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## REPORT

on the request for waiver of the immunity of Vural Öger  
(2006/2198(IMM))

Committee on Legal Affairs

Rapporteur: Francesco Enrico Speroni

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## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for waiver of the immunity of Vural Öger (2006/2198(IMM))

*The European Parliament,*

- having regard to the request for waiver of the immunity of Vural Öger, forwarded by the representative of the Public Prosecutor at the Brussels Court of Appeal on 11 May 2006, and announced in plenary sitting on 6 July 2006,
  - having heard Vural Öger in accordance with Rule 7(3) of its Rules of Procedure,
  - having regard to Article 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,
  - having regard to the judgments of 12 May 1964 and 10 July 1986<sup>1</sup> 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 (A6-0140/2006),
- A. whereas Vural Öger was elected to the European Parliament at the sixth European election held from 10 to 13 June 2004, and whereas his credentials were verified by Parliament on 14 December 2004,
- B. whereas, by virtue of Article 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities, Vural Öger is immune from any measure of detention and from legal proceedings on the territory of Member States other than the Member State of which he is a national,
1. Decides not to waive the immunity of Vural Öger;
  2. Instructs its President to forward this decision, and the report of the committee responsible, immediately to the competent authorities of the Kingdom of Belgium.

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<sup>1</sup> 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. BACKGROUND

At the session of 6 July 2006, the President of Parliament announced that he had received a letter from the public prosecutor of the Brussels Court of Appeal requesting waiver of the parliamentary immunity of Mr Vural Öger, a German Member of the European Parliament. Pursuant to Article 6(2) of the Rules of Procedure, the President referred this request to the Committee on Legal Affairs.

The request for waiver of immunity came from the public prosecutor of the Brussels Court of Appeal. In a letter of 30 June 2006, the Permanent Representative of Belgium to the European Union stressed that the fact that the request for waiver of immunity had not gone through the Ministry of Foreign Affairs did not render the request void and that any reply would be forwarded to the Head of Protocol of the Ministry of Foreign Affairs of the Kingdom of Belgium, which was the competent authority within the meaning of Rule 7(7) of the Rules of Procedure.

The public prosecutor of the Brussels Court of Appeal requested waiver of Mr Vural Öger's parliamentary immunity so that the investigating judge could interview Mr Öger and weigh up the prosecution and defence arguments, in view of suspicions of Mr Öger's possible implication, on the basis of statements and serious accusations made during investigation of a case before the Court of First Instance in Brussels concerning a kidnapping which took place in Belgium in September 2005.

The details of the accusations against Mr Öger are set out in Notice to members No 24/2006, which has been circulated to the members of the Committee on Legal Affairs. Mr Öger's comments are set out in his letter of 16 October 2006 to the chairman of the Committee on Legal Affairs, which has been forwarded to the members of the Committee on Legal Affairs.

By letter of 1 February 2007, the Committee on Legal Affairs requested a further explanation concerning the request for waiver of the parliamentary immunity of Mr Vural Öger and some additional information, to find out in particular whether Mr Öger was due to be heard as a witness or as a defendant, what the actual suspicions against him were and of what crime he was being accused.

The Committee on Legal Affairs has not yet received a reply to its request.

## II. PARLIAMENTARY IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT: TEXTS AND PRINCIPLES

1. Article 10 of the Protocol on Privileges and Immunities of the European Communities<sup>1</sup>, annexed to the Treaty establishing a Single Council and Single Commission of the European Communities<sup>2</sup>, which contains the provisions of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, EEC and EAEC, states:

*‘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;*  
*(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.’*

2. Parliamentary immunity is not a privilege granted to any particular Member of Parliament, but a guarantee of the independence of Parliament and its Members vis à vis other institutions.

Parliament's decisions have forged a coherent concept of European Parliamentary immunity, which in principle is autonomous in relation to the various practices of the national parliaments. This makes it possible to prevent Members being treated differently according to their nationality. Consequently, although it takes the immunity recognised by the national law into consideration, Parliament applies its own, constant principles to decide whether or not to waive the immunity of one of its Members.

Parliamentary immunity is intended to protect Members' freedom of expression and freedom of political debate. The relevant committee in the European Parliament has always held as a fundamental principle that, in all cases where the actions of which a Member is accused are an integral part of, or directly connected with, his political activity, immunity cannot be waived.

To this principle must be added other considerations governing the waiver or not of immunity, in particular *fumus persecutionis*, i.e. the presumption that the legal proceedings are intended to impede the Member's political activity. The concept of

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<sup>1</sup> See also 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.’

<sup>2</sup> Referred to at Article 4(2) of the Act of 20 September 1976 concerning the election of Members of the European Parliament by direct universal suffrage

*fumus persecutionis* means in effect that immunity is not waived when there is a suspicion that the legal proceedings are motivated by a desire to impede the Member's political activity.

Thus, when a prosecution is initiated by a political adversary, without proof to the contrary, immunity is not waived if there is reason to believe that the prosecution aims to damage the Member concerned and not to obtain reparation for an injury. Similarly, when a prosecution is initiated in circumstances which suggest that their sole aim is to damage the Member, immunity is not waived.

3. The procedure that the European Parliament must follow is set out in Rules 6 and 7 of its Rules of Procedure. The relevant provisions of these rules are as follows.

*Rule 6, Waiver of immunity*

1. *In the exercise of its powers in respect of privileges and immunities, Parliament shall seek primarily to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in performance of their duties.*

2. *Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived shall be announced in Parliament and referred to the committee responsible.*

(...)

*Rule 7, Procedures on immunity*

1. *The committee responsible shall consider without delay and in the order in which they have been submitted requests for the waiver of immunity or requests for the defence of immunity and privileges.*

2. *The committee shall make a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity or for the defence of immunity and privileges.*

3. (...)

4. *Where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate 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.*

4. It should be noted that waiver of immunity does not in any way affect the presumption of innocence.

### III. REASONS FOR THE PROPOSED DECISION

1. Article 9 of the Protocol on Privileges and Immunities (PPI) clearly does not apply in this case. Absolute immunity is only applicable to ‘opinions expressed or votes cast by (members) in the performance of their duties’.
2. However, Mr Öger, a German MEP, enjoys immunity as a Member of the European Parliament by virtue of Article 10, first paragraph, point (b) of the PPI. The suspicions against Mr Öger, a German MEP, concern matters that are alleged to have occurred on the territory of the Kingdom of Belgium.

Pursuant to Article 10, first paragraph, point (b) of the PPI, Mr Öger enjoys, during the sessions of the European Parliament, immunity from any measure of detention and from legal proceedings in the territory of any Member State other than his own.

3. As noted in the request for waiver of Mr Öger’s parliamentary immunity, a series of statements and serious allegations have been made against Mr Öger during the investigation of a case before the Court of First Instance in Brussels concerning a kidnapping which took place in Belgium in September 2005. However, it is not at all clear whether the purpose of the request for waiver of Mr Öger’s immunity is to allow legal proceedings to be taken against him as a defendant or of what crimes he is actually being accused. It should be stressed that if the intention of the Belgian authorities is to summon Mr Öger as a witness, there is no need to request a waiver of immunity when the provisions under Rule 7(5) of the Rules of Procedure of the European Parliament are complied with.

Accordingly, the request for waiver of Mr Öger’s immunity cannot be interpreted as a means to enable an investigation to be conducted against him as a defendant. Since the Committee on Legal Affairs does not have sufficient information on the nature of the suspicions against Mr Öger and any criminal offences of which he might be accused, it is unable to consider whether there is any evidence to suggest that this case is a matter of *fumus persecutionis*.

4. Therefore, with a view to preserving Parliament’s integrity as a democratic legislative assembly and to safeguarding the independence of the Member concerned in the performance of his tasks, the Committee on Legal Affairs has decided not to waive Mr Öger’s immunity.

#### IV. CONCLUSION

In view of the above considerations and pursuant to Rule 7(1) and (2), of the Rules of Procedure, the Committee on Legal Affairs, having considered the arguments for and against waiver of immunity, recommends that Parliament reject the request for waiver of Mr Vural Öger’s parliamentary immunity.

## PROCEDURE

<b>Title</b>	Request for waiver of the immunity of Vural Öger
<b>Procedure number</b>	2006/2198(IMM)
<b>Request for waiver from*</b> Date of request Date announced in plenary *In one language only	Public Prosecutor at the Brussels Court of Appeal (French) 11.5.2006 6.7.2006
<b>Committee responsible</b> Date announced in plenary	JURI 6.7.2006
<b>Rapporteur(s)</b> Date appointed	Francesco Enrico Speroni 11.9.2006
<b>Previous rapporteur(s)</b>	
<b>Discussed in committee</b>	2.10.2006    20.12.2006    10.4.2007
<b>Date adopted</b>	10.4.2007
<b>Result of final vote</b>	+: 10 -: 0 0: 2
<b>Members present for the final vote</b>	Carlo Casini, Marek Aleksander Czarnecki, Cristian Dumitrescu, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Piia-Noora Kauppi, Klaus-Heiner Lehne, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis
<b>Substitute(s) present for the final vote</b>	
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	
<b>Date tabled</b>	13.4.2007
<b>Comments (available in one language only)</b>	