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on the request for defence of the immunity of Mr Marco Pannella
(2003/2116(IMM))

Committee on Legal Affairs and the Internal Market

Rapporteur: Klaus-Heiner Lehne

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PROCEDURAL PAGE

At the sitting of 4 June 2003 the President of Parliament announced that he had received a request for defence of the immunity of Mr Marco Pannella, forwarded by letter on 29 April 2003 at the request of Mr Maurizio Turco, and that he had referred it to the Committee on Legal Affairs and the Internal Market pursuant to Rule 6(1) of the Rules of Procedure.

The committee appointed Klaus-Heiner Lehne rapporteur at its meeting of 10 June 2003.

At its meeting of 10 June 2003, it heard Marco Pannella pursuant to Rule 6(3) and at its meetings of 27 January 2004, 24 February 2004 and 17 March 2004 held an exchange of views on the reasons for and against the defence of immunity.

It considered the draft report at its meeting of 17 March 2004 and adopted the proposal for a decision unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Ioannis Koukiadis vice-chairman; Bert Doorn, Marie-Françoise Garaud, Malcolm Harbour, Sir Neil MacCormick, Manuel Medina Ortega, Francesco Enrico Speroni (for Alexandre Varaut), Marianne L.P. Thyssen and Diana Wallis.

The report was tabled on 18 March 2004.

PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for defence of the immunity of Mr Marco Pannella (2003/2116(IMM))

The European Parliament,

- having regard to a request for the defence of the immunity of Mr Marco Pannella, following his sentencing to a term of imprisonment, - subsequently commuted to an order restricting his freedom of movement - for acts which took place in Italy, as submitted by Mr Maurizio Turco on 28 April 2003 and communicated to Parliament, meeting in plenary, on 4 June 2003,
 - having regard to Articles 9 and 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 1986¹,
 - having regard to Rules 6 and 6a of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0180/2004),
- A. Whereas Article 10(a) of the Protocol confers on Members of the European Parliament in their own State immunity from legal proceedings equivalent to that of a Member of the Parliament of that State,
- B. Whereas Mr Marco Pannella was elected as a Member of Parliament in Italy,
- C. Whereas Mr Pannella, following a conviction having the force of *res judicata* pronounced by the Italian authorities, was in the past subject to an order restricting his freedom of movement for eight months, in connection with public actions concerning the use of prohibited drugs,
- D. Whereas such actions were clearly a part of his political activity carried on in good faith and involving collective acts of symbolic law-breaking,
- E. Whereas, however, it appears that Members of the Italian Parliament do not enjoy Parliamentary immunity in such circumstances,
- F. Whereas on the evidence provided, Mr Pannella is not protected by Parliamentary immunity in respect of the legal proceedings which have been drawn to the attention of the President of the European Parliament,
1. Decides that it would not be appropriate to take any action to raise questions

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

concerning Mr Pannella's political activity with the Italian authorities.

EXPLANATORY STATEMENT

I. Facts of the case

1. During a demonstration of civil disobedience which was performed in the context of his specific political activity seeking the legalisation of soft drugs, carried out in the Porta Portese market in Rome in 1995, Mr Marco Pannella supplied narcotic substances. Such demonstration had been notified to the media and to the police and judicial authorities, in a situation which thus made clear the political purpose of the gesture.
2. As a consequence of that action, Mr Pannella was convicted of the offence of flagrantly supplying narcotic substances and was definitively sentenced to four months' imprisonment, subsequently converted into an order restricting his freedom of movement for eight months, which he has been serving in accordance with the conditions laid down by the Supervising Judge in Rome, entailing authorisation to *'travel to the offices in Brussels, Strasbourg and Luxembourg to perform his duties as a Member of the European Parliament, subject to prior notice to the police authorities, for the time strictly needed for the same and in no circumstances for more than seven days for each month of the sentence.'*

II. Procedure

1. The relevant provisions of the Rules of Procedure are Rules 6 and 6a, in particular Rule 6(1) and (3):

'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 the performance of their duties.

3. Any request addressed to the President by a Member or a former Member to defend privileges and immunities shall be announced in Parliament and referred to the committee responsible.'
2. As the President of Parliament considered that Mr Turco had opened the procedure for defending Mr Pannella's immunity, as laid down in the above-mentioned Rules, the request was announced in Parliament.
3. The formal requirements have therefore been met for the matter to be referred to the Committee on Legal Affairs and the Internal Market.

III. Applicable provisions

1. Article 10 of the Protocol on the privileges and immunities of the European Communities (PPI)¹

¹ The protocols annexed to the original Treaties form part of primary Community law and have the same legal

That article reads as follows:

'During the sessions of the European Parliament, its members shall enjoy:

(a) in the territory of their own Member 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. Under the PPI, Members of Parliament are protected from any legal proceedings in respect of opinions expressed or cast in the performance of their duties (Article 9) and they enjoy immunity during the sessions of the European Parliament under the conditions laid down in Article 10.
3. In the light of the above-mentioned considerations and consisted practice of the Committee on Legal Affairs, it seems that Article 9 PPI does not apply in this case.
4. Mr Pannella was elected to the European parliament from Italy in the fifth direct elections on 13 June 1999, and Parliament verified his credentials on 13 December 1999.

In the present case only Article 10 (a) can be applied.

5. Article 10 refers to national law and therefore to national immunity arrangements in Italy. Article 68, first paragraph, of the Italian Constitution provides that Members of Parliament may not be called upon to answer for opinions expressed and votes cast in the performance of their duties (*insindacabilità*). This takes effect upon their appointment as Members of Parliament. Inviolability (*inviolabilità*) is established by the second and third paragraphs of Article 68 of the Constitution (in annex).
6. In the case in point, the second paragraph of Article 68 should be applied: "*Without authorisation from the House to which they belong, no Member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested or otherwise deprived of personal freedom, or kept in detention, **except to enforce a final conviction**, or if caught in the act of committing a crime for which arrest is mandatory*".

status as the Treaties themselves. The judgment in a case concerning the liability of Community officials for property tax made clear that a breach of the provisions of the PPI represented a breach of the obligations arising out of the Treaties (judgment of 24 February 1988 in case 260/88, *Commission v Belgium*, [1988] ECR. 966).

7. The Committee therefore considers that Members of the Italian Parliament do not enjoy Parliamentary immunity in respect of a final conviction in the circumstances reported in part I of this report.

IV. Conclusion

On the basis of the above considerations and pursuant to Article 6a(2) of the Rules of Procedure, after considering the reasons for and against defending the Member's immunity, the Committee on Legal Affairs and Internal Market recommends that the European Parliament should not defend the parliamentary immunity of Mr Marco Pannella.