply in this case, stressing the need for decisions taken on the waiver of a member's immunity to have a firm legal basis, so as to prevent their being influenced by various considerations such as the member's political allegiance or indeed his nationality.

A. Purpose of parliamentary immunity

Parliamentary immunity is not a privilege granted for the benefit of an individual member of Parliament, but a guarantee of Parliament's independence and that of its members vis-à-vis the other institutions. Under that principle it makes no difference when the alleged offence was committed - whether before or after the member's election to the European Parliament - and the only criterion must be the protection of Parliament as an institution through the protection of its members.

B. Renunciation of parliamentary immunity null and void

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities considers it important not to depart from the principle followed hitherto by the European Parliament whereby a member's renunciation of parliamentary immunity is null and void.

C. Time limit on immunity

The Court of Justice has been called upon twice to interpret the words 'During the sessions of the European Parliament' in Article 10 of the Protocol on the Privileges and Immunities of the European Communities.

It appears from two of the Court's judgments (Wagner v. Fohrmann and Krier, 12 May 1964, Case 101/63, 1964 [ECR] 397, and Wybot v. Faure, 10 July 1986, Case 149/86, 1986 [ECR] 2403) that the European Parliament holds an annual session lasting one year during which its Members enjoy the immunity provided by the Protocol, even in the periods between part-sessions.

It is in any case clear from the purpose of parliamentary immunity that it is effective throughout a Member's term of office, and applies to the opening of proceedings, investigations, enforcement measures, judgments already passed or procedures awaiting judgment on appeal or cassation. The immunity ceases with the end of the Member's term of office.

D. Independence of European parliamentary immunity from national parliamentary immunity

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( ) 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 in respect of Members of the European Parliament (A2-121/86).

) OJ C 99, 13.4.1987, p.44

The fact that Article 10, first paragraph, subparagraph (a) of the Protocol on Privileges and Immunities refers to the immunities granted to members of national parliaments does not mean that the European Parliament has no power to create its own rules or 'case law'; on the matter of

waiving parliamentary immunity, it is important not to confuse the immunity itself, which takes the same form for members of national parliaments and for MEPs, with the waiver of that immunity, for which each parliament is responsible on its own account; the rules governing this procedure, which arise from decisions in specific cases of requests for the waiver of immunity, have gradually forged a coherent notion of European parliamentary immunity which is in principle independent of the various practices of the national parliaments: to do otherwise would be to accentuate the disparities among members of the same parliament on the grounds of their nationality.

6. In the application of these principles a constant feature has emerged in Parliament's decisions, which has become a fundamental criterion in considering the action to be taken on each request for the waiver of immunity: in any case where the offence which a Member of the European Parliament is alleged to have committed forms part of a political activity, immunity is not waived. This criterion is taken together with other arguments for or against the waiver of immunity, particularly

- the 'fumus persecutionis', i.e. the suggestion that the prosecution originates in an intention to harm the Member's political activities (for example, the investigation may be based on anonymous accusations, or the request for waiver of immunity may have been submitted a long time after the alleged offence took place);
- the particularly serious nature of the offence of which the Member is accused.

7. The Committee on the Rules of Procedure, the Verification of Credentials and Immunities has discussed whether it is admissible, when considering a request for the waiver of a Member's immunity, to take account of the fact that the laws of Member States other than the Member's state of origin provide less serious penalties for the offence of which the Member is accused, or even do not consider it an offence. This new criterion will of course have to be examined in depth.

### III. REASONS FOR THE PROPOSAL FOR A DECISION

8. Since the alleged offence occurred on the territory of the Federal Republic of Germany, and since Mr Le Pen claims that he was acting in the context of his political activities, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities has discussed in detail the articles of the Protocol on Privileges and Immunities which may apply in this case.

Article 9 states that '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'.

It appears from the summary of the facts that Mr Le Pen expressed the sentiments in question during a press conference in connection with the launch of a book on his life and political activities.

It cannot therefore be maintained that he was acting 'in the performance of his duties', as would have been the case, for example, if he had spoken these words during a sitting of the European Parliament or one of its bodies, or if he had acted as a member or rapporteur of a committee, or indeed in any capacity at all connected with the activities of Parliament.



Article 10(b) states that 'During the sessions of the European Parliament, its Members shall enjoy...  
in the territory of other Member States [than their own], immunity from any measure or detention and from legal proceedings.'

Unlike the arrangement provided for in Article 9, this immunity may be waived by Parliament. Since Parliament considers that freedom of expression should prevail, it takes, as a matter of principle, a very liberal attitude to the opinions expressed by its members on the political scene.

However, in this case, the members of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities have noted the following:

- Mr Le Pen's words are covered by a specific German law aimed at preventing any resurgence of the theories of National Socialism or any attempts to deny the wrongfulness, or even the existence, of the crimes and sufferings which it caused. Such laws exist in other Member States, or else the same guarantees are provided by the case law of the courts.  
It should be recalled that Mr Le Pen's statement of the same opinions in France led to his being sentenced to pay a large sum in damages.
- It is not for Parliament but for the court with jurisdiction in the case to decide, after a trial offering all democratic guarantees, to what extent this law has been broken and what the judicial consequences might be. The relevant arguments of fact and law in Mr Le Pen's defence should therefore be pleaded before that court.

#### IV. CONCLUSION

9. In the light of the above, and pursuant to Rule 6(6), second subparagraph, of the Rules of Procedure, after considering the arguments for and against the waiver of immunity, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities recommends that parliamentary immunity be waived in this case.