

Request for defence of immunity of Gérard Onesta

European Parliament decision on the request for defence of the immunity and privileges of Gérard Onesta (2006/2121(IMM))

The European Parliament,

- having regard to the request by Monica Frassoni for defence of the immunity of Gérard Onesta in connection with the criminal proceedings brought against the latter before the Third Chamber of the Court of Criminal Appeals of Toulouse, France, made on 17 May 2006, announced in plenary sitting on 31 May 2006,
 - having heard Gérard Onesta in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Articles 9 and 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 1986¹ of the Court of Justice of the European Communities,
 - having regard to Article 26 of the Constitution of the French Republic,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0386/2006),
- A. whereas Gérard Onesta is a Member of the European Parliament who was elected in the sixth direct elections of 10 to 13 June 2004 and whereas his credentials were verified by Parliament on 14 December 2004²,
- B. whereas, during the sessions of the European Parliament, its Members enjoy in the territory of their own State the immunities accorded to members of their parliament and whereas immunity cannot be claimed when a Member is caught in the act of committing an offence; whereas this does not prevent the European Parliament from exercising its right to waive the immunity of one of its Members³,
- C. whereas the provision applicable to the case in question is Article 26, second subparagraph, of the French Constitution, pursuant to which no Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorisation of the Bureau of

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

² European Parliament Decision on the verification of credentials (OJ C 226 E, 15.9.2005, p. 51).

³ Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965.

the assembly of which he is a member; whereas such authorisation shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or a final sentence,

- D. whereas the Court of Criminal Appeals of Toulouse sentenced Gérard Onesta to three months' imprisonment, thus applying a stricter sanction than the one reserved to the other accused and whereas the self same court justified this different decision by stating that, in his capacity as a parliamentarian, Gérard Onesta had, more so than any other citizen, the means available to make his voice heard in political fora, in particular with the support of other elected members of his party, his group in the Assembly and, if necessary, the media, as he is, according to the French court, an expert in the art of communication,
- E. whereas punishing Gérard Onesta more severely only in view of his status as a parliamentarian constitutes a clear case of discrimination against elected politicians, in so far as it seems that, since they have other and more effective means of expression, they are not permitted to engage in public demonstrations in the same way as other citizens and whereas this would therefore entail the unacceptable conclusion that Members of a Parliament are only allowed to act in political assemblies and that, outside those fora, they enjoy fewer rights and means of expression than any other citizen,
- F. whereas the French authorities' discriminatory use of *flagrante delicto* against parliamentarians alone - selected from more than 400 persons involved - constitutes an abuse of procedure with the sole purpose of circumventing the Protocol on Privileges and Immunities,
- G. whereas Gérard Onesta maintains that his intention was to draw attention to the fact that the Court of Justice of the European Communities found against France for failing to transpose Directive 2001/18/CE of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms¹,
- H. whereas the issue at stake is extremely delicate and its consequences for the prerogatives of the European Parliament are unacceptable, as the discriminatory attitude of the French court and the resulting political prejudice to Gérard Onesta's civil rights are to be strongly deplored,
- I. whereas, after exhausting his domestic remedies, Gérard Onesta is in any case entitled to bring his case before the European Court of Human Rights in Strasbourg, and the European Parliament is already considering supportive measures,
- J. whereas any case of political persecution of one of its Members is an attack on the integrity of the European Parliament as a political institution, democratically elected by the peoples of Europe, and amounts to a contempt of Parliament and whereas, as a democratic institution, the European Parliament is bound to defend its prerogatives using all the means at its disposal,
- 1. Regrets that, as it stands, the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 does not afford the European Parliament the means of taking binding action in order to protect Gérard Onesta and therefore decides not to

¹ OJ L 106, 17.4.2001, p. 1.

defend his immunity.