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Policy Department C
Citizens Rights and Constitutional Affairs**

PARLIAMENTARY IMMUNITY IN THE EUROPEAN PARLIAMENT

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PARLIAMENTARY IMMUNITY IN THE EUROPEAN PARLIAMENT

INTERNAL STUDY

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Parliamentary immunity in the European Parliament*

I. The legal basis of parliamentary immunity

Article 291 of the EC Treaty¹ stipulates that the European Communities shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks, under the conditions laid down in the protocol annexed to that Treaty.

Articles 9 and 10 of that protocol, the Protocol on the privileges and immunities of the European Communities (PPI), repeat the provisions concerning the non-liability and immunities of Members of the European Parliament previously set out in the protocol annexed to the Treaty of 18 April 1951 establishing the ECSC and the protocols annexed to the Treaties of 25 March 1957 establishing the EEC and the EAEC:

Article 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.

Article 10

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.

In 1965, the Single Assembly of the European Communities² still consisted of delegates appointed by the national parliaments in accordance with the procedure laid down by each individual Member State. This explains the reference to the national provisions governing parliamentary immunity made in letter (a) of the first paragraph of Article 10 of the PPI.

* Extract from Publication W8/rev. of the Directorate-General for Research, Legal Affairs Series, entitled 'Parliamentary immunity in the Member States of the European Union and in the European Parliament', 1999, revised and updated text.

¹ Following the entry into force of the Treaty of Amsterdam, this article has replaced Article 28 of the Treaty of 8 April 1965 establishing a Single Council and a Single Commission of the European Communities (Merger Treaty).

² See Article 1 of the Convention on certain institutions common to the European Communities signed in Rome on 25 March 1957.

The Act of 20 September 1976 altered the way in which the composition of Parliament is determined, stipulating that its Members must be elected by direct universal suffrage. Nonetheless, Article 4(2) of that Act stipulates the following:

Representatives shall enjoy the privileges and immunities applicable to Members of the European Parliament by virtue 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.

Accordingly, Articles 9 and 10 of the PPI, reproduced above, continue to apply to Members of the European Parliament even after the introduction of the system of direct election by the peoples of the Member States which make up the Union.

The current wording of Rule 5(1) of Parliament's Rules of Procedure reflects this situation, stipulating that 'Members shall enjoy privileges and immunities in accordance with the Protocol on the privileges and immunities of the European Communities'.

As the national rules governing parliamentary immunity in the Member States are not identical, the application of Article 10 of the PPI has given rise to substantial disparities in the treatment of MEPs on the basis of their nationality.

In a resolution of 15 September 1983¹ Parliament committed itself to proposing a revision of the PPI, bringing it into line with the new method of determining Parliament's composition, and to drawing up a uniform Statute for its Members.

On 14 November 1983, Parliament's Enlarged Bureau submitted to the Commission an initial proposal for a revision of the PPI. The Commission amended that draft text and forwarded it to the Council, pursuant to the first paragraph of Article 236 of the EEC Treaty (Doc. 1-1442/84, COM(84) 666). The Council then forwarded the document to Parliament for consultation, pursuant to the second paragraph of the same Treaty article (C2-0031/85). Following that consultation, Parliament proposed a number of amendments to the Commission draft in a resolution adopted on 10 March 1987².

That resolution had been preceded by a report, drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights (Donnez report, A2-0121/86), which set out in detail the grounds justifying a revision of the PPI, given that the current situation discriminated against MEPs of various nationalities.

¹ OJ C 277, 17.10.1983, p. 135.

² OJ C 99, 13.4.1987, p. 43.

Despite repeated calls by Parliament for action on this issue¹, the Council has so far failed to take a decision on amending Articles 9 and 10 of the PPI². One of the protocols annexed to the Treaty on European Union signed in Maastricht on 7 February 1992 amends the PPI by extending it to cover the European Central Bank and the European Monetary Institute, whilst leaving unchanged the provisions governing parliamentary immunity.

The new paragraph 4 added by the Treaty of Amsterdam to Article 190 (formerly Article 138) of the EC Treaty stipulates that 'the European Parliament shall, after seeking the opinion of the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members'. That article was amended by the Treaty of Nice to the effect that 'all rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council'³.

Articles 4 and 5 of the draft Statute for Members of the European Parliament (Rothley report, A5-0193/03, drawn up on behalf of the Committee on Legal Affairs and the Internal Market) adopted by the EP in its resolution of 3rd June 2003 stipulate the following:

Article 4

- *A Member may at no time be the subject of legal proceedings or otherwise be held to account extrajudicially for any action taken, vote cast or statement made in the exercise of his/her mandate.*
- *Parliament shall decide, on an application from the Member, whether a statement was made in the exercise of his/her mandate.*
- *Parliament shall lay down provisions for the implementation of this Article in its Rules of Procedure.*

Article 5

- *Any restriction of a Member's personal freedom shall be permitted only with the consent of Parliament, except where he/she is caught in the act.*

As regards the applicability of Articles 4 and 5, the draft Statute stipulates that they will enter into force when Articles 9 and 10 of the PPI are repealed.

¹ In addition to the resolutions already cited, see also the resolution of 16 May 1991 on the system of immunity for Members of the European Parliament (OJ C 158, 17.6.1991, p. 258) and the decision of the same date (ibid., p. 27).

² It follows from Article 311 (formerly Article 239) of the EC Treaty (in accordance with which the protocols annexed to the Treaty form an integral part thereof) that the revision of the PPI is currently governed by the conditions set out in Article 48 (formerly Article N) of the Treaty on European Union concerning the revision of the Treaty itself.

³ The EP had called for the incorporation of a legal basis whereby it could establish regulations governing the performance of their duties by its Members (see, in particular, paragraph 38 of the resolution of 13 March 1997). It wanted those regulations to be adopted by a majority of its Members, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority. However, the unanimity requirement was retained with regard to taxation.

The articles proposed were not approved by the Council and didn't take place in the Decision of the European Parliament of 28th of September 2005 adopting the Status for Members of the European Parliament (2005/684/EC, Euratom) and founded on the resolution of the European Parliament of the 23rd 2005. The European Parliament has expressed the request for a review of the provisions relating to the Members of European Parliament in the Protocols on Privileges and Immunities of 8th April 1965, in the Resolution on Modification of the Protocols on Privileges and Immunities from 6th of July 2006.

The procedure for waiving a Member's parliamentary immunity is currently governed by Rules 6 and 7 of Parliament's Rules of Procedure and will be discussed in Chapter 4.

II. The duration of parliamentary immunity

The exemption of Members of the European Parliament from liability for the opinions expressed and votes cast by them in the performance of their duties (as specified in Article 9 of the PPI) protects them for the entire duration of their term of office and, indeed, beyond, given that this privilege is not subject to a time-limit. Moreover, the Zimeray report (A5-0248/2003, Musotto) made clear that that protection begins as soon as the results of the elections are made public.

The immunity provided for in Article 10 of the PPI is effective 'during the sessions of the European Parliament'.

The concept of 'during the sessions' has been interpreted by the Court of Justice of the European Communities in two judgments handed down in 1964¹ and 1986² respectively. On the basis of these two judgments and of Rule 10(1) of Parliament's Rules of Procedure, it may be concluded that Parliament holds an annual session lasting twelve months, during which its Members enjoy the immunity provided for in the PPI, even during periods between part-sessions.

Given the specific purpose of parliamentary immunity and Parliament's practice of concluding its annual session on the day preceding the first day of the following session, it is clear that immunity is effective throughout a Member's five-year term of office.

In their reports, Parliament's successive committees responsible (initially the Committee on Legal Affairs and Citizens' Rights and, as from 1987, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities; as from July 1999, responsibility reverted to the Committee on Legal Affairs) have repeatedly taken the view that immunity is effective from the moment when a Member is declared to have been elected³ and up to the moment when his or her term of office comes to an end.

¹ Judgment of 12 May 1964 (Wagner v Fohrmann and Krier), Case 101/63, ECJ 1964, p. 397 et seq.

² Judgment of 10 July 1986 (Wybot v Faure), Case 149/85, ECJ 1986, p. 239 et seq.

³ Article 3 of the 1976 Act concerning the election of the representatives of the European Parliament by direct universal suffrage stipulates that each representative's term of office begins at the same time as the five-year period for which they are elected (paragraph 3), that period beginning 'at the opening of the first session following each election' (paragraph 2). If these provisions are taken together with the reference made to the same Act in Rule 8(1) of Parliament's Rules of Procedure, it may be concluded that, with respect to elected representatives who were not Members of the previous Parliament, parliamentary immunity is effective not from the date on which the Member is declared elected, but rather from the date of opening of the first session following the election (this is the view held by Manuel Caverio Gómez in 'La inmunidad de los diputados en el Parlamento europeo' ('Immunity of the Members of the European Parliament') in Revista de las Cortes Generales, Separata No 20, second four-month period of 1990, pp.16 and 17). See also Zimeray report, as referred to above, p. 3.

According to Article 3 of the 1976 Act, a Member's term of office expires at the end of the five-year period for which representatives are elected to the European Parliament. Rule 8(2) of Parliament's Rules of Procedure stipulates that Members who are not re-elected remain in office until the opening of the first sitting of Parliament following the elections. Taking these provisions together, it may be concluded that a Member is protected by parliamentary immunity during the entire five-year period of his or her term of office, even if he or she fails to gain re-election, up to the day preceding that of the opening of the first sitting following the election concerned¹.

Exceptions obviously have to be made in cases where a Member's term of office ends early on grounds of death, resignation or incompatibility: the date on which the term of office is declared to have ended and on which, consequently, the protection conferred by parliamentary immunity ceases to apply is determined by the criteria laid down by Parliament in Rule 8 of its Rules of Procedure.

Finally, since the PPI and all the other relevant rules are silent on this matter, Parliament has adopted the criterion that the immunity provided for by Article 10 of the PPI applies not only to actions committed during a Member's term of office, but also retrospectively, so that only actions committed after the expiry of a Member's term of office are excluded. This criterion is based on the premise that the primary purpose of immunity is to protect the normal functioning of a parliamentary institute, which might otherwise be jeopardised by actions committed both before or after the commencement of a Member's term of office.

III. The scope and purpose of parliamentary immunity

Article 291 of the EC Treaty, which has replaced Article 28 of the Treaty of 8 April 1965 (Merger Treaty), leads to the conclusion that the privileges and immunities set out in the PPI were established with the purpose of enabling the European Communities to carry out their tasks. Pursuant to Article 4 of the EEC Treaty, Articles 3, 6 and 7 of the ECSC Treaty and Article 3 of the Euratom Treaty, the Communities act through their respective institutions, which include the European Parliament. The traditional view, therefore, has been that the immunity defined in Articles 9 and 10 of the PPI is intended to protect Parliament as a Community institution and not to protect its Members considered as individuals. Moreover, that interpretation underpins the principles set out by the Court of Justice of the European Communities in the judgments referred to above, in particular where it has ruled that Article 10 of the PPI is to be considered from the point of view of equal treatment for all Members of the European Parliament, irrespective of nationality².

This institutional purpose underlying the concept of immunity is also a criterion fundamental to the interpretation of Article 10 of the PPI.

¹ Article 10(4) of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage stipulates that 'the powers of the outgoing European Parliament shall cease upon the opening of the first sitting of the new European Parliament'.

² See judgment of 10 July 1986, Case 149/85, *Wybot v Faure*, ECJ 1986, p. 2407, paragraph 2.

a) Article 9 of the PPI (non-liability)¹

Under Article 9 of the PPI, Members of the European Parliament are exempted from liability for the opinions expressed and votes cast by them in performance of their duties.

This privilege is intended to safeguard Members' freedom to perform their duties, such performance being subject only to the rules governing procedure and the conditions of parliamentary etiquette, the framing and application of which are solely a matter for Parliament itself and subject to no intervention by outside authorities.

Despite the existence of analogous provisions in the Member States, the scope of this privilege is not identical under the various national systems. Parliament has endeavoured to define the precise scope of the provision concerned, proposing that the current wording of Article 9 of the PPI should be replaced by the following text²:

'Members of Parliament shall not be subject to any form of inquiry, detention or legal proceedings, in connection with civil, criminal or administrative proceedings, in respect of opinions expressed or votes cast during debates in Parliament, in bodies created by or functioning within the latter or on which they sit as Members of Parliament.'

The draft Statute for Members of the European Parliament (see p. 6) contains a new wording.

The wording employed in Article 9 of the PPI referring to opinions expressed or votes cast by Members 'in the performance of their duties' is consistent with the constitutional tradition shared by France, Belgium and Italy³.

According to legal opinion⁴, and following the interpretation of the parliamentary committee responsible, this expression covers opinions expressed and votes cast not only during Parliament part-sessions, but also at meetings of parliamentary bodies, such as committees or political groups. However, Article 9 of the PPI is held not to cover opinions expressed by Members of the European Parliament at party congresses, during election campaigns or in books or articles published by them⁵.

¹ The term 'non-liability' does not appear in the PPI. It is used here for practical reasons, with a view to simplifying the discussion, given that the terminology used by the various national legal systems to designate this system of immunity is not uniform.

² Resolution on the draft protocol amending the Protocol on the privileges and immunities of the European Communities of 8 April 1965 as regards Members of the European Parliament, OJ C 99, 13.4.1987, p. 43. See also the Donnez report, A2-0121/86, Part B, p. 23.

³ See Article 26 of the French Constitution, Article 58 of the Belgian Constitution and Article 68 of the Italian Constitution.

⁴ Jeuniaux, 'Le statut personnel des membres du Parlement européen', Toulouse, 1987, p. 179; Senén Hernandez, 'Inviolabilidad e inmunidad en el Parlamento europeo', in Revista de las Cortes 1986, p. 322; Harms, 'Die Rechtstellung des Abgeordneten in der Beratenden Versammlung des Europarats und im Europäischen Parlament', Hamburg, 1968, p. 90 (quotations included in the study drawn up by Parliament's Legal Service, PE 140.197, 23 April 1990).

⁵ See Jeuniaux, op. cit., p. 180; Senén Hernandez, op. cit., p. 322.

Moreover, non-liability is held to cover only 'opinions' and 'votes' and not any acts of physical violence, even where perpetrated with the aim of giving expression to a particular opinion¹.

In direct contrast to the provisions of the first paragraph of Article 46 of the Basic Law of the Federal Republic of Germany and the second paragraph of Article 61 of the Greek Constitution, the PPI does not exclude from the scope of non-liability actions committed with defamatory intent. It follows that, in such cases as well, Members enjoy the protection conferred on them by Article 9 of the PPI².

As regards the non-liability of the representatives of the Federal Republic of Germany in the European Parliament, Article 5(1)(2) of the Federal Law of 6 April 1979 concerning Members of the European Parliament (*Europaabgeordnetengesetz*) refers to Article 46(1) of the Basic Law of the Federal Republic of Germany, which excludes defamatory statements.

The non-liability provided for in Article 9 of the PPI is absolute, in that it cannot be ruled out by any body, not even Parliament itself. It is thus not subject to the procedure laid down in Rules 6 and 7 of Parliament's Rules of Procedure.

In the opinion it adopted in March 1987 on the draft revision of the PPI, Parliament proposed that a new Article 9a should be inserted stipulating that its Members should be entitled to refuse to testify in court if such testimony were to relate to their activities as Members of the European Parliament. The current Rule 7(5) of Parliament's Rules of Procedure stipulates the following: *'Where a Member is required to appear as a witness or expert witness, there is no need to request a waiver of immunity, provided that*

- *the Member will not be obliged to appear on a date or at a time which prevents him from performing, or makes it difficult for him to perform, his parliamentary duties, or that he will be able to provide a statement in writing or in any other form which does not make it difficult for him to fulfil his parliamentary obligations;*
- *the Member is not obliged to testify concerning information obtained confidentially in the exercise of his mandate which he does not see fit to disclose'.*

The effect of this proposal would be to establish a privilege which exists in various Member States, but which is not referred to in the current PPI.

However, Parliament has received a number of requests from national authorities seeking authorisation for Members to testify in court or make statements in accordance with their national laws.

After receiving a request for authorisation for a Portuguese Member to testify in court, the committee reviewed the general problem posed by this type of request.

¹ See Harms, op. cit., p. 91; Senén Hernandez, op. cit., p. 321.

² See Jeuniaux, op. cit., p. 179; Moretti, 'Le immunità dei parlamentari europei: un istituto da rivedere', in Il Foro Italiano, 1985, p. 342 et seq.

'The Committee was of the opinion that Members of the European Parliament did not require, and should not require, Parliament's authorisation to appear as witnesses or experts and that consequently there was no need for any initiative to have this condition made part of the Protocol on the privileges and immunities of the European Communities. It was also of the opinion that Article 5 of the Treaty establishing the European Community already enabled judicial bodies in the Member States to allow Members of the European Parliament to appear as witnesses or experts and to fulfil their duty to cooperate with judicial authorities without prejudicing their independence or office, as had been shown by experience'¹.

At its meeting of 18 March 1996 the Committee on the Rules of Procedure proposed the following interpretations, adopted in plenary on 27 March 1996, concerning paragraphs 4 and 8 of Rule 6 of the Rules of Procedure:

'Where the request for the waiver of immunity entails the possibility of obliging the Member to appear as a witness or expert witness, thereby depriving him of his freedom, the committee shall:

- ascertain, before proposing that immunity be waived, that the Member will not be obliged to appear on a date or at a time which prevents him from performing, or makes it difficult for him to perform, his parliamentary duties, or that he will be able to provide a statement in writing or in any other form which does not make it difficult for him to fulfil his parliamentary obligations;
- seek clarification regarding the subject of the statement, in order to ensure that the Member is not obliged to testify concerning information obtained confidentially in the exercise of his mandate which he does not see fit to disclose.

The President shall ensure that recourse is had to this right where the aim of the arrest or prosecution is to make the Member appear as a witness or expert witness against his will, without his immunity having been waived beforehand'.

b) Article 10 of the PPI (immunity in the strict sense of the term)

Immunity in the strict sense of the term refers to actions by Members of the European Parliament not covered by Article 9 of the PPI, i.e.:

- opinions expressed and votes cast outside debates in Parliament, in the bodies set up by Parliament or functioning under its auspices, or in bodies where the Members concerned meet or are present in their capacity as Members of the European Parliament;
- actions which cannot be classified as opinions or votes, whether carried out within or outside Parliament.

Article 10 of the PPI distinguishes between two types of situation arising 'during the sessions of the European Parliament', depending on whether the Member concerned is *in the territory of his or her own Member State* or *in the territory of any other Member State*.

In the first case, letter (a) of Article 10 refers to the national law of the Member States, stating that Members of the European Parliament are entitled to the immunities granted to members of their respective national parliaments.

¹ OJ C 117, 22.4.1996.

As we have already seen, this gives rise to genuine inequality of treatment between Members stemming from the disparities in national provisions on this matter.

This situation also has an adverse impact on Parliament's own work, since it obliges Parliament, in connection with each request for the waiver of parliamentary immunity, to consider the relevant national rules governing immunity and the related procedures¹. This may lead to delays in decision-making, errors in interpretation and even the misapplication of the relevant rules.

Despite the limitations laid down in letter (a) of Article 10 of the PPI, Parliament has created its own body of legal precedent with regard to the procedure and criteria for waiving immunity.

These principles, which will be dealt with in Chapters 4 and 5, seek to provide a solid, uniform legal basis for Parliament's decisions by keeping to a minimum the disparities in the treatment of individual Members on the basis of their nationality. The reports of Parliament's committee responsible thus consistently refer to the 'autonomous nature of immunity in the European Parliament as compared with national parliamentary immunity'.

If a Member of the European Parliament is on the territory of a Member State other than that of which he or she is a national, he or she is exempt from 'any measure of detention and from legal proceedings' (letter (b) of Article 10 of the PPI).

Unlike letter (a) of Article 10, letter (b) thus seems to confer genuine 'Community immunity' in that this prerogative is not defined by reference to national rights. Letter (b) must be interpreted as defining a parliamentary immunity which may be waived in accordance with the third paragraph of Article 10 of the PPI².

As has been repeatedly stated in the reports of Parliament's committee responsible, immunity protects Members throughout their term of office, applying equally to the instigation of legal proceedings, the establishment of acts connected with investigatory procedures and acts enforcing sentences already passed and appeal procedures.

However, the reference to '*legal proceedings*' gives rise to some doubt as to whether the scope of the immunity conferred by letter (b) of Article 10 of the PPI covers only the area of criminal law, or whether it also extends to civil law, as in the case of the concept of non-liability enshrined in Article 9.

- Civil proceedings

Although letter (b) of Article 10 of the PPI has on many occasions been given a broad interpretation, suggesting that the provision in question covers legal proceedings of any kind³, there are arguments in favour of a restrictive interpretation confining its scope to criminal proceedings.

¹ The factors which have to be established include the authorities empowered to draw up the request, the procedures concerning the investigative measures and proceedings which precede such requests, appeals against those procedures, etc.

² To date, this situation has arisen twice (see A3-0030/94 and A4-0317/98).

³ See Senén Hernández, *op. cit.*, p. 329, speeches made in 1985 to the British House of Lords by representatives of the Foreign Office and the Lord Chancellor's department (House of Lords, Session 1985-1986, 8th report, Select Committee on the European Communities - Privileges and Immunities of Members of the European Parliament, Evidence, pp. 4 and 12, section 49) (quoted in the study drawn up by Parliament's Legal Service, PE 140.197, 23 April 1990).

Since none of the six founding Member States of the European Communities which considered the wording of Articles 9 and 10 of the PPI grant immunity to their national parliamentarians in connection with civil proceedings, it is difficult to give credence to the notion that the representatives of those six Member States intended to grant Members of the European Parliament privileges which were broader in scope than those accorded to their own national parliamentarians.

Until September 2003, the restrictive interpretation limiting the scope of the provisions of letter (b) of Article 10 of the PPI to criminal proceedings also had its proponents in Parliament.

In March 1987, Parliament went so far as to propose an amendment to the Commission draft text revising the PPI with a view to clarifying the provision in question by expressly restricting the immunity of MEPs to criminal proceedings and measures involving the withdrawal or restriction of individual freedom¹.

Paragraphs 4 and 7 of the current version of Rule 7 of Parliament's Rules of Procedure² lend further weight to that interpretation by making explicit reference to 'prosecution proceedings' and to the 'prosecution' of the Member concerned.

However, on 23 September 2003 Parliament decided, for the first time, to uphold the immunity of a Member in civil proceedings³. Subsequently, four similar decisions were taken in other cases involving civil proceedings⁴. The grounds for extending the protection offered by immunity to certain cases involving civil proceedings are as follows:

A civil action brought against a Member may constitute 'legal proceedings' within the meaning of Article 10, letter (b), if the civil action is punitive in nature, in particular if the applicant has not brought an action for defamation, on the basis of certain remarks made, but is merely endeavouring to bring a civil action against the Member concerned.

In the cases of Mr Sakellariou and Mr Gargani, the view was taken that the amount of damages claimed (roughly € 150 000) was clearly intended to be punitive. In other words, the damages were primarily intended to act as a deterrent and were to be paid to the victim of an unlawful act⁵. US law particularly emphasises the deterrent nature of punitive damages: the aim is to discourage the perpetrator from repeating the act which prompted the damages award and potential imitators from perpetrating such an act for the first time.

Given that this approach has increasingly become an established part of the legal systems of the EU Member States in recent years, through the recognition and enforcement of foreign court judgments, such as those handed down in the USA, there is every possibility that it will be used as a roundabout means of initiating quasi-criminal proceedings against Members.

Accordingly, the reference to 'legal proceedings' in the 1965 text of the PPI must today be interpreted as covering any attempt to secure punitive damages by means of civil proceedings.

¹ See the Donnez report, A2-0121/86, pp. 21 and 31. The amendment read: 'Members of Parliament shall enjoy in the territory of the Member States immunity from prosecution, arrest or any other measure depriving them of or limiting their personal freedom'; in that connection, see also the replies given by the rapporteur for and the chairman of Parliament's committee responsible to the House of Lords (op. cit., p. 22, section 93, and p. 23, section 94).

² See Chapter 4.

³ See A5-0309/03, Sakellariou.

⁴ See A5-0421/03, Gargani; A5-0184/04, Schulz; A5-0185/04, Lehne; A5-0281/04, Bossi.

⁵ http://www.jura.uni-hannover.de/wolf/seminare/rueck_b/schwach.doc

In the case of Mr Schulz and Mr Lehne, the two Members were the subject of a temporary injunction prohibiting them from making certain statements against a newspaper, on pain of a fine of up to € 250 000, in connection with the debate on the Statute for Members. Emphasising that the Members made the statements which prompted the injunction in performance of their duties, Parliament noted the following:

The size of the threatened fine for contempt of court in the injunction of 24 February 2004 (a maximum of € 250 000 in each instance) is intended to act as a deterrent against a repetition of the statement, and to prevent potential imitators from making similar statements. In the event of contravention of the injunction, the Members are even threatened with up to two years' imprisonment for contempt of court. It can therefore be assumed that the threat of a fine and imprisonment for contempt of court is akin to a punitive measure, since both individual prevention and general prevention are significant characteristics of criminal prosecution.

The documents forwarded to Parliament show that the Hamburg District Court interpreted the scope of the immunity of Members of the European Parliament exclusively in accordance with German law. The objection to this is that the legal situation of Members is governed primarily by the Protocol on privileges and immunities of 8 April 1965, which is primary Community law and is thus directly applicable by each Member State. Provisions of German law may be applied only to supplement such law, and then only if they are not at variance with the provisions of Community law. Article 9 makes no reference to national law (unlike Article 10 of the PPI), so that it cannot be assumed that the scope of Article 9 is limited to the protection afforded by Article 5, second sentence, of the Law on Members of the European Parliament (*Europaabgeordnetengesetz*).

Since 24 February 2004, therefore, the legal proceedings threatened in the event of contravention of the injunction have impaired the independence and freedom of speech of two Members of the European Parliament, which is incompatible with Article 9 of the PPI.

Article 10, second paragraph

The second paragraph of Article 10 of the PPI additionally confers immunity on Members '*while they are travelling to and from the place of meeting of the European Parliament*'. This, too, is a 'Community immunity', being independent of the protection accorded by the relevant national laws; it is a specific expression of the general provision set out in the first paragraph of Article 8 of the PPI¹.

The initial objective of this provision was to safeguard the normal functioning of Parliament at times other than 'during [its] sessions'. In view of the interpretation placed on the provision by the Court of Justice in 1964 (*Wagner v Fohrmann and Krier* judgment), to the effect that Parliament has annual sessions and that parliamentary immunity applies throughout a Member's term of office, the protection accorded by the second paragraph of Article 10 may be regarded as being of some practical interest to Members who are travelling within the territory of their own Member State, to or from the place of meeting of Parliament, in cases where the laws of their own Member State do not guarantee immunity (or do so in a more restricted sense) or fail to apply it effectively².

¹ The text reads: 'No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament'.

² In this connection, see Manuel Caverio Gómez, 'La inmunidad de los Diputados en el Parlamento Europeo', *Revista de las Cortes Generales*, 20, 1990, pp. 24 and 25. The same author adds that this protection would also apply during periods when Parliament had decided to suspend a session (something which has never happened to date), in which cases letters (a) and (b) of Article 10 would no longer apply.

In its opinion of March 1987 on the proposed revision of the PPI - as, moreover, the Commission did in its original draft - Parliament removed the reference to this specific type of immunity; it was understood that it would be covered by the general rules set out in the proposed amendments to Articles 8 and 10 of the PPI.

The final paragraph of Article 10 sets out a conventional exception to the privilege of parliamentary immunity, stating that immunity 'cannot be claimed where a Member is found in the act of *committing an offence*'.

The former paragraph 8 of Rule 6 of Parliament's Rules of Procedure stipulated, however, that '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'. The fact that the PPI does not grant Parliament the right to 'request that the proceedings be suspended' has been explained by the interpretation that the interruption of immunity is only temporary, applying only at the moment of arrest proper so as to enable the Member States to put an end to a situation in which public safety or law and order are endangered: once the danger concerned has been removed, the general provisions concerning immunity become fully applicable once again¹. Moreover, that provision was deleted when the Rules of Procedure were revised in February 2003. Rule 6 no longer makes any reference to Members caught in the act of committing an offence. However, Rule 6(4) stipulates the following: '*As a matter of urgency, in circumstances where a Member is arrested or has his freedom of movement curtailed in apparent breach of his privileges and immunities, the President, after having consulted the chairman and rapporteur of the committee responsible, may take an initiative to assert the privileges and immunities of the Member concerned. The President shall communicate his initiative to the committee and inform Parliament*'. Although Rule 6 of the Rules of Procedure make no reference to Members caught in the act of committing an offence, Article 5 of the draft Statute for Members (report A5-0193/03, referred to above, p. 3) does, stipulating the following: '*Any restriction of a Member's personal freedom shall be permitted only with the consent of Parliament, except where he/she is caught in the act*'. This reflects the same determination, as seen in the former Rule 6(8), to leave national authorities free to restore public order.

Now, however, any current or former Member may submit a request to defend the immunity of an MEP. Rule 6(3) thus extends the scope for making requests to the President, and thereby initiating the procedure, to include any current or former Member. Parliament has twice voted in favour of requests for the suspension of legal proceedings against Members, requests which had to be submitted, in accordance with the former version of the old Rule 6(8) (Rule 6(3) since the February 2003 revision) of the Rules of Procedure, by other Members of the same nationality. In the first case, a request was submitted for the suspension of proceedings against a Belgian Member who had been arrested (and subsequently released) for climbing over the fence of a military installation². The second case concerned the suspension of proceedings against two German Members who had failed to comply with a police order breaking up a demonstration in Bonn³.

¹ See the Donnez report, A2-0121/86, pp. 15-16. In its opinion on the proposed revision of the PPI, adopted in March 1987 in the wake of that report, Parliament proposed that this provision should be clarified by means of the following amendment to the second paragraph of Article 10: 'Immunity from arrest and measures depriving them of their personal freedom cannot be claimed where Members are found in the act of committing an offence'.

² A2-0151/85, decision of 13 November 1985, OJ C 345, 31.12.1985, p. 27.

³ A2-0035/86, decision of 12 May 1986, OJ C 148, 16.6.1986.

In both cases, Parliament accepted the interpretation put forward by the Committee on Legal Affairs and Citizens' Rights that the requests concerned were admissible, given that the relevant laws (Article 45 of the Belgian Constitution and Article 46 of the Basic Law of the Federal Republic of Germany respectively) provided for the possibility that the suspension of proceedings already in progress might be requested and that the reference to national law in Article 10 of the PPI cleared the way for the conferral of that right on Members who were nationals of the Member States in question.

IV. The procedure for waiving parliamentary immunity

The final section of the third paragraph of Article 10 of the PPI gives Parliament the right to waive the immunity of one of its Members.

By referring to a right of Parliament, this provision emphasises the institutional purpose of this prerogative, which seeks to safeguard the independence and normal functioning of the parliamentary institution as such. In addition, Article 291 of the EC Treaty (formerly Article 28 of the 1965 Merger Treaty), as referred to above, may be read as implying that the PPI should enable Parliament to fulfil its function as a Community institution.

In accordance with the interpretation of the Court of Justice of the European Communities, the effect of this general principle is that the reference to national laws in letter (a) of the first paragraph of Article 10 of the PPI must be interpreted in a restrictive manner as being a special provision which has a bearing only on the material substance of the immunity of a Member of the European Parliament when the latter is in the Member State of which he or she is a national¹.

It may also be concluded from that interpretation that, since it is in no way related to the material substance of the immunities recognised under national law, the procedure for waiving the immunity of a Member of the European Parliament referred to in the third paragraph of Article 10 of the PPI should be based on Community law.

However, since Community law contains no specific provision dealing with the waiving of immunity, it is up to Parliament to determine the nature of the procedure, on the basis of the internal organisational powers conferred on it by Article 199 of the EC Treaty.

Rules 6 and 7 of Parliament's Rules of Procedure are the only relevant procedural provisions.

However, Parliament's practice over the years has led to the establishment of a series of basic guidelines applicable to the procedure for waiving a Member's immunity.

This issue was initially dealt with in the former Rule 45 of the Rules of Procedure of the ECSC Joint Assembly, on which Parliament's Rules of Procedure, adopted in 1958, were based. Following the revisions of the Rules of Procedure in 1962² and 1967³, the relevant provisions were incorporated successively into Rules 50 and 51 of the Rules of Procedure.

¹ As we have already seen, this interpretation led to the definition of the duration of Parliament's sessions: see the judgments already referred to in ECR 1986, in particular pp. 2398 and 2407, and ECR 1964, pp. 423 et seq.

² See OJ 97, 15.10.1962, pp. 2437-2462.

³ See OJ 280, 20.11.1967.

Following the 1981 revision¹, the provisions governing immunity set out in the former Rule 51 (paragraphs 2 to 6) were incorporated into Rule 5. None of these changes, however, has entailed a departure from the substance of the original wording.

In 1981, an interpretative rule was adopted concerning the substance of and voting on the proposal for a decision included in the report of the committee responsible (interpretation adopted at the meeting of that committee of 7 April 1981 and announced at the sitting of 14 September 1981).

In 1988, at the sitting of 13 April², two amendments were adopted to Rule 5 concerning, respectively, consideration by the committee responsible of requests for the waiver of immunity and the timing of the vote. A further revision was adopted at the sitting of 13 May 1992³. Subsequently, as part of the general revision of the Rules of Procedure (report A3-0240/93) required following the entry into force of the Treaty on European Union, that provision was revised once again. The former Rule 5 became Rule 6 and the final subparagraph of paragraph 4 was amended. The various paragraphs of the former Rule 5 were also renumbered. At the sitting of 11 March 1999⁴, and as part of the revision of the Rules of Procedure required to bring them into line with the new situation created by the Treaty of Amsterdam, a new subparagraph was added to paragraph 6. That subparagraph was amended when the Rules of Procedure were revised in February 2003 to bring them into line with the provisions of the Treaty of Nice. As part of that revision, the rules concerning the procedure for waiving immunity became Rules 6 and 6a of the Rules of Procedure. Parliament has endeavoured to clarify the procedure for waiving immunity by creating new provisions, such as those set out in Rule 6a(4), (6), (10), (11), (12) and (13). As of September 2006 the provisions governing the procedure for waiving immunity were consolidated into Rules 6 and 7 of the Rules of Procedure.

Rule 6(2) of the Rules of Procedure states the following:

'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.'

Pursuant to the provisions of letter (a) of Article 10 of the PPI, a request submitted to Parliament is valid if it is drawn up and forwarded by the authorities which, under the relevant national law, are entitled to submit and forward a similar request to the parliament of the Member State concerned. At the sitting of 23 October 1991, Parliament rejected a proposal from the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, based on Rule 102 of the Rules of Procedure that requests for the waiver of the immunity of two Greek Members should not be considered (A3-0269/91). The committee argued that the requests were invalid, and therefore inadmissible, on the grounds that the competent authorities of the Hellenic Republic were acting in breach of Article 10 of the PPI and Article 62 of the Greek Constitution⁵.

¹ Doc. 1-920/80 of 23 February 1981 (Luster report) and resolution of 23 March 1981, published in OJ C 90, 21.4.1981, p. 48.

² OJ C 122, 9.5.1988, p. 75 (A2-0289/87).

³ Decision adopted by Parliament on 15 September 1993 (OJ C 268, 4.10.1993).

⁴ Decision of 11 March 1999, OJ C 175, 21.6.1999, pp. 195 et seq.

⁵ According to the committee, the irregularity arose because the Greek authorities had brought charges and summonsed the Members concerned to appear before the court provided for in Article 86(1) of the Greek Constitution without having first secured the waiver of their parliamentary immunity.

In rejecting that proposal, on the grounds that it was essential to consider, debate and subsequently take a decision on the requests concerned, Parliament endorsed the opinion of the Legal Service on the matter¹, which stated that, in keeping with the principle of the separation of powers, it is not for Parliament to take the process of establishing the admissibility of a request as a pretext for questioning whether an internal procedure of a Member State is consistent with the national law of that State. Provided that the independence of Parliament and of its Members is not called into question, the precise moment at which, in the context of the preparation of legal proceedings, a request for waiver of immunity must be drawn up, before judicial action is taken, must be determined by the national law of the Member States.

Furthermore, at the start of the second parliamentary term, in 1984, the problem arose as to whether requests for the waiver of immunity on which no decision had been reached during the lifetime of the previous parliament should be declared to have lapsed.

At the sitting of 25 October 1984, Parliament rejected a contradictory interpretation and decided that such requests should not be declared to have lapsed, on the grounds that the essential aim of what was then Rule 116 of the Rules of Procedure² was to consolidate Parliament's position in the process of consulting the two Community institutions concerned, the Commission and the Council. That objective, whilst politically logical, could not be extended to cover requests for waiver of immunity, given that the submission of such requests is not a discretionary act on the part of the judge concerned: the judge is required both to continue the proceedings under the criminal law and to interrupt those proceedings once it has been established that the person concerned is a Member of the European Parliament. That interpretation was also based on practical arguments designed to avoid delays linked to the forwarding to the national authorities - in some cases via complicated, slow channels - of legal files which would automatically be returned to Parliament through the same channels.

At the start of the fourth parliamentary term, the Committee on the Rules of Procedure agreed to review in their entirety all the provisions relating to unfinished business. On a proposal from that committee, the former Rule 167 was revised by a Parliament decision of 12 March 1996³. The first paragraph of Rule 185 now stipulates that, at the end of the last part-session before elections, all Parliament's unfinished business is deemed to have lapsed, subject to the provisions of the second paragraph, which reads: 'At the beginning of each parliamentary term, the Conference of Presidents shall take a decision on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such matters'. Requests for waiver of immunity may also be covered by the provisions of that paragraph. That rule was not changed as part of the February 2003 revision.

¹ A3-0269/91, Annex II; see also Debates of Parliament, 3-410, pp. 118 to 126.

² The former Rule 116 reads: 'At the end of the last part-session before elections, all requests for advice or opinions, motions for resolutions and questions shall be deemed to have lapsed. This shall not apply to petitions and communications that do not require a decision'.

³ OJ C 96, 1.4.1996, p. 25, report A4-0025/96, rapporteur: Mr Jean-Pierre Cot.

Under letters (a) and (b) of the first paragraph of Article 10 of the PPI, requests for waiver of parliamentary immunity may be made by the authorities of a Member State other than that of which the Member concerned is a national¹.

'If [letter] (b) of the first paragraph of Article 10 of the PPI were to be deemed to be introducing an exemption from legal proceedings which did not give rise to waiver of parliamentary immunity, in practice a Member of the European Parliament would then, for the duration of his mandate, enjoy non-liability in respect of criminal and quasi-criminal matters in every country of the Community - except his own - whatever the offence of which he was accused, even murder. However, a privilege which offended ordinary law to that extent would be inconceivable in law' (PE 207.279/Ann.).

After 1987, the committee responsible in this field was the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, which succeeded the Committee on Legal Affairs and Citizens' Rights. Pursuant to Parliament's decision of 15 April 1999, responsibility for matters relating to privileges and immunities reverted to the Committee on Legal Affairs and the Internal Market, with effect from the start of the fifth parliamentary term (July 1999).

The new Rule 6a (1) (currently Rule 7 (1)) states the following:

'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'.

This provision thus combines earlier decisions of the committee concerning the time-limit for considering requests for the waiver of parliamentary immunity and the order in which such requests should be considered.

With regard to the time-limit, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities endorsed the interpretation put forward by Parliament's Legal Service to the effect that the provisions in force in the Member States which lay down a final time-limit for approval of a decision to proceed or otherwise with a waiver of immunity are not applicable to the procedure for waiving the immunity of Members of the European Parliament².

In the case of Members holding a dual mandate, Parliament acts in accordance with a decision adopted by the committee responsible at the beginning of the first parliamentary term³ and traditionally waits for the decision of the national parliament concerned before taking action. Although the procedures in question are entirely separate, it has been regarded as preferable, for both political and practical reasons, to await the national parliament's position on a request before considering it. This practice accounts for the delays which sometimes characterise Parliament's decisions.

¹ To date, this has happened at least twice (A3-0030/94 and A4-0317/98).

² See A3-0269/91, p. 6.

³ Decision adopted by Parliament's Committee on Legal Affairs at its meeting of 27 October 1980, in accordance with the conclusions of Working Document PE 67.868/fin. drawn up by Mr Ferri, chairman of that committee.

As part of the February 2003 revision of the Rules of Procedure, a new Rule 6a(3) (currently Rule 7 (3)) was also added, which reads as follows:

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

The aim was to clarify the earlier wording of Rule 6 by introducing further provisions enabling the committee to ask for information not contained in the original request for waiver of immunity and the Member concerned to submit such information. These provisions, combined with those of the final section of the former paragraph 5 of Rule 6 of the Rules of Procedure, strengthen the legitimacy of the parliamentary committee's right to obtain detailed information concerning each case considered and to have at its disposal, for that purpose, all the elements it regards as necessary to substantiate its decision.

On several occasions Parliament has based its refusal to waive a Member's immunity on the grounds that the competent national authorities had failed in their duty to cooperate, pursuant to Article 5 of the EEC Treaty, by not providing certain information requested because it was fundamental to a consideration of the cases in question. The Committee on the Rules of Procedure, the Verification of Credentials and Immunities took the view that such a failure represented sufficient grounds for declaring the requests inadmissible¹.

Moreover, the Member concerned by the request for waiver of immunity is also entitled to be represented by another Member at his or her hearing by the committee, even if he or she is not actually in custody².

Exercising the powers conferred on it by Rule 171(4) of the Rules of Procedure, the committee responsible has thus far considered requests for the waiver of parliamentary immunity in camera³. The purpose of this practice is to guarantee confidentiality, in the interests of both the Member concerned and of the committee itself and its members, in such a way as to ensure a free and unbiased debate, particularly where cases of this type are concerned.

The February 2003 revision also offered an opportunity to reword the former Rule 6 and to incorporate a new paragraph 7 into Rule 6a of the Rules of Procedure. The revision thus combined paragraphs 4 and 5 of the former Rule 6 to form a single paragraph 7 in Rule 6a:

'7. The committee may offer a reasoned opinion about the competence of the authority in question and about the admissibility of the request, but 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 or her justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.'

¹ See, in particular, A3-0269/92, A3-0270/92, A3-0020/93, A3-0021/93.

² The earlier wording of Rule 5(2) confined this possibility to cases where the Member was in custody. However, even before the rule was revised the committee had in practice allowed the Member concerned to be represented by another Member, even if he or she was at liberty.

³ The principle of the confidentiality of matters relating to Members' immunity had already been laid down by the Committee on Legal Affairs and Citizens' Rights at its meeting of 18 September 1984.

Paragraph 7 is intended to resolve certain technical problems stemming from the need to hold a single vote on the proposal for a decision contained in the report in cases involving several different charges. The new provision introduces the possibility, in such cases, of submitting more than one proposal for a decision, each relating to one of the various charges.

Parliament has also on occasion been obliged to waive a Member's immunity in connection with a criminal action, whilst maintaining it in connection with arrest or preventive detention, so as to ensure that the Member concerned was not prevented from performing his or her duties by purely precautionary measures implemented before any final sentence had been passed¹. The current wording of Rule 6(4) thus explicitly acknowledges that possibility.

The last section of paragraph 7 enshrines the conventional principle that the committee is not empowered to pronounce on the guilt or innocence of the Member concerned, since this is obviously a matter for the courts.

The current wording of Rule 7 (8) of the Rules of Procedure incorporates all the interpretations added, in the form of notes, to the former Rule 5(4) (prior to the May 1992 revision), with a view to making provision for the drafting and consideration of several proposals for decisions.

'8. 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 and against each proposal to waive or uphold immunity, or to defend immunity or a privilege.

Without prejudice to Rule 122, the Member whose privileges or immunities are the subject of the case shall not speak in the debate.

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

After Parliament has considered the matter, an individual vote shall be taken on each of the proposals contained in the report. If any of the proposals are rejected, the contrary decision shall be deemed adopted.'

The debate in plenary is thus organised in such a way as to satisfy the requirements of urgency and rationality, whilst avoiding pointless delays and digressions.

Rule 7 (9) of the Rules of Procedure states the following:

'9. The President shall immediately communicate Parliament's decision to the Member concerned and to the competent authority of the Member State concerned, with a request that the President should be informed of any developments in the relevant proceedings and 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, if necessary after consulting the committee responsible.'

¹ See, in particular, the report of the Committee on Legal Affairs and Citizens' Rights of 28 November 1984, Doc. 2-1105/84, and the Parliament decision of 10 December 1984, published in OJ C 12, 14.1.1985, p. 12; see also the report of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, A3-0030/94, and the decision of 8 February 1994 (OJ C 61, 28.2.1994, p. 31).

The procedure thus concludes with the immediate notification of the decision to the competent national authorities. However, in cases where the decision taken involves the waiver of immunity, the President of Parliament must ask to be kept informed of the progress of the judicial proceedings initiated. The purpose of that request for information is not to make public the judgments handed down or scrutinise the decisions taken by national courts; its aim is purely to make for a better understanding of the consequences of Parliament's decisions and to obtain the information needed to assess to what extent requests for the waiver of immunity are in fact followed by judicial proceedings.

The legitimacy of this provision is based on the general duty of cooperation between the Member States and the Community institutions enshrined in Article 5 of the EEC Treaty and Article 19 of the PPI. That duty encompasses, *inter alia*, the mutual obligation to provide the information required for each party to fulfil its functions.

As part of the February 2003 revision the following new rules were incorporated with a view to clarifying the procedure for waiving immunity.

Rule 6a(4) (currently Rule 7 (4)) states the following:

'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.'

The new paragraph 6 of Rule 6a (currently Rule 7 (6)) states the following:

'In cases concerning the defence of immunity or privileges, the committee shall state whether the circumstances constitute an administrative or other restriction imposed on the free movement of Members travelling to or from the place of meeting of Parliament or an opinion expressed or a vote cast in the performance of the mandate or fall within aspects of Article 10 of the Protocol on Privileges and Immunities which are not a matter of national law, and shall make a proposal to invite the authority concerned to draw the necessary conclusions.'

The new Rule 6a(10) (currently Rule 7 (10)) states the following:

'When the President makes use of the powers conferred on him by Rule 6(4), the committee responsible shall take cognisance of the President's initiative at its next meeting. Where the committee deems it necessary, it may prepare a report for submission to Parliament.'

The new Rule 6a(11) (currently Rule 7 (11)) states the following:

'The committee shall treat these matters and handle any documents received with the utmost confidentiality.'

The new Rule 6a(12) (currently Rule 7(12)) states the following:

'The committee, after consulting the Member States, may draw up an indicative list of the authorities of the Member States which are competent to present a request for the waiver of a Member's immunity.'

The new Rule 6a(13) (currently Rule 7 (13)) states the following:

'Any inquiry as to the scope of Members' privileges or immunities made by a competent authority shall be dealt with according to the above rules.'

V. Parliamentary practice

1. During the period before the first direct elections in 1979 only one case arose in which a waiver of immunity was requested¹. Since 1981, following the introduction of elections by universal suffrage, the significant increase in the number of Members and the gradual reduction in the number of dual mandates have led to a considerable rise in the number of requests for immunity to be waived.

In the intervening period, parliamentary practice has resulted in the development and consolidation of a set of principles and criteria intended to serve as guidelines for the work of the committee responsible.

That committee's reports regularly invoke the principles which govern consideration of requests for the waiver of immunity.

Those principles are based in part on the case law of the Court of Justice of the European Community, and most of the cases concerned have already been referred to above. They may be summarised as follows:

(a) Purpose of parliamentary immunity

Parliamentary immunity should not be seen as a privilege benefiting individual Members, but rather as a guarantee of the independence of Parliament and its Members vis-à-vis other authorities. Accordingly, the date of any alleged offences is largely irrelevant: they may have occurred before or after the election of the Member concerned. The only issue to be considered is the protection of the parliamentary institution through its Members.

(b) Renunciation of parliamentary immunity by an individual Member has no legal effect

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities takes the view that it must not depart from the principle applied to date by Parliament whereby renunciation of parliamentary immunity by an individual Member has no legal effect.

¹ See Doc. 27/64 of 6 May 1964 (decision of 15 June 1964, OJ C 109, 9.7.1964, p. 1669).

(c) *No time-limit on immunity*

The case law of the Court of Justice (see Chapter 2) and the very purpose of parliamentary immunity make clear that it is effective throughout a Member's term of office, irrespective of whether the immunity relates to the initiation of legal proceedings, investigations, the enforcement of judgments already handed down or appeals to lower or higher courts.

(d) *Autonomous nature of immunity in the European Parliament vis-à-vis immunity in the parliaments of the Member States*

In the words of the Donnez report, referred to above, the fact that letter (a) of Article 10 of the PPI refers to immunities granted to Members of national parliaments does not mean that the European Parliament may not establish its own rules, its own case law, as it were; as for the waiver of parliamentary immunity, the notion of parliamentary immunity itself, which is identical for Members of national parliaments and of the European Parliament, must not be confused with the procedures for waiver of parliamentary immunity, which are a matter for each parliament concerned. These rules, which are the outcome of decisions taken on requests for the waiver of immunity, tend to create a coherent notion of parliamentary immunity which should, as a matter of principle, be entirely separate from the various practices employed in the national parliaments. If that were not the case, the disparities between Members of one and the same parliament would be accentuated on the grounds of their nationality. The Committee on the Rules of Procedure therefore takes the view that the ground must be prepared for a genuine European Parliament immunity, one which is autonomous by its very nature, whilst retaining the references to national laws contained in the PPI, in particular as regards procedural matters.

The application of these principles has given rise to a constant element in Parliament's decisions, one which has become a fundamental criterion when considering the action to be taken on individual requests for waiver of immunity: In all cases where the charges against a Member are related to the exercise of a political activity, immunity is not to be waived. This criterion has been complemented by other considerations which may militate either for or against waiver of immunity. These include:

- the existence or otherwise of '*fumus persecutionis*', i.e. the presumption that the legal action in question arises from an intention to undermine the political activity of the Member concerned (anonymous accusations which prompt investigations, or a lengthy delay between the date on which the offence is alleged to have occurred and the date of submission of the request for waiver of immunity, to name only two); in such cases, immunity is not waived;
- the *particularly serious* nature of the charges, in which case immunity is waived.

Similarly, the committee takes the view that, where a decision has to be reached on the waiver of a Member's immunity, due account must be taken of the fact that the laws of the Member States other than the Member State of origin of the Member concerned lay down less severe penalties for the act in question, or may not even regard it as a criminal offence.

2. Between the introduction of direct elections to Parliament and 31 August 2003, a total of 104 requests for waiver of parliamentary immunity were considered¹. In 19 cases, i.e. 18.2% of the total, Parliament voted in plenary to waive immunity. Parliament followed the recommendations of the committee responsible in all but five cases².

To date, the scope of Members' political activities has been defined on an extremely broad and flexible basis. Accordingly, in the vast majority of cases involving requests for the waiver of immunity the committee responsible has taken the view that the actions concerned fell within that scope.

A study drawn up by Parliament's Legal Service, dated 19 April 1990 (PE 140.196), analyses the limits laid down by the committee responsible with a view to defining what may be regarded as a political act. It concludes that there are three groups of cases in which the committee has refused to accept the interpretation that the acts ascribed to the Member concerned fall within the sphere of his or her political activity, i.e.:

- (a) in all cases where the acts were regarded as constituting a threat to individuals or democratic society.
Examples: support for persons guilty of terrorist acts; membership of criminal organisations; drug trafficking; possession at a demonstration of objects liable to cause injury to persons and property;
- (b) in all cases of defamation where the injured party or parties were held to have been denigrated as individuals, rather than as representatives of an institution (administrative authorities, media organs, etc.).
Examples: verbal and written attacks on an individual police officer, directed at him or her personally, rather than at the police as such; a written attack on a journalist, directed at him or her personally, rather than at the press in general or a specific newspaper;
- (c) in all cases involving a clear breach of the criminal law or of rules or administrative provisions which were in no way connected with any political activity.
Examples: failure to report a road accident; insulting police officers after being caught driving with different number plates; nepotism in return for financial favours; accounting fraud.

An analysis of Parliament's decisions on immunity taken since the publication of the Legal Service's study shows clearly that its findings are still topical.

Within the broad area of acts which may be regarded as falling within the scope of Members' political activity, a further significant group of cases can be identified and placed in the category of what are often referred to as offences against a person's reputation or 'crimes of opinion' (insults, defamation, etc.) - that is, acts which, whilst falling outside the scope of Article 9 of the PPI, may nonetheless be regarded as falling within that of Article 10 of the same document.

¹ See the attached list. The total does not include a decision to authorise a Member to make a statement to an inquiry (A3-0112/91, decision of 14 May 1991, OJ C 158, 17.6.1991), as it was decided that this did not constitute a request for waiver of immunity. Also excluded are a number of decisions concerning requests for the suspension of legal proceedings already under way (A2-0151/85 and A2-0035/86, published, respectively, in OJ C 345, 31.12.1985, p. 27, and OJ C 148, 16.6.1986, p. 16).

² See A2-0195/85 (decision of 13 January 1986, OJ C 36, 17.12.1986); A2-0101/86 (decision of 6 October 1986, OJ C 283, 10.11.1986); A3-008/89 (decision of 11 December 1989, OJ C 15, 22.1.1990); A3-0040/90 (decision of 12 March 1990, OJ C 96, 17.4.1990); A3-0269/91 (decision of 23 October 1991, OJ C 305, 25.11.1991).

At its meeting of 17 and 18 September 1990 the Committee on the Rules of Procedure, the Verification of Credentials and Immunities adopted a report (PE 141.446/fin.) which lays down the following criterion: ‘any request for the waiver of immunity resulting from the free expression of ideas or political opinions should be rejected as a matter of principle. The only exceptions to this fundamental right should be incitement to any kind of hatred, slander, libel, questioning the honour or good name of others, whether individuals or groups, and actions prejudicial to fundamental human rights’.

Several reports drawn up by the above-mentioned committee rejecting requests for the waiver of immunity refer to the fact that the Member in question ‘did not exceed the tone generally encountered in political debate’¹. The fact that the rapporteur or the committee explicitly disapprove of the ideas or views expressed, has no bearing on the decision to uphold immunity².

Moreover, with the view to determining the existence or otherwise of ‘*fumus persecutionis*’ the parliamentary committee responsible has consistently taken account of certain characteristics of the complaint made against a Member. These include: anonymity of the complaint³; delayed submission of the request by comparison with the date of the alleged acts⁴; establishment of a clear link between the date of the complaint and the Member’s election to Parliament⁵; instigation of legal proceedings against the Member alone when more than one person could be charged⁶; clearly unfounded accusation (e.g. in cases involving decisions for which the Member was not responsible or where there is no proof of his or her involvement in the relevant acts) or clear intention of penalising the Member for his or her political activities⁷.

In the above-mentioned resolution, adopted at its meeting of 17 and 18 September 1990, the Committee on the Rules of Procedure also took the view that the presumption of ‘*fumus persecutionis*’ must stem from the existence of a precise, direct and reasonable link between the circumstances surrounding the action of the national authorities and the conclusion that the case in question involves an attempt to undermine the independence or the dignity of the Member concerned and/or of Parliament.

The criterion concerning the minor nature of the offences with which a Member is being charged has also, in some instances, contributed to a decision to refuse a request for waiver of immunity⁸. Account has also been taken of circumstances where the acts ascribed to the Member in question did not give rise to violence, material damage or harm to third parties.

¹ For examples, see A3-0170/93, A4-0076/99.

² For examples, see A5-0123/03, A5-0243/03.

³ Doc. 1-321/81.

⁴ Docs. 1-321/81, 1-123/84, A2-0165/85, A2-0168/85, A2-0188/87 and A2-0413/88, A3-0021/93, A3-0169/93, A5-0246/03.

⁵ Doc. 1-321/81.

⁶ Docs. A2-0191/85 and A2-0090/88, A5-0246/03.

⁷ Docs. A2-0165/85, A2-0034/86, A2-0042/89, A3-0247/90, A3-0076/92 and A3-0077/92.

⁸ Examples include the cases dealt with in documents A2-0413/88 and A3-0009/91.

The resolution also contains a brief description of the type of acts in respect of which a request for the waiver of a Member's immunity has been submitted and granted by Parliament: provision of assistance to criminals in order to enable them to escape justice (1-1311/82 and A2-0191/85); membership of a criminal organisation ('Nuova Camorra Organizzata') and drug trafficking (2-1105/84); possession at a demonstration of objects liable to cause injury to persons and property (A2-0013/85); parking in a prohibited area (A2-0070/86); encouragement and support for the reconstitution of a dissolved fascist party (A2-0195/85)¹; failure to report a road accident (A2-0176/87); insulting a representative of the forces of law and order (A2-0105/85); insults or defamatory remarks directed against individuals (A2-0217/88, A2-0130/88 and A3-0088/89) or groups (A3-0040/90); financial offences involving embezzlement and fraud (A3-0018/91); publication of libellous material in a newspaper (A3-0023/93)²; abuse of powers, embezzlement, use of and complicity in the drawing-up of bogus documents (A3-0030/94); denying the Holocaust at a press conference held to mark the launch of a book on the Member's life and political activities (A4-0317/98); aggravated fraud (A4-0262/99); spraying "Disgrace to Forleo" on the sidewalk in front of the Palace of Justice (A6-0329/2006); investigation for rape (A6-0317/2006); implication in a kidnapping (A6-0140/2007); destruction of a field of maize (A6-0386/2006).

During the fifth parliamentary term, the decision-making practice of the Committee on Legal Affairs and the Internal Market and, at the next stage of the procedure, Parliament has developed as they have applied and fleshed out the principles previously laid down. For example, Parliament decided not to waive immunity in a number of cases where a Member faced criminal proceedings as a result of opinions expressed in the context of his or her political activity or on the grounds of '*fumus persecutionis*', i.e. that the proceedings were politically motivated (see the following cases: Cohn-Bendit, A5-0246/03; Korakas, A5-0245/03; Pasqua, A5-0032/02; and Marciani, A5-0033/02). In the last two cases, the rejection of the request was justified on the grounds of both '*fumus persecutionis*' and by the failure to specify the proposed restrictions on the liberty of the Members concerned. These decisions not to waive immunity were taken even in cases where the opinion expressed was explicitly deprecated by the rapporteur (see the following cases: Brie, A5-0151/00; Pacheco Pereira, A5-0304/00; Ribeiro e Castro, A5-0038/01; Sichrovsky, A5-0123/01, Voggenhuber, A5-0124/01; Camre, A5-0243/03).

In three cases where a Member faced criminal proceedings as a result of traffic offences, Parliament waived immunity (A5-0158/00, A5-0126/01 and A5-0372/02).

Moreover, during that parliamentary term a new procedure for upholding immunity was introduced by means of amendments to Rules 6 and 6a of Parliament's Rules of Procedure. This change reflected the conclusion reached by the Committee on Legal Affairs and the Internal Market, in a report by Mr MacCormick (A5-0213/02), that the criminal proceedings instigated in Italy against Mr Speroni and Mr Dell'Utri, current Members, and Mr Marra, a former Member, constituted *prima facie* cases of non-liability pursuant to Article 9 of the PPI and that Parliament should therefore endow itself with the instruments needed to uphold, vis-à-vis national authorities, the privileges and immunities enjoyed by its Members.

¹ In the cases dealt with in A2-0195/85, A3-0088/89 and A3-0040/90 Parliament waived the immunity of the Members in question contrary to the recommendation of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, which had concluded either that '*fumus persecutionis*' was involved or that the acts concerned were simply expressions of opinions in the context of the political activity of the Member concerned.

² Since a judgment had already been handed down to the effect that criminal liability had lapsed following the expiry of the limitation period, it was important to ensure that the appeal proceedings brought by the Member concerned seeking acquittal on the grounds that no crime had actually been committed should run their course.

Since September 2003 that procedure for upholding immunity has also been applied in five cases involving civil proceedings where the amount of damages claimed or the penalty for non-compliance were clearly so severe as to constitute 'punitive damages' (Sakellariou, A5-0309/03; Gargani, A5-0421/03; Schulz, A5-0184/004; Lehne, A5-0185/04; and Bossi, A5-0281/04 and Gargani A6-0071/2007).

In the Musotto case (A5-0248/03), Parliament finally established its position that its Members enjoy the privileges and immunities laid down by the PPI from the moment when the results of the elections are made public.

Table

**Decisions regarding requests for waiver of parliamentary immunity
of Members of the European Parliament since the first parliamentary term**

European Parliament

*Directorate-General for Internal Policies
Citizens' Rights and Constitutional Affairs*

**Requests for waiver of parliamentary immunity of Members of the European Parliament
decided on since the first parliamentary term**

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
1-72/81	07.04.1981	Not waived	Mr Gouthier Mr Gouthier was accused of an offence punishable under Article 16 of the amalgamated Italian Public Security Act for making a speech at an unauthorised demonstration for peace and disarmament held on 24 December 1979 (authorisation had in fact been given for a venue several hundred metres away).	The committee responsible ruled that the acts of which the MEP was accused were clearly linked with the exercise of his mandate.
1-321/81	07.07.1981	Not waived	Mrs Herklotz On 28 June 1979, an anonymous accusation was made against Mrs Herklotz alleging certain irregularities in the management of a civic education association during the period between November 1974 and October 1976, an association she chaired at the time.	The committee responsible ruled that the acts of which Mrs Herklotz was accused were linked with her political activities, her involvement in the development of civic education coming under the heading of 'political activity'.
1-1082/81	09.03.1982	Not waived	Mrs Castellina Mrs Castellina was convicted of making defamatory statements in the press in two successive rulings. She was neither a Member of the European Parliament nor a Member of the Italian Parliament at the time. She appealed against both rulings, but became an MEP in the meantime, following which the Italian Attorney-General applied for her immunity to be waived.	The committee responsible found that although Mrs Castellina was undoubtedly guilty of making defamatory statements in the press, the case was clearly political in nature, since the newspaper where Mrs Castellina worked as editor-in-chief was patently an exclusively political newspaper.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
1-298/82	16.06.1982	Not waived	Mr Pannella The charges brought against Mr Pannella by the Italian authorities related to press articles that he, as the head of an Italian publication, had allowed to be published on 29 March 1962. The competent Italian court sentenced Mr Pannella primarily for incitement to evade national service. Mr Pannella appealed against the decision and the case was pending before the Court of Appeal in Rome.	The committee responsible considered the charges to relate solely to Mr Pannella's political activities.
1-832/82	16.11.1982	Not waived	Mr Pannella As the head of an Italian publication, Mr Pannella was bound over by a court in Rome to pay a fine of ITL 1 200 000 for making defamatory statements in a controversial political article he had published. On 21 November 1977, the Criminal Court in Rome also sentenced Mr Pannella to a fine of ITL 300 000, this time for being an accessory to making defamatory statements in another press article. Mr Pannella had entered an appeal against both decisions and the case was pending before the Court of Appeal of Rome.	The committee responsible ruled that the charges brought against Mr Pannella by the Italian authorities – i.e. making defamatory statements in the press – were identical to those in the previous case. It concluded that the basis of the charges could be viewed as one of the political activities of the Member concerned.
1-1311/82	07.03.1983	Waived	Mr Almirante The Italian judicial authorities had asked for the parliamentary immunity of Mr Almirante to be waived, charging him with the offence of ' <i>favoreggiamento personale</i> ', i.e. aiding and abetting the perpetrator of a crime after the fact. The perpetrator in question was one Mr Ciccuttini, responsible for a massacre in Peteano in 1972 during which three members of the Italian <i>carabinieri</i> died. Mr Almirante was accused of having helped Mr Ciccuttini raise money so that he could have his vocal cords operated on, thus allowing him to change his voice.	The committee responsible took the view that, in this particular case, the Member concerned had exceeded his political mandate.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
1-766/83	10.10.1983	Not waived	Mr Pannella Several people prosecuted in Italy for contempt of court towards the Italian Constitutional Court – a very particular offence, which can only be prosecuted with the permission of that Court, as was the case here – declared during the investigation that the offensive and extremist, to say the least, remarks they had made about the Italian Constitutional Court had to a certain extent originated from the National Secretariat of the Radical Party during a meeting attended by Mr Pannella, hence the action threatened against Mr Pannella for complicity in insulting and defamatory statements and contempt of court towards the Italian Constitutional Court.	The committee responsible decided that in this case, the offence was political in nature, or to be precise, consisted of remarks of a political nature made by Mr Pannella.
1-123/84	09.04.1984	Not waived	Mr Blumenfeld Following an investigation initiated by the Landgericht in Hamburg, it emerged that Hansa, a public relations and market research firm, had been paid fees for research work carried out on behalf of certain German companies. In actual fact, this research or consultation work was fictitious, and was simply a façade to enable these firms to record as operating costs donations ultimately intended for the Hamburg CDU association. Legal action was brought against the directors of Hansa, and particularly Mr Blumenfeld, who had been director of that company between 1974 and 1976, according to the German judicial authorities, or between 1974 and 1977, according to Mr Blumenfeld.	The committee responsible found that Mr Blumenfeld had not acted in his own name, but as director of the Hamburg CDU. The offences with which he had been charged were therefore fundamentally linked with his political activities.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
2-1105/84	10.12.1984	Waived	Mr Tortora Mr Tortora was charged on two counts in Italy, following which the Italian judicial authorities applied to the President of the European Parliament to waive Mr Tortora's parliamentary immunity. The first charge was of belonging to an illegal association, known as the <i>Nuova Camorra Organizzata</i> , considered a criminal organisation in Italy. This association was viewed in the same light as certain Italian terrorist organisations. The second charge was of drug trafficking.	The committee responsible found that the charges brought against Mr Tortora were not political in nature and were not therefore covered by his political activity
A2-0013/85	15.04.1985	Waived	Mr Klöckner On 11 June 1982, Mr Klöckner attended a political rally. He took a stone and a corrosive gas spray with him, which he intended to use to cause personal injury and damage to property at the meeting venue.	The committee responsible pointed out that taking part in a political rally was a normal political activity in a democratic country, but to be carrying objects with the intention of using them to cause injury or damage to persons and property was not a democratic political activity in countries such as Member States of the European Union.
A2-0014/85	15.04.1985	Not waived	Mr Klöckner and Mr Härlin The Second Criminal Division of the Landgericht, which had jurisdiction over the case in the Federal Republic of Germany, had brought the following charges against Mr Klöckner and Mr Härlin as editors of the publication <i>Radikal</i> : sanctioning arson, explosions and other acts of violence by distributing propaganda to assist 'Revolutionary Cells', an organisation set up to oppose law and order in the Federal Republic of Germany. On 1 March 1984, the Second Criminal Division of the Landgericht sentenced Mr Klöckner and Mr Härlin to two and a half years in prison, a decision referred to the Court of Cassation, where it was due to be heard.	The committee responsible found that the charges brought against Mr Klöckner and Mr Härlin did not come under the heading of terrorism and that publishing a paper, free speech and a free press were the very essence of political activity in a democratic community

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0046/85	10.06.1985	Not waived	Mr Pannella The public prosecutor at Florence Magistrate's Court accused Mr Pannella, together with other individuals, of helping to arrange abortions for consenting women by sending them to various doctors in Italy and abroad at a time when abortion was illegal in Italy.	The committee responsible ruled that Mr Pannella, acting as he did, according to these serious allegations, had been guided by his own political principles, since at the time, Mr Pannella, together with his political allies and other people, were campaigning to change the law in Italy.
A2-0105/85	07.10.1985	Waived	Mr Ciccimessere On 15 October 1981, a uniformed police patrol saw a vehicle that was being driven with different front and rear registration plates. Despite being asked to stop, the driver, Mr Ciccimessere, continued his journey, ignoring the police siren and emergency lights, before eventually becoming stuck in one of the narrow roads near the Italian Chamber of Deputies building. Refusing to disclose his identity, he insulted the police officers, calling them, among other things, 'louts'.	The committee responsible ruled that calling an officer of the law a 'lout' was not a political act.
A2-0164/85	09.12.1985	Not waived	Mr Tortora Following the decision to waive parliamentary immunity in the previous case, Mr Tortora went before a court. During the trial, the prosecution said that Mr Tortora "was elected by the Camorra. This is how he became a Member of Parliament". Challenged on this by Mr Tortora's lawyer, the prosecutor repeated, "I can confirm that Mr Tortora was elected by the Camorra". At this point, Mr Tortora shouted, 'E un' indecenza' ('this is an outrage'), which was considered an insult to the judge.	The rapporteur expressed the findings of the committee responsible as follows: <i>'It is unacceptable to tell a Member of Parliament that he or she is a representative of the Camorra or the Mafia, or any other lobby. The truth is that we are all parliamentarians elected by the people of our country and we deserve to be respected for this. It is essential therefore the comments made by Mr Tortora, which so offended the public prosecutor, be taken in their proper context. Mr Tortora was basically only responding to an instance of "fumus persecutionis".'</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0165/85	09.12.1985	Not waived	Mr Zahorka At the end of January 1984, a former client of Mr Zahorka – who is a lawyer – had accused him of persuading him to steal blank passports from Magstadt town hall in 1962, so that Mr Zahorka could then, with the help of one of his associates, falsify them to help the family of a Czech doctor who wanted to live in Germany cross the border.	The committee responsible asked itself the question, ‘did Mr Zahorka’s client want to harm his reputation as a politician?’ It concluded that, in view of the timing, and judging by extracts from the German press, when the year of the alleged events (1962) was compared with the year of the accusation (1984), it was possible that this client did want to damage Mr Zahorka’s reputation. Having asked itself this question, the committee concluded that this was indeed an attempt to harm Mr Zahorka professionally and politically.
A2-0168/85	09.12.1985	Not waived	Mr Pannella Mr Pannella was prosecuted before the Italian Criminal Court on numerous counts of contempt of court, resisting a government official and refusing to reveal his identity, after the following events: on 26 September 1976, the judge presiding over a military tribunal in Padua, during the trial of several officers and members of the Italian police force, informed the public prosecutor’s office that he had received a telegram from Mr Pannella, accusing him of acting illegally in order to alienate the freedom and individual rights of the accused. That same day at the hearing, Mr Pannella, who was present, asked the presiding judge to read out the telegram sent to him. He was asked to leave the courtroom and apparently resisted attempts by the police who had been called to remove him, saying ‘arrest me. I am committing a crime. There is no reason for you not to arrest me, you know who I am, there is no point in showing you my papers’. Following these events, Mr Pannella was taken to the nearest police station, from where he was released him some time afterwards. Mr Pannella was due to reappear before the military tribunal on charges of contempt of court, having allegedly called magistrates cowards, criminals and traitors to the constitution.	The committee responsible took the view that criticising a legal decision was a political act, and that criticising a military tribunal when the person concerned wanted that military tribunal to be abolished was also a political act. The rapporteur added, ‘and we know only too well that Mr Pannella, as national leader of the Radical Party, wanted to see an end to military tribunals in Italy’.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0191/85	13.01.1986	Waived	Mr Almirante Mr Almirante was accused of aiding and abetting a criminal after the fact (the massacre in Peteano in 1972).	The committee responsible found that the accusations made against Mr Almirante were of a particularly odious nature; the Peteano murders were effectively a crime against the State, since members of the police force (representatives of the State) had been assassinated. <i>‘In no way can these events be considered a political crime.’</i>
A2-015/85	13.01.1986	Waived	Mr Almirante Mr Almirante, as General Secretary of the Italian Socialist Movement, was accused of having helped re-establish the Italian Fascist Party.	The committee responsible, by a large majority, reached the conclusion that this was a political matter. It reasoned that the Italian Socialist Movement was committed to democratic politics in Italy. This was undisputed and Mr Almirante was unchallenged on this. The committee responsible also based its conclusions on the existence of ‘fumus persecutionis’. The plenary session rejected the findings of the committee responsible.
A2-0214/85	17.02.1986	Not waived	Mr Graefe Zu Baringdorf Mr Graefe Zu Baringdorf and some of his friends, probably with the same political affiliation, allegedly unfurled a banner that read ‘milk quotas = the ruin of small farmers – Bauernblatt association of action groups’, during a speech by the Federal Minister for Food, Agriculture and Forestry of the Federal Republic of Germany to Bundestag diplomats on 12 October 1983. Following this disturbance, prohibited under Bundestag regulations, Mr Graefe Zu Baringdorf and his friends were invited to leave the forum. The following incidents then occurred: Mr Graefe Zu Baringdorf allegedly told police officers that they was using Nazi methods, that they were only good at beating people up, adding, when asked for his occupation, ‘Bauer mit B wie Bulle’ (a farmer, with a “B” for “bull”).	The committee responsible concluded that the principal charge (disrupting Bundestag proceedings) was directly linked to the political activities of Mr Graefe Zu Baringdorf, and that it was irrelevant therefore whether the other charge of insulting a police officer was political or not, since the second charge was only a corollary to the principal offence that had been committed, and was all part of the same activity.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0033/86	12.05.1986	Not waived	Mr Amadei According to the Italian judicial authorities, a senior customs officer, Mr Raffaella Giudice, had allegedly received help to secure a particularly high-ranking post in the Italian Customs Service while Mr Amadei was Under-Secretary of State for Finance, help that was not free, moreover, since according to the Italian authorities, Mr Amadei was allegedly paid ITL 150 million.	The committee responsible considered the facts of the case as having no bearing on Mr Amadei's political activity.
A2-0034/86	12.05.1986	Not waived	Mr Amadei Mr Amadei was accused of having furthered the career of a certain Mr De Nile, as chairman of a special committee while Under-Secretary of State for Finance. It is a matter of fact that the decision taken in Mr De Nile's favour was based on a unanimous vote of the committee, composed not only of senior officials, but also of union members, and that the chairman of such a committee can only ratify what the committee members decide.	The committee responsible ruled that Mr Amadei's being accused of appointing Mr De Nile was proof of ' <i>fumus persecutionis</i> ', since Mr Amadei could have had no hand in this appointment.
A2-0070/86	07.07.1986	Waived	Mr Ciccimessere In a report dated 24.6.1983, Fiumicino Port Authority informed the district judge in Rome that Mr Ciccimessere's vehicle was parked illegally on the dockside in Fiumicino where, for security reasons and by order of the Harbour Master's Office in Rome, the passage and parking of any vehicle outside designated parking areas was prohibited. The 8 th Criminal Division handed down a 'sentence order' against the offender. Mr Ciccimessere challenged the ruling in accordance with the proper procedures and within the allotted time by declaring himself an MEP.	<i>'...it emerges from the charge that the facts of the case are in no way political. Furthermore, there is no basis for the presumption that the judge's actions were influenced by any intention to harm Mr Ciccimessere politically.'</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0101/86	06.10.1986	Not waived	Mr Gaibisso Mr Gaibisso was accused of embezzling \$12 500 on 12 December 1974, while heading an Italian tourism mission to New York, Chicago and Boston not as director of the tourist information office in his home town. Following this mission, Mr Gaibisso allegedly signed off expenses of \$12 500, an amount that has not since been found.	The committee responsible took the view that the charge was not political in nature and was not directly or indirectly linked to Mr Gaibisso's political activities. The plenary session rejected the proposal by the committee responsible to waive immunity.
A2-0145/86	10.11.1986	Not waived	Mr Jospin On 23 December 1965, Mr Badinter, then French Minister of Justice and Keeper of the Seals, submitted a request to President Pflimlin to waive the parliamentary immunity of Mr Jospin following a complaint made by Mr Alain Peyrefitte, himself former Minister of Justice and Keeper of the Seals, for making defamatory remarks. It emerged from Mr Peyrefitte's complaint that during a televised political programme broadcast in France on 26 September 1985, Mr Jospin made remarks that were considered defamatory by Mr Peyrefitte, who had asked for action to be taken against Mr Jospin in view of his position as a former French government minister.	The committee responsible ruled that the remarks made by Mr Jospin concerning Mr Peyrefitte could potentially be considered defamatory by the competent court. The committee emphasised that these remarks were made during a televised political programme, that the remarks were politically controversial and that it is often difficult to distinguish between controversy and defamation.
A2-0220/86	16.02.1987	Not waived	Mr Valenzi	The committee responsible drew attention to the fact that the accusations made against Mr Valenzi dated from the earthquake of 23 November 1980, which virtually destroyed Naples, causing hundreds of deaths, leaving thousands homeless and causing widespread damage to property. In view of this disaster, the committee considered that the mayor of a city as large as Naples should be allowed to take measures not entirely consistent with conventional administrative practice. Furthermore, the committee was of the opinion that the basis of the charges came under the heading of 'political activity'.
A2-0221/86	16.02.1987	Not waived	This concerned a request for the waiver of immunity in respect of proceedings brought against Mr Valenzi for violating Articles 110, 328, 479, 476 and 61 of the Italian Penal Code following events that took place between 1976 and 1963 [sic], when Mr Valenzi was Mayor of Naples. As Mayor of Naples, Mr Valenzi was accused of having drawn up a budget based on false documents in order to cover up a particularly large deficit of around ITL 980 billion for the period in question, and of having presented a balanced budget when the opposite was true, if a report by the audit body appointed for this purpose by the court is to be believed.	
A2-0036/87	11.05.1987	Not waived	Mr Ciccimessere	The committee responsible found that Mr Ciccimessere had

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0037/87	11.05.1987	Not waived	The Italian judicial authorities accused Mr Ciccimessere of having taken part in three demonstrations, without asking the relevant authorities for permission, not to take part in, but to organise these events.	taken part in the three demonstrations mentioned as a leading member of the Italian Radical Party. According to the committee, Mr Ciccimessere was within his rights to attend the demonstrations, even though the organisers of the three demonstrations had not sought permission from the Italian authorities, and his taking part in these events was a political act.
A2-0038/87	11.05.1987	Not waived		
A2-0099/87	06.07.1987	Not waived	Mr Malaud, When interviewed by the French weekly <i>L'événement du jeudi</i> , Mr Malaud was quoted as saying, 'I believe the Soviet secret services must be involved with Greenpeace. They want to get rid of Hernu [the then French Defence Minister]. The Green Party movement has also been infiltrated and is being controlled by the KGB, proof being that they have never demonstrated against Soviet nuclear testing. They follow Moscow, which is why I want the Green Party to be outlawed in France'.	The committee responsible found that the Malaud affair was strangely similar to an earlier case involving Mr Jospin, who had also made remarks that the plaintiff considered defamatory. In that case, Parliament had not waived parliamentary immunity, believing the remarks to be political in nature. The committee compared this with Mr Malaud's case. It informed the plenary that Mr Malaud was chairman of a political party known as the CNI (the Centre National des Indépendants et Paysans), and that it was clear that he had made the remarks as chairman of that party and that the political aspect of his parliamentary mandate could not be overlooked.
A2-0176/87	26.10.1987	Waived	Mrs Braun-Moser On 25 September 1985, while driving her car, Mrs Braun-Moser caused a traffic accident that damaged a third party's vehicle. After the collision, she allegedly left the scene of the accident without reporting it, according to German police thereby committing a hit-and-run offence pursuant to Article 142 of the German Penal Code.	The committee responsible ruled that a road traffic accident of this kind was neither directly nor indirectly political in nature.
A2-0188/87	16.11.1987	Not waived	Mr Tripodi Mr Tripodi was accused of being the author of a book entitled 'Fascism according to Mussolini', in which he extols the principles, history and practices of fascism and its anti-democratic and racist aims, with the result that this book is a treatise on fascism. This is illegal in Italy under Article 152 of the Act of 22 May 1975. Mr Tripodi explained that the work in question was simply a reworking of lectures he gave between 1941 and 1942, when he was a university lecturer.	The committee responsible considered the charges brought against Mr Tripodi as political and falling within the scope of his political activity as a member of the Italian Socialist Movement.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0226/87	14.12.1987	Not waived	Mr Rigo, Mr Rigo was charged with promoting certain city councillors to more senior positions on the pretext of a fabricated emergency while Mayor of Venice, aided by the Director of the Municipal Casino. The charges were brought after Mr Rigo had been tried for much more serious offences (fraud and breach of trust), of which he had been cleared.	The committee responsible took the view that the charges fell into the category of political activity.
A2-0274/87	08.02.1988	Not waived	Mrs Lizin Mrs Lizin was accused as both an MEP and Burgomaster of the town of Huy in Belgium of having falsified a passport, of having supplied a false passport to one of her friends, whom she described as her husband, and of having registered three teenage children of an Algerian father and a Belgian mother on these passports, so that these children could enter Belgium illegally.	The committee responsible concluded that in this case, Mrs Lizin was clearly acting according to her political beliefs.
A2-0309/87	07.03.1988	Not waived	Mrs Bonino The facts of the case and the conclusions are similar to those of the Pannella case (doc. A2-168/85). Reference is made to this case.	The facts of the case and the conclusions are similar to those of the Pannella case (doc. A2-168/85). Reference is made to this case.
A2-0005/88	11.04.1988	Not waived	Mr Selva This was a request for the waiver of parliamentary immunity of Mr Selva on the grounds that as head of the Venice newspaper <i>Il Gazzettino</i> , he had failed to exercise the necessary control over the content of certain articles published in that newspaper in order to prevent the publication of remarks that, according to the plaintiff, Mr Giorgio Carraro, were defamatory. Mr Carraro believed that the journalist Ugo B., who worked for the newspaper, had written about him in such a way as to discredit him, and more specifically, written that the political party to which the plaintiff belonged, the ' <i>Ultimi</i> ', were known extremists, and that it was likely that the plaintiff regularly committed acts of political terrorism.	The committee responsible ruled that the case was patently political in nature, given that the disputed article clearly states that the criticisms made about the plaintiff relate to political terrorism. The word 'political' was there in black and white. In light of this, and according to the case law of the committee responsible, it was found that there was a near-direct link between the political activity of Mr Selva and the article in question. The committee responsible continued, ' <i>particularly as there is a fine line between politics and often harsh political debate. In the case before us, this is a particularly fine line</i> '.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0090/88	13.06.1988	Not waived	<p>Mr Pannella</p> <p>In an article that appeared in the newspaper <i>Unione Sarda</i> on 30.12. 1983, Mr Pannella was accused of making remarks that, according to Mr Cau, the judge responsible for monitoring the legality of acts at Nuoro Magistrate's Court, were defamatory. More specifically, Mr Pannella was accused of having criticised the work of the magistrate, by saying or being quoted as saying the following:</p> <p>'by taking an unlawful decision, the judge responsible for monitoring the legality of acts was acting arbitrarily. The law does not permit him to do this. I could see that he didn't understand at all. I don't know the man, he seems OK, but professionally speaking he lacks experience'.</p>	<p>The committee responsible ruled that the remarks made by Mr Pannella were not meant to be personal; in other words, Mr Pannella was not referring to Mr Cau as a person, but as a judge. The rapporteur continued, 'looking at how Mr Pannella challenges the Italian judicial system, looking at the kinds of remarks he is prone to making, these should be placed in the context of his political activity, even if we don't subscribe to his views, or only partially subscribe to them. This is not the problem. The political campaign led by Mr Pannella against the Italian justice system is no secret. It is clear that, when we look more closely at the statements made by Mr Pannella, he was not referring to Mr Cau personally, but to him as a magistrate within a broader judicial system that he, Mr Pannella, would like to reform. And it is his absolute right to do so. In any case, this is unquestionably a political activity'.</p>
A2-0130/88	04.07.1988	Waived	<p>Mr Pannella</p> <p>On 16 January 1987, the Public Prosecutor in Rome submitted a request to the European Parliament to waive the parliamentary immunity of Mr Pannella following a complaint of defamation made by a senior carabinieri officer called Gennaro Scala. Mr Scala accused Mr Pannella of making defamatory remarks about him in an interview broadcast by the press agency ANSA, and more specifically, of claiming that Mr Scala was the subject of several police investigations, one for having helped an individual evade justice and become a police informer, another for assaulting a detainee, and last but not least, the third for having been involved in a drugs scandal and even, to a lesser extent, for having been involved in the disappearance of a large quantity of heroin.</p>	<p>The committee responsible emphasised that if Mr Pannella had considered the carabinieri in general to be corrupt, or had considered magistrates in general to be corrupt, then these could be viewed as political declarations, for which Mr Pannella alone was responsible, but which were all part of the cut and thrust of democratic politics. Had this been the case, the committee would have sought to uphold immunity. However, it concluded that, in the case at hand, these were not specific and detailed remarks of a political nature, but remarks made about a police officer which, if false, were defamatory, and if true, were particularly serious for the police officer concerned. The committee therefore proposed waiving immunity, while pointing out that there was an obligation to protect the legitimate interests of litigants, whether 'ordinary' or 'parliamentary'.</p> <p>The plenary session subsequently decided to waive immunity.</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0191/88	10.10.1988	Not waived	Mr Pannella This request for the waiver of immunity was submitted following a complaint made by a journalist, Mr Lubrano, an editor working for the Italian TV network RAI who, on the basis of the defamatory remarks he believed had been made about him, felt that Mr Pannella should be prosecuted. More specifically, Mr Lubrano complained that Mr Pannella had accused Mr Lubrano and most of the directors at RAI of being members of a gang of criminals.	The committee responsible ruled that Mr Lubrano was complaining about statements that could be viewed as defamatory, but which were made in the context of a censure of RAI directors in general. The rapporteur pointed out that Mr Pannella often criticised directors of that institution for misinforming Italian viewers at the expense of the Italian Radical Party. This was a political campaign of Mr Pannella's, who was critical of RAI as a whole, rather than the journalists who worked for it. Based on this, the committee was forced to conclude that these were political statements and consistent with the views frequently expressed by Mr Pannella on the subject.
A2-0217/88	24.10.1988	Waived	Mr Pannella On 10 March 1987, the Public Prosecutor in Rome submitted a formal application to the European Parliament following a complaint received from a journalist, Mr Pantucci, who believed that certain remarks and written statements made by Mr Pannella discredited him and that he was entitled to protection from this defamation under the Italian Penal Code. In fact, Mr Pantucci specifically criticised Mr Pannella for having written an article in the Radical Party review <i>Notizie Radicali</i> in which he claimed that Mr Pantucci was in the pay of organisations such as the P2 Lodge.	The committee responsible ruled that Mr Pannella had clearly made remarks about an individual, a journalist in his own country, and that these remarks were not directly related to a political activity, unlike in a previous case where a remark made about a RAI journalist had been meant for RAI as a whole, rather than the journalist in question.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0266/88	12.12.1988	Not waived	Mrs Bloch Von Blochnotz Mrs Bloch Von Blochnotz was accused of having co-signed a leaflet inviting people to take part in a more or less impassioned demonstration against euromissiles. Mrs Bloch Von Blochnotz had helped write the leaflet together with a number of its signatories, inciting Germany militants to take part in the protest to blockade missile sites.	The committee responsible found that it was clear that Mrs Bloch Von Blochnotz had only put down in black and white what she had often said before in the Parliament and what she had previously written in other places, especially in the Federal Republic of Germany. The rapporteur continued, <i>'In some ways she took her argument to its furthest point. We know how our colleagues at the Rainbow Group view missiles and we know their opinion on the subject. I respect the opinions of all my colleagues, even if I do not share them. This case is a perfect example of a colleague possibly going a bit too far, if you pardon the expression. The leaflet emphasises her political ideas, her political judgement and her political attitudes. This is a political act in all its splendour, if I may say so.'</i>
A2-0340/88	16.01.1989	Not waived	Mr Pisoni A complaint of defamation was made by the company Auricchio against Mr Pisoni on the grounds that he had told a journalist at the Milan newspaper <i>Il Giornale</i> that 'farmers are continuing to supply large companies like Auricchio, but have to wait six months before being paid.' These comments were detrimental to the company's trade credit.	The committee responsible noted that these remarks had been made by Mr Pisoni during a farmers' rally attended by him as head of an Italian farmer's union and that the remarks were patently political in nature. That they were political was indisputable, even if they were made during a professional demonstration and not strictly speaking a political one, and even though they slightly overstepped the mandate of an MEP. The committee responsible described Mr Pisoni's remarks as being general, and not meant to target a particular individual or company. Furthermore, taking the committee's reasoning to its logical conclusion, Auricchio could still, if it wanted to, take legal action for damages through the civil courts, if it believed it had been penalised by Mr Pisoni's comments.
A2-0413/88	13.03.1989	Not waived	Mr De Pasquale Mr De Pasquale was accused of having built an underground tank without permission, which at ground level exceeded the permitted dimensions by a few centimetres.	The committee responsible took the view that the facts of the case were not politically related.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A2-0042/89	10.04.1989	Not waived	Mr Vetter This was a request for the waiver of parliamentary immunity of Mr Vetter following a complaint filed by a Bundestag select committee, set up following the criminal proceedings brought against some members of the company Neue Heimat. Mr Vetter was accused of making two false statements.	Following a careful examination of all the facts, the committee responsible reached the conclusion that the allegations were, to say the least, serious enough to cause Mr Vetter harm, and that this was sufficient proof of <i>fumus persecutionis</i> .
A3-0067/89	20.11.1989	Not waived	Mr Mattina The request for the waiver of immunity was made following a complaint sent to the Italian authorities by the directors of the cement manufacturer la Campani. The complaint was based on statements that Mr Mattina had made to an Italian journalist, principally to the effect that the company was buying cement from Greece at inflated costs and then reselling it on la Campani's market, which had the effect of flouting the competition rules. Mr Mattina told the journalist that this was probably a money-laundering exercise and expressly alluded to the Mafia.	When Mr Mattina was heard by the committee, he explained that he had done nothing other than express his views on a political debate. Consequently, the committee decided that the comments were made in the context of Mr Mattina's political activities.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0088/89	11.12.1989	Waived	Mr Le Pen During a public meeting, Mr Le Pen had fiercely attacked Mr Durafour, a member of the French Government, using strong words: 'Mr Durafour - crematorium. Thank you for this admission'. Mr Le Pen did not contest the accusation made against him by the French Minister of Justice.	The rapporteur explained that the committee responsible felt, by a large majority, that Mr Le Pen's immunity should not be waived, since he had done nothing other than voice a political opinion, and that to decide otherwise would be to give a parliamentary majority the option of deciding whether or not proceedings should be brought against members in political matters. It also concluded that the French government, by submitting other requests for the waiver of Mr Le Pen's immunity, was evidently keen to persecute Mr Le Pen. A minority felt that Mr Le Pen, by saying what he did, had not voiced a political opinion, but was simply using a particularly insulting expression, that it was not necessary for him to do so and that therefore this expression could easily be separated from its context and the French judicial authorities allowed to decide whether Mr Le Pen should be prosecuted or not. Immunity was waived by the plenary session.
A3-0040/90	12.03.1990	Waived	Mr Le Pen The Public Prosecutor at the Court of Appeal in Paris had made an accusation concerning a number of statements made by Mr Le Pen to a French newspaper. According to the magistrate, statements such as 'there is an internationalist lobby that seeks to establish a simplistic, democratising ideology; the international Jewish community is part of this lobby', constituted the offence of complicity in racial defamation. In fact, the judge believed that the statements and allegations made by Mr Le Pen discredited and demeaned a group of people on their basis of their ethnic origin.	The rapporteur expressed the findings of the committee responsible as follows: <i>'parliamentary immunity mainly exists to ensure the freedom of opinion and above all freedom of expression of parliamentarians. This is why the Committee on the Rules of Procedure decided that by making these statements – regardless of whether the Committee agrees with them or not – Mr Le Pen was voicing his political opinions, and that in view of this, it did not feel compelled to recommend that this assembly waive parliamentary immunity.'</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0229/90	08.10.1990	Not waived	Mr Le Pen Charges relating to answers Mr Le Pen gave in an interview to the newspaper <i>Present</i> . During the interview, Mr Le Pen put forward the theory whereby the desertification of large areas in North Africa, combined with high population growth, would inevitably force the inhabitants of this area to emigrate to European countries to look for work. Paraphrasing Mr Le Pen, the Public Prosecutor closed his subpoena with the claim that Mr Le Pen was advocating the abolition of 'weird pretexts like the right of asylum that allows foreign nationals to invade the country " <i>en masse</i> ", at the expense of French workers, who are forced out of work.'	The committee responsible concluded that Mr Le Pen was voicing political opinions and that the EP was not entitled to pass judgment on these, its role being to uphold the freedom of expression of its Members. The request was founded on excerpts from an interview, a dubious practice that already casts doubts on the objective nature of the request, possibly stemming from a wish to see Mr Le Pen hauled before the courts at all costs.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0247/90	22.10.1990	Not waived	<p>Mr Le Pen</p> <p>On 6 July 1989, Mr Jacques Bruhnes filed a complaint with the senior examining magistrate at the Court of First Instance in Nanterre for defamation of an individual in public office, seeking compensation for damages. The complaint was lodged against several people, including Jean-Marie Le Pen, as chairman of the French National Front (Front National), and was based on the contents of a leaflet which, bearing the acronym of his party, was distributed in Gennevilliers in June 1989.</p> <p>This leaflet, which was not signed by Mr Le Pen, and which does not bear his name, was entitled 'UNION POUR GENNEVILLIERS AUX FRANCAIS'. Under this heading was the name of Joseph Jouan, Municipal Councillor, Secretary of the Front National. The leaflet protested against the acts of violence committed by foreign nationals against French municipal councillors. In a decision dated 14 September 1989, the examining magistrate, mentioning Mr Le Pen's parliamentary status, concluded that the complaint made against him with a claim for damages was inadmissible.</p>	<p>The committee responsible explained its recommendation not to waive immunity by arguing:</p> <ul style="list-style-type: none"> - that this was a complaint made by a private individual (even if he was in public office), claiming to have been slandered by Mr Le Pen. This was not an action brought by the public prosecution service or judicial authority as part of their duty to prosecute offences; - that the alleged offence consisted of a leaflet, which did not appear to have been written or signed by Mr Le Pen, who has formally denied being its author; - that the plaintiff, who, as a member of the majority party (which does not include Mr Le Pen's party) holds a public office, offers no proof that this MP is actually the author of the leaflet or even that he ordered its distribution. It would be unusual for a chairman of a national party to be concerned with leaflets dealing with local issues or to endorse the publication or the distribution of such leaflets; - that in the absence of proof, the aim of this action against a political opponent, who does not appear to be the author of the leaflet in question, is ostensibly to cause that person harm, rather than to obtain his conviction for the offence and compensation for the damage caused, an aim that might be accomplished by bringing legal action against other parties, including the person whose name is mentioned in the leaflet.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0377/90	21.01.1991	Not waived	<p>Mr Pannella</p> <p>In January 1988, Mr La Malfa filed a complaint against Mr Pannella – among others – accusing him, as co-chairman of the Radical Party, and in a bid to cause harm, of having published an article entitled ‘La Malfa e la Mafia’ in the newspapers <i>Il Giornale d’Italia</i> and <i>Il Manifesto</i> on 6 November 1987. The article in question was detrimental to Mr La Malfa’s reputation by making certain accusations against him. In particular, the article said that ‘... in a scandalous advertisement, the Italian Republican Party claimed that the victory of the yes lobby in the referendum on the civil responsibility of judges will benefit the Mafia. Apart from the indignity and absurdity of this false allegation, we wonder whether the PRI has sufficient credibility to wage such a campaign. After scanning the articles published in the Sicilian and national press, we have drawn up an impressive, albeit incomplete, list of Republican Party representatives implicated in criminal offences.’ ‘... The Republican Party (whose representatives were known for their fierce and venomous attacks on the Radical Party when certain detainees joined it) is in no position to preach against the Mafia. Had it not been protected and supported by the press, it would have collapsed already, and would hardly be able to discuss the moral question of “La Malfa or the Mafia?”’</p>	<p>According to the committee responsible, the investigation into the waiver request revealed that:</p> <p><i>‘- this is a complaint made by a private individual claiming to have been slandered by Mr Pannella; this is not an action brought by the public prosecution service or judicial authority as part of their duty to prosecute offences;</i></p> <p><i>- the alleged offence was committed by means of two articles, which did not appear to have been written or signed by Mr Pannella, who formally denies being the author of these articles or being responsible for their publication;</i></p> <p><i>- there is no proof or other indication of the fact that this MP is the actual author of these articles or even that he ordered or authorised their release; the only evidence in this respect is that the respective editors of the newspapers admit to writing them.’</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0018/91	18.02.1991	Waived	<p>Mr Ruiz-Mateos</p> <p>The proceedings brought against Mr Ruiz-Mateos originate from a requisition made by the public prosecutor's office on 14 April 1983 for alleged financial offences, misappropriation and fraud.</p> <p>A decision dated 6 July 1983 ordered Mr Ruiz-Mateos to be formally charged and remanded in custody. He was arrested on 25 April 1984 in Frankfurt, Germany.</p> <p>Mr Ruiz-Mateos was handed over to the Spanish authorities, his extradition being authorised on the following grounds:</p> <ul style="list-style-type: none"> - for having created records in 1983 for fictitious credit transactions without the knowledge of the account holders concerned and for having used these mainly to adjust the losses of various banks in Rumasa Group, and for having created backdated records on 24 February 1983 so that these would appear in the accounting records of banks belonging to Rumasa Group. - for having artificially increased asset values (share estimates) in the financial statements of Holding Rumasa AG in the second half of 1982, as chairman of the limited company Holding Rumasa. 	<p>The committee responsible concluded that the offences with which Mr Ruiz-Mateos had been charged were not a political activity linked with his parliamentary mandate.</p> <p>Mr Ruiz-Mateos had been elected as MEP at the last elections, whereas the events for which the waiver was requested had taken place long before. Furthermore, it should also be pointed out there was no indication of <i>fumus persecutionis</i> in the proceedings brought against Mr Ruiz-Mateos.</p> <p>The case consisted only of legal action aimed at penalising economic offences. There are thus grounds for waiving parliamentary immunity.</p> <p>In addition, the German federal courts ruled on the nature of the charges brought against Mr Ruiz Mateos when they agreed to his extradition.</p>
A3-0009/91	18.02.1991	Not waived	<p>Mrs Breyer</p> <p>Mrs Breyer was accused of taking part in a blockade at the US airbase in Bitburg, together with around 200 other people. During this blockade she went along with the communal decision taken by the protesters to stage a sit-in on the link road between Entrance II and the airbase compound, thus preventing at least 20 vehicles from entering the base (offence of using unlawful measures of compulsion, acting jointly).</p>	<p>The committee responsible considered this sit-in as a peaceful political protest, and also took account of the length of time that had elapsed since the events in question, i.e. more than seven years.</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0066/91	15.04.1991	Not waived	<p>Mr Stamoulis</p> <p>On 8 June 1990, Mr Stamoulis, Mr Alexandris and Mr Mijopoulos, lawyers for the accused, Nikolaos Athanassopoulos, read out, before the Special Court established under Article 86 of the Greek Constitution, a statement that was then appended to the minutes of the hearing. This statement was made immediately after discussion of the case began. From an examination of the documents submitted, it does not appear that the presiding judge interrupted the reading of the statement, issued any warning or made any demands of any of the aforementioned lawyers.</p> <p>That same day, the clerk of the Special Court, acting on the orders of the presiding judge, sent a copy of the statement to the Attorney General at the Court of Cassation for advice on how to proceed, in the event of it being established that this statement constituted contempt of court as laid down by Article 181 of the Penal Code, which stipulates that 'the following are punishable by a maximum sentence of two years' imprisonment: a) anyone who publicly insults the Prime Minister of the Republic, the government, the Chamber of Deputies, the President of the Assembly, the heads of the parties recognised by Chamber regulations or the judicial authorities.'</p>	<p><i>'It would appear that the remarks attributed to the Member were made while exercising his right to freedom of expression. This freedom guarantees the right to a defence, which is part of the right to effective legal protection. Even taken out of context, the remarks in question are neither offensive nor do they exceed the level of criticism to which legal decisions may legitimately be exposed.</i></p> <p><i>Furthermore, the courts evidently have sufficient procedural means at their disposal to prevent the legitimate bounds of the right to a defence from being overstepped. Replacing the preliminary procedure incumbent on all courts to take with a charge of a criminal offence after the fact, in violation of the principle of respect for the right to freedom of expression, is something that the European Parliament cannot condone.'</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0068/91	15.04.1991	Not waived	<p>Mr Pannella</p> <p>Mr Paglia, a journalist by profession, filed a complaint against Mr Pannella claiming that the latter, in his speech to a Radical Party Congress held on 27, 28 and 29 January 1990 had used words that dishonoured and demeaned him and that implicated him in a crime. The complaint and the submissions of the prosecutor included the following paragraphs:</p> <p><i>‘This will not make me popular, but people need to hear the truth: I am not surprised that Guido Paglia has managed to mislead Montanelli and destroy the tradition of complete honesty and the critical attitude of the Giornale simply by working for it. Guido Paglia, you have been attacking me for years; I don’t know if you actually helped Giannettini write the first diatribe that your side addressed to me during the Congress at the Hotel Jolly in the early 1960s, when I found out about documents that you had written entitled ‘Red hands on the army’, for my opponents <u>Aloja</u> or <u>De Lorenzo</u>. These documents stated that the 64/65 radicals and I were the most dangerous and money-grabbing of those accused .’</i></p>	<p>The committee responsible argued that <i>‘that the remarks attributed to the Member were made while exercising his right to freedom of expression. Even taken out of context, the remarks in question are neither offensive nor do they exceed the level of criticism to which a journalist is legitimately entitled as part of his job. It is normal for judgements or silence by journalists to be criticised by the people they target. However ,partisan or biased attempts to influence a branch of the media are not in themselves dishonourable. In any event, the actual context in which these words were spoken belies this sort of attack.’</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0067/91	15.04.1991	Not waived	<p>Mr Taradash</p> <p>On 26.2.1988, Mr Giurato, a journalist, filed a complaint against Mr Taradash, claiming that an article he had written entitled 'RAI – THE STAGFLATION OF GR 1', published in the monthly review <i>Prisma</i> in December 1987, had damaged his reputation. The complaint and the submissions of the prosecutor emphasised the following statements (made by Mr Taradash):</p> <p>'... the general attitude among its staff is that since joining the newspaper a year ago from <i>La Stampa</i>, Giurato has abused the trust placed in him by the editorial office; ... GR 1 has a sworn enemy in Giurato. The only organisational measures taken by the director have consisted of a rash of promotions... given his inexperience, the spectre of parochial politics arose after the initial truce period...'</p>	<p>The committee responsible argued that the remarks attributed to the Member were made while exercising his right to freedom of expression. Even taken out of context, the remarks in question were neither offensive nor did they exceed the level of criticism the head of a branch of the media could legitimately expect. This criticism could be positive or negative. To claim that the head of a branch of the media lacked the ability or impartiality required to do his job properly was a subjective and questionable view, but one that, in any event, did not overstep the legitimate bounds of criticism. To think otherwise would seriously jeopardise the right to freedom of expression.</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0230/91	07.10.1991	Not waived	<p>Mr Le Pen</p> <p>On 19 June 1990, in response to questions asked by a Radio Monte Carlo journalist on the desecration of graves at the Jewish Cemetery in Carpentras (Vaucluse), Mr Le Pen publicly implicated the French Interior Minister, Mr Joxe.</p> <p>The question and answer were as follows:</p> <p>‘You mentioned Carpentras. You have a theory about this, don’t you?’</p> <p>J.M. Le Pen. – ‘Listen, I have several theories, which I cannot go into here. There’s a Latin proverb that says ‘Is fecit qui prodest’ (‘Done by the one who profits from it’). Well, you could say that the French political classes have profited from, used and abused the National Front. After six weeks, the government and police still have no proof, no clue. Anyway, Mr Joxe saw to it that all the evidence was destroyed on day one by inviting people to go and demonstrate at the cemetery, and by failing to take basic precautions that even a fledgling police officer would have taken.’</p> <p>The Attorney General considered these statements, which were broadcast nationwide, to contain an allegation that dishonoured and discredited a government minister in terms of his role, and that they appeared to constitute the offence of public defamation of a minister.</p>	<p><i>‘...the statements attributed to Mr Le Pen are a manifestation of his right to free speech. They contain no insult, incitation to hatred or defamation, nor do they dishonour or discredit groups or individuals, nor do they undermine fundamental human rights... In addition, the freedom of the press provides the public with one of the best ways of learning about and analysing the ideas and attitudes of its leaders. Broadly speaking, free political debate lies at the very heart of the concept of a democratic society, which is a governing principle of the whole Convention. Therefore, the acceptable limits of criticism are more far-reaching for a politician, targeted as such, than for an individual...’</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0229/91	07.10.1991	Not waived	<p>Mr Pannella</p> <p>In May 1988, Mr Pannella, then a member of the Italian Chamber of Deputies, sent the Minister of Justice a parliamentary question in which he asserted that:</p> <ul style="list-style-type: none"> - for nearly 20 years, Mr Fontana, who moved to Catania in April 1987, had headed the Acireale magistrature; - as his replacement, Mr Sturiale's name had been put forward. Like Mr Fontana, Mr Sturiale is the son-in-law of Mariano Grasso; - Mr Grasso had enjoyed favourable treatment from Acireale local authority in land development matters; - in April 1987, the Higher Judicial Council received a detailed account of these facts. There was also reference to legal proceedings brought against Mr Grasso by one of the purchasers of land involved in these 'favours'. The report asked for the position not to be given to Mr Sturiale, since his application for a transfer had been motivated by a desire to protect the very people who had served his party. - Despite this, the Higher Judicial Council referred the case to the Justice of the Peace in Acireale, and to Mr Sturiale, who, in view of his seniority, reserved for himself cases involving offences against the public administration and those concerning the environment and land development. Mr Pannella therefore asked the Minister what measures he envisaged taking in the matter. <p>These statements were repeated during a televised broadcast and in a leaflet distributed in Catania during the electoral campaign. Mr Grasso and Mr Fontana have filed a complaint for aggravated defamation.</p>	<p><i>'... the remarks attributed to the Member were made while exercising his right to freedom of expression. Once could certainly consider that these statements are defamatory and discredit and dishonour the two individuals who filed the complaint. However, we should note that these statements are merely a reiteration of those previously made by Mr Pannella in the oral question he submitted to the Chamber of Deputies. To allow legal action to be taken for the simple reason that the MP concerned repeated them outside the Chamber would indirectly invalidate the non-liability granted to Italian MPs for votes cast and views expressed during parliamentary sessions (Article 68 of the Italian Constitution).'</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0303/91	18.11.1991	Not waived	<p>Mr Fantini</p> <p>Mr Fantini was prosecuted in Naples together with several other persons following complaints made about an administrative decision referred to him as head of Campania Regional Executive on 23 July 1986. This was because the decision in question contravened a decision by the CIPE to grant equipment subsidies rather than a basic service as stipulated in the invitation to tender, and infringed a regional law that had delegated the power to carry out this work to local authorities. The joint defendants are charged with having abused their office to endorse the choice of contractor and having allocated public funding to its legal representative.</p>	<p><i>‘After a relatively complex investigation of equally complex facts, the examining magistrate ruled that most of the charges brought against Mr Fantini were unfounded. Nevertheless, the examining magistrate was keen that Mr Fantini should be held to account for what he termed ‘abuse of power’. The alleged abuse clearly came under the heading of the exercise of a political office.</i></p> <p><i>For instance, Mr Fantini and the Board to which he belongs are accused of having dealt with this matter when in fact they had no authority to do so. While we know that the Regional Executive took over the case at the request of the Regional Assembly, which had already debated the subject for some time, we can only conclude that there was deliberate political persecution. The action had been brought by a supplier who secured an order for water purification vessels to be used in the Bay of Naples and who was replaced. The accusations, worded rather vaguely, had persuaded the committee to request further information about the legal basis of the charges under consideration. The request produced an exhaustive report and confirmed that any proceedings against Mr Fantini could only be the result of an unwarranted relentless pursuit.’</i></p> <p>Accordingly, the committee responsible ruled by majority vote that there were no grounds for waiving immunity.</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0038/92	10.02.1992	Not waived	<p>Mr Avgerinos</p> <p>On 21 June 1990, Mr Stylianos Yannakakis, President of the Court of First Instance of Kavala (Greece), had filed a complaint against Mr Avgerinos, a member of the Panhellenic Socialist Movement (PASOK), a former government minister and MEP, on the grounds that he had, during a local radio programme broadcast on 24 March 1990, 'discredited him personally and professionally and acted in contempt of court'. In its decision, the Court of First Instance of Kavala had declared that the candidacies for the general election of 8 April 1990 of three PASOK candidates on the Kavala list No 2 were ineligible. In the statement referred to above, Mr Avgerinos is alleged to have said 'the President of the Court of First Instance of Kavala should be ashamed of declaring half the candidates put forward by PASOK ineligible; this has not happened anywhere else in Greece.'</p>	<p>The committee responsible concluded that the remarks made by Mr Avgerinos had to be examined in the context of an electoral campaign; that more specifically, these were not offensive towards the President of the Court and that, in any event, although the decision taken by the judge was a legal one, it still had a clear political impact, since it affected the candidacy of members of a political party in a general election.</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0039/92	10.02.1992	Not waived	<p>Mr Kostopoulos</p> <p>On 3 February 1986, Mr Lazaros Kyrizoglou, a lawyer in Thessalonica, filed a complaint with the prosecutor at the Criminal Court of that town against Mr Kostopoulos, a member of the government, on the grounds of a television programme broadcast at midnight on 2 February 1988. In the programme, Mr Kostopoulos, in response to a statement published that same day by the Nea Dimokratia party, said : ‘Mr Mitsotakis had to face a barrage of criticism yesterday in the Chamber of Deputies and was again ridiculed in front of the Greek people. He now finds himself trailing behind, trying to salvage what he can from the wreck of his personal and political life. Thieves, liars and unscrupulous party leaders lack the necessary stature to bring about the proper democratisation of the country. After their countless battles, sacrifices and offerings, the people cannot tolerate renegades being awarded certificates of good conduct and integrity, when it is they who issue them’. In his complaint, Mr Kyrizoglou indicated that ‘this intolerable and unacceptable televised “attack” by Mr Kostopoulos, brought to me through my television set, into my home, grossly offended my democratic sensibility as a Greek citizen.’</p>	<p>The committee responsible ruled that, aside from the fact that the events in question had happened years before, Mr Kostopoulos, in making this statement, was simply responding in a political capacity to a press release issued by the executive of the opposition party Nea Dimokratia. Furthermore, the grounds argued by the plaintiff, who considers himself to have been attacked through his television set, were not sufficient basis for a request for the waiver of parliamentary immunity.</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0077/92	09.03.1992	Not waived	<p>Mr Ferrara</p> <p>Mr Ferrara was summoned to appear on 14.12.1988 before the Court of First Instance in Rome following complaints made by Mr Fontana, Mr Di Persia and Mr Di Pietro, all three of them magistrates. Mr Ferrara was accused of having claimed, during a broadcast of 'Il Testimone', a television programme he presented on 31.4.1988, that the television presenter Enzi Tortora (a former MEP) had been the victim of a 'careless' judicial error. Mr Tortora, accused of belonging to a criminal organisation and of being involved in drug trafficking, was convicted at first instance and acquitted on appeal, the First Criminal Division of the Court of Cassation having dismissed the appeal entered by the prosecution with the Court of Appeal in Naples.</p>	<p>The committee responsible believed that the grounds argued by the plaintiffs were insufficient to warrant a request for the waiver of immunity. Members of the committee were keen to add that the straightforward acquittal of Mr Tortora by the Court of Appeal, when the Court of Cassation had dismissed the prosecution's appeal, in spite of the serious charges initially brought against Mr Tortora, and without explicitly confirming the information supplied by Mr Ferrara, made it particularly interesting, particularly since it concerned a television broadcast seeking to inform the public on such a sensitive, obscure and dramatic matter. Consequently, apart from the reasons mentioned earlier, the committee felt that the complaint made against Mr Ferrara was also marred by <i>fumus persecutionis</i>.</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0076/92	09.03.1992	Not waived	<p>Mr Tsimas</p> <p>On 9 June 1989, a group of 13 officials from the Greek national information service lodged a complaint against Mr Tsimas, then director of this service, requesting his 'exemplary punishment' for having published an official statement implicating the plaintiffs. The statement said that:</p> <p>'a) Without being influenced by union motives, right-wing trade unionists, spurred on by their ideological and partisan passion, organised protests and demonstrations and sought, in defiance of any union code of conduct and ethics, to mislead the public and to tarnish the democratic reputation of the EYP;</p> <p>b) these people, who are only trade unionists by name and are in fact nothing other than the pawns of Regilla Square (1), accuse the leadership of persecuting staff when it was them who threatened and terrorised officials in favour of democracy on a daily basis. The trade unionists shamelessly lie throughout, regardless of the questions raised by them. c) No attack was launched against the trade unionists, although they act with complete impunity and are beyond all control, with blatant disregard for the code of conduct imposed on the civil service. Finally, let there be no mistake regarding their identity: only one of the 16 trade unionists represents the DAKE, controlled from Regilla Square. The others are pawns of the junta.'</p>	The committee responsible ruled that the grounds argued by the plaintiffs were insufficient to warrant a request for the waiver of immunity and that they and their request for an 'exemplary judgment' are guilty of <i>fumus persecutionis</i> .

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0196/92	08.06.1992	Not waived	Mr Ferrara Mr Giorgio Pisano, a journalist and senator of the Republic, had accused Mr Ferrara of making defamatory statements about him during a television programme entitled 'Passo falso', broadcast again on 27 April 1991. During the programme, Mr Ferrara claimed that accusations made against him relating to a press campaign led by Mr Pisano in 1970 against Mr Mancini were underhand and dubious, and that Mr Pisano had been the puppet of the financial and industrial power centres in the North and the Christian Democrats, which linked these power centres and the powerful vote-catching armies in the South.	<i>"During a television programme, Mr Ferrara debated with a member of the Italian Senate, accusing him, in no uncertain terms, of having made unfounded accusations against the Italian Minister of Public Works (in 1970!) and of having been the puppet of industry and of a political party. This was a political quarrel, originating from accusations made by the plaintiff against another politician. Mr Ferrara expressed an opinion, as was his right. According to parliamentary case law, there are no grounds for waiving his immunity."</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0269/92	26.10.1992	Not waived	<p>Mr Pannella</p> <p>On 26 July 1988, Mr Bruno d'Urso and Mr Paolo Mancuso, judges at the Court of Appeal in Naples, entered a complaint against Mr Pannella, citing the following grounds: 'On 28 April 1988, during a meeting of Naples City Council, Mr Pannella was quoted as saying "The council is guilty of serious wrongdoing. It is powerless against the corruption of the law courts and the present Administration." This statement was intended to denounce the attitude of the Naples magistrature in the Tortora case, its support for the 'prevailing' Camorra and its dogged persecution of the 'losing' Camorra, its position in the Siani murder trial, in the via Palizza brothel scandal and in the recipient magistrates affair, all cases that were mentioned and viewed as contributing factors in the 'massacre of legality'... In reality, the remarks made by Marco Pannella not only offend us as members of the Naples magistrature, but are an insult to our dignity as judges, we who have presided over numerous trials involving members of both the 'prevailing' Camorra and of the 'losing' Camorra. These facts have, on numerous occasions, been widely discussed in the local and national press.'</p>	<p>The Italian authorities did not, in this case, act in the spirit of cooperation required by Article 5 TEC, since they failed to send the European Parliament the information it requires to reach a decision in regarding the request for the waiver of parliamentary immunity full knowledge of the facts, and more specifically information about the complaints made by Mr Pannella against certain magistrates. In these circumstances, any decision aimed at 'depriving the member and the Parliament of the guarantee afforded by parliamentary immunity would be illogical. Therefore, all other considerations aside, the request for the waiver of immunity must be deemed inadmissible.'</p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0270/92	26.10.1992	Not waived	Mr Pannella The Public Prosecution Service in Florence claimed that a) on 6 December 1975, Mr Pannella was summoned before the Court of Florence charged with being a member of a criminal organisation and for incitement to abortion; b) that the Italian Chamber of Deputies, to which a similar application had been sent – Mr Pannella being at that time an Italian MP – decided, in its session of 26 July 1989, not to grant the authorisation requested, hence the decision of the Court of Florence not to commit the MP for trial due to lack of authorisation.	<i>'In the case before us, the Italian authorities did not act in the spirit of cooperation required by Article 5 TEC, mentioned above, since they failed to send the European Parliament the information it requires to be able to reach a decision regarding the request in full knowledge of the facts. This alone is sufficient grounds for inadmissibility. Furthermore, in the case before us, the Italian Chamber of Deputies decided on 26 July 1986 not to grant permission for the waiver of Mr Pannella's parliamentary immunity. It is surprising therefore to find the same authorisation being requested one year later from the European Parliament, without any new evidence coming to light. Therefore, all other considerations aside, the request for the waiver of immunity must be deemed inadmissible.'</i>
A3-0383/92	14.12.1992	Not waived	Mr Iacono This request concerned permission to prosecute Mr Iacono and four other people in their official capacity, most notably the Regional Transport Councillor at the Maritime Transport Office for Campania and Transport Service Coordinator for Campania. The parties concerned are accused of having unduly derived a material benefit for a company in the form of a subsidy granted to operators of ships able to reach speeds of up to 15 knots, whereas in reality the actual performance was less than this.	The committee responsible unanimously ruled that there were no grounds for waiving immunity, since the proceedings did not meet the requisite conditions. As Mr Iacono himself remarked, the Committee on the Rules of Procedure noted that he was the victim of malicious persecution (<i>fumus persecutionis</i>).

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0407/92	14.12.1992	Not waived	<p>Mrs Daiber, Mrs Roth and Mr Telkämper</p> <p>The Public Prosecution Service of North-Rhine Westphalia requested the waiver of immunity based on the following allegations:</p> <p>a) On 14 January 1991, during a presentation of a declaration by the Federal Government on the situation in the Gulf and in Lithuania, the Members were accused of having attempted to unfurl a banner in the visitors' gallery of the Bundestag while shouting 'No to the Federal Army in the Gulf'. In addition, Mr Telkämper, together with Mrs Daiber and Mrs Roth, threw leaflets into the Chamber that read: <i>'We support the conscientious objectors and deserters from the armies involved ('Winter holiday' campaign). We ask... religious groups, trade unions, youth movements and women's organisations, and all men and women willing to accommodate refugees and deserters and provide them with legal assistance.'</i></p>	<p><i>'Based on the evidence, it cannot be surmised that the Bundestag session was seriously disrupted, but rather that Mrs Daiber, Mrs Roth and Mr Telkämper expressed their opinions incorrectly. As proof, the President simply called them to order and Bundestag police and security did nothing more than take away the flag they were attempting to unfurl, without removing them from the Chamber. The behaviour of Mr Telkämper, Mrs Roth and Mrs Daiber clearly was not meant as an incitement to hatred, defamation or an attack on the fundamental human rights, honour or reputation of groups or individuals.'</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0020/93	08.02.1993	Not waived	<p>Mr Fantini</p> <p>As President of the Regional Executive, Mr Fantini was accused of having, in a private interview, persuaded the Chairman of the Industrial Development Forum (ASI) to include a new business centre for research, experimentation and new technologies in the regional development plan. The decision of the ASI Steering Committee concerning the planning of this centre was alleged to have been tarnished by abuse of power. Allegedly, it also failed to meet certain prior obligations, such as conducting economic and technical research. Furthermore, the private company Tecnopark Italia was alleged to have been granted undue advantages during the construction of this centre (which is yet to be built).</p> <p>During the meeting of 22 April 1992, the Committee on the Rules of Procedure noted that a difficulty had arisen in the meantime regarding the application of Italian law, and that there was a problem with the relationship between the judges behind the two requests for the waiver of immunity concerning Mr Fantini (the first, made on 15 January 1990, was dismissed by the European Parliament on 18 November 1991).</p> <p>Consequently, on the proposal of its rapporteur, the Committee on the Rules of Procedure decided to ask the President of the European Parliament to request additional information on the matter from the Italian authorities. On 1 June 1992, Mr Klepsch, President of the European Parliament, sent a letter to this effect to the Italian authorities. No reply was received.</p>	<p><i>'The accusations made by the judicial authority against Mr Fantini concern his involvement in the management of the Campania region, and more specifically the construction of a leisure centre. This is a complex case and the complaints made are not always clear. There is a definite impression that the problem is more an administrative one than a legal one, and the judicial authorities are attempting to use criminal law to interfere in matters outside their remit.</i></p> <p><i>This is not a new case. It dates back to February 1987, which might explain why the criminal-law provision predominantly relied on has since been revoked.</i></p> <p><i>Your committee concluded that additional clarification was required to continue investigating the case. This letter, sent on 1 June 1992, received no reply. The normal time limit for the case to be investigated properly by the prosecution expired a long time ago.'</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0021/93	08.02.1993	Not waived	Mr Ruiz-Mateos Mr Ruiz-Mateos is accused of assault and insulting Mr Miguel Boyer Salvador before District Court No 9 in Madrid while leaving a hearing involving Mr Ruiz-Mateos and the Spanish authorities.	The committee responsible ruled that <i>'the relatively benign nature and background of the case; the length of time that has elapsed since the events took place and the considerable length of time (more than two years) that elapsed before the request was submitted, even in such a straightforward case; the potential risk to an MP and to a parliamentary institution of a judicial authority being free to choose when to bring a case; the failure to take any action following the waiver of immunity two years earlier; the assessment by the European Commission of Human Rights, all suggest that the authority is biased towards Mr Ruiz-Mateos.'</i>
A3-0023/93	08.02.1993	Waived	Mr Langer Mr Langer was prosecuted for publication of libellous material in a newspaper following an article that appeared in the daily <i>Lotta Continua</i> , run by Mr Langer. The article stated that the plaintiff had allegedly used a gun during an altercation between students at the Catholic University in Milan.	Two opposing viewpoints have formed within the committee responsible. One side felt that there were no grounds for upholding immunity in this case. It was not a question of establishing the criminal responsibility of Mr Langer, but of ensuring that the proceedings initiated with his Supreme Court appeal could follow their course. The appeal could not bring about the conviction of the MP, since an order had already been issued extinguishing criminal responsibility on the grounds that the period of limitation had already expired. The only possible outcome was either that the time limitation would be upheld, or Mr Langer would be acquitted on the grounds of there being no case to answer in the first place. The plenary session upheld this position.
A3-0142/93	24.05.1993	Not waived	Mr Stamoulis The public prosecutor's office in Athens wanted to prosecute Mr Stamoulis for defamatory statements made on television and in a daily newspaper about a group of judges and law enforcement officers.	It emerged from an examination of the waiver request that the statements attributed to the Member could not be proven, since the Greek authorities were unable to send Parliament the information it required to reach a decision in full knowledge of the facts.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0169/93	21.06.1993	Not waived	Mr Ruiz-Mateos The request for the waiver of Mr Ruiz-Mateos's parliamentary immunity was submitted on the grounds that 'on 27 October 1988, he had been taken from Alcala-Meco prison, where he was being detained, to appear before the examining magistrate in courtroom No 4 of the "Audencia nacional", from where he absconded. He subsequently remained at liberty until 13 November of the same year, on which date he was arrested'.	The committee responsible found that its findings in a previous case applied to this one, and namely that: - a case like this cannot be considered objective simply because it is extremely straightforward, when it is referred to the European Parliament after a lengthy period of time (four years, in this case). Were this allowed, it would mean that the prosecution could decide when to bring a case, potentially infringing the right to a defence, particularly when the defendant is a politician, with all the attendant consequences that appearing before a criminal court can be presumed to have for that politician. - The Court of Human Rights has ruled that a case may be invalid if an excessive period of time has elapsed before it is brought. Here, the case could and should have been referred to the European Parliament when it opened after the June 1989 elections, which would have been eight months after the events in question took place. - In the present case, Mr Ruiz-Mateos appealed to the European Commission of Human Rights regarding proceedings relating to the case, and it ruled that the case could not be heard by the Court since the examination phase had taken too long and Mr Ruiz-Mateos had not received a fair trial.
A3-0170/93	21.06.1993	Not waived	Mr Ferrara Mr Ferrara was accused of making defamatory remarks about Mr Scola during a television programme.	The committee responsible found that Mr Ferrara had been describing the work Mr Scola was doing as a member of a political party. <i>'The remarks made by Mr Ferrara, however caustic they might be, had not overstepped the kind of language usually employed in politics.'</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-0255/93	25.10.1993	Not waived	Mr Le Chevalier Mr Ferdinand Bernhard had accused the member of making the following remarks on RTL ‘... <i>nevertheless, we must bear in mind that Mr Bernhard’s father was in the German army during the last war, whereas Jean-Marie Le Pen’s father was killed by a German mine. The two things are completely different. You would think then that if your name was Mr Bernhard and your father had been in the Germany army, you would be a bit more careful about how you criticised a political party.</i>	The committee responsible ruled that the grounds were insufficient to warrant a request for a waiver of immunity. ‘ <i>This was a political debate over an administrative decision – since sanctioned by the courts – in which insults were exchanged.</i> ’
A3-0030/94	08.02.1994	Waived	Mr Risker Pedersen was accused of having violated several articles of the Penal Code and the law on accountants certified by the State since, as member of the board of directors of several companies, he had allegedly supplied false and misleading information about the accounts of these companies for the 1988, 1989 and 1990 financial years.	According to the committee responsible, the acts of which Mr Risker Pedersen is accused were not political in nature, nor did they relate to his political activities.
A3-121/94	09.03.1994	Not waived	Mr Stamoulis During a hearing before the Court of Appeal in Athens, attended by Mr Stamoulis as legal representative for one of the accused, and by several Greek MPs, a series of incidents occurred that persuaded the Athens public prosecutor to request the waiver of immunity of all the aforesaid persons for contempt of court and for disrupting the hearing. The Greek Chamber of Deputies examined the cases of the eight MPs concerned and refused to waive their immunity.	The committee responsible ruled ‘ <i>that the interruptions by [Mr Stamoulis] while exercising his right to defend his client did not go beyond the bounds of legitimate criticism of the decisions of the court</i> ’

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A3-167/94	19.04.1994	Not waived	Mrs Roth Mrs Roth was prosecuted for breaching the security perimeter of the Bundestag. On 16 June 1993, Mrs Roth met with two other individuals in front of the entrance to the Bundestag in Bonn, inside the security perimeter, to demonstrate against the Chancellor following fires at Rostock, Mölln and Solingen. She carried a banner that read: "Enough is enough, Mr Kohl – Resign immediately – Rostock – Mölln – Solingen".	Referring to a resolution adopted on 20 September 1999, the committee responsible ruled that <i>"there are no grounds for waiving the immunity ... of Mrs Roth, since this is a case of free expression of ideas or political opinions, without proof – moreover – that the security perimeter was actually breached."</i>
A4-0023/96	12.02.1996	Not waived	Mr Tapie Management of Olympique de Marseille Football Club: The examining magistrate ruled that new facts which had come to light during a request to extend the investigation could be grounds for charging Bernard Tapie as Chairman of the OM, in addition to those on which he was previously questioned. The judge proposed that Mr Tapie should undergo further questioning on several counts. He requested the waiver of parliamentary immunity in order to remand Mr Bernard Tapie in temporary custody in view of the serious public disturbance caused, and also because he feared Mr Tapie would attempt to influence other individuals questioned during the investigation as well as witnesses both in France and in other countries.	'Although a request for the waiver of immunity seems justified in view of the charges brought and the judge's intention to issue a detention order, it would appear that: - the decision previously handed down by the Office of the French National Assembly prohibits the judge from ordering any provisional detention measure, immunity having been waived purely for the purposes of the judicial review, which the judge for his part considered "inadequate and ineffectual", - although the application of provisions relating to the judicial review is compatible with the exercise of the national mandate, it conversely represents an obstacle to the free exercise of the European mandate, which is partly exercised outside the national territory, - in any event, under the new French Constitutional Law, any member may be prosecuted, questioned, stand trial and be imprisoned following a final sentence, without immunity having to be waived.'
A4-0311/97	21.10.1997	Not waived	Mr Ribeiro Campos The Member stood accused of having committed on 23 May 1994, during a press conference, the offence of defamation provided for and punishable under the Penal Code of the Republic of Portugal against the former Minister of Agriculture.	<i>'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.'</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A4-0312/97	21.10.1997	Not waived	Mr Ribeiro Campos Proceedings were brought against Mr Ribeiro Campos by the Minister of Agriculture, Rural Development and Fisheries for defamatory remarks made about him and the running of his ministry in an interview with the issue of the newspaper <i>Expresso</i> dated 28.9.1996.	<i>'...apart from the aforementioned letter from the Public Prosecutor, the documents forwarded to the European Parliament refer solely to the accusation brought by Mr Fernando Manuel Van-Zeller Gomes da Silva. Since the person concerned was not heard, and since the defence produced no written evidence, the judge in charge of the case was unable to arrive at any conclusions or draft an indictment drawn up on the basis of a full hearing. On the basis of the information currently available to the Committee on the Rules of Procedure, it is obliged to note that the Member concerned has not been formally charged, as required by Article 160(3) of the Portuguese Constitution, and that Parliament cannot therefore take a decision on the request for waiver of immunity forwarded to it in this instance.'</i>
A4-0154/98	12.05.1998	Not waived**	Mr Rosado Fernandes Request that the Member should be called upon to answer charges and submit to questioning on a complaint brought by an agricultural cooperative in connection with a press release which questioned the running of that cooperative, and in particular the actions of one of its leaders. The press release also claimed that the leader had cast doubts on the organisation and representativeness of the cooperative elections.	<i>'... the request for waiver of immunity is based on the charges against Mr Rosado Fernandes. The attached document contains some information that could serve as exonerating evidence - the plaintiff may himself have made defamatory statements against the Cooperative headed by Mr Rosado Fernandes - but the judge does not make any assessment. The magistrate should therefore be asked to comply with these requirements [provide more detailed information, give his opinion as to whether charges are well-founded] and authorize a hearing of Mr Rosado Fernandes, without his parliamentary immunity being waived.'</i>

** In these two decisions, Parliament decided, on a proposal from the committee responsible, 'not to take a decision on the requests for waiver of immunity at this stage of the proceedings'. The decisions state that Parliament does not object, in order for the request for waiver of immunity to be amplified and, if necessary, forwarded to the European Parliament again, to the magistrates concerned hearing the Members in question without preferring charges and without the use of any any coercive measure.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A4-0155/98	12.05.1998	Not waived**	Mr Ribeiro Campos Proceedings were brought against Mr Ribeiro Campos by the Minister of Agriculture, Rural Development and Fisheries for defamatory remarks made about him and the running of his ministry in an interview with the issue of the weekly magazine <i>Tal E Qual</i> dated 12-18 September 1997.	‘ the request for waiver of immunity simply states the charges against Mr Ribeiro Campos and the magistrate has offered no additional assessment. The magistrate should therefore be asked to comply with these requirements [provide more detailed information, give his opinion as to whether charges are well-founded] and authorize a hearing of Mr Ribeiro Campos without his parliamentary immunity being waived.’
A4-0317/98	06.10.1998	Waived	Mr Le Pen Statement by Mr Le Pen at a press conference held to launch a book entitled: ‘Le Pen, the Rebel’, according to which ‘... the gas chambers were a detail in the history of the Second World War...’	It could not be maintained that the MEP 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. <i>‘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 following were noted: 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.’</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A4-0076/99	09.03.1999	Not waived	Mr Rosado Fernandes Authorisation for Mr Raúl Miguel Rosado Fernandes to be questioned as defendant in criminal law proceedings brought against him on a complaint by the former Minister of Agriculture, Rural Development and Fisheries. The defendant was accused of having made declarations to different branches of the media constituting the offence of defamation pursuant to Article 180(1) of the Portuguese Penal Code.	<i>‘Mr Rosado Fernandes, a full Member of the European Parliament’s Committee on Agriculture, and one who, in his political activities, has consistently displayed a special interest in problems arising in that area, made the statements complained of in the context of his country’s agricultural policy. Mr Fernando Manuel Van-Zeller Gomes da Silva, at whom those statements were directed, was at the time in question Portugal’s Minister of Agriculture. The Committee on the Rules of Procedure, the Verification of Credentials and Immunities moreover considered that the statements made by Mr Rosado Fernandes did not, in substance, exceed the tone generally encountered in political debate.’</i>
A4-0210/99	04.05.1999	Not waived	Mr Féret To summon Mr Féret to appear before the Court of First Instance. The charges against Mr Féret under criminal and labour law were as follows: refusal to allow monitoring of documents under Labour Inspection legislation, failure to declare to the social security authorities the services of an employee, non-payment of a holiday allowance upon dismissal due to an employee and relating to services rendered.	<i>‘Consideration of the file ... gave rise to serious doubts as to the reasons behind the proposed proceedings ... [Following a request for additional information, consideration of] the reply from the Belgian authorities... revealed that the initial doubts remained and had indeed been confirmed by an additional factor: the criminal proceedings, with particular reference to the failure to pay the holiday allowance, were launched only with a view to interrupting the prescription period - three years - provided for by the new Article 24 of the preliminary title of the Code of Criminal Procedure. Accordingly, in the light of a justification which it ultimately deemed inadequate, the committee responsible took a ... decision advocating that the immunity of the Member concerned should not be waived.’</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A4-0262/99	04.05.1999	Waived	Mr Moniz Summons to appear before a magistrate on grounds of 'strong suspicion of aggravated fraud'. '...on examination of the records of the payments which the Portuguese Parliament had made with a view to covering the travelling expenses incurred by Mr Fernando Moniz in 1987 and 1988, it had become apparent that Mr Moniz had not actually made some of the trips in respect of which he had applied for and received reimbursement on the basis of invoices issued by travel agencies.'	<i>'... While acknowledging the extreme tardiness of the proceedings brought against Mr Fernando Moniz and the indirect link between the charges and parliamentary duties, the Committee on the Rules of Procedure considered that those charges bore no relation to Mr Fernando Moniz's political activities as such.'</i>
A5-0304/00	24.10.2000	Not waived	Mr Pacheco Pereira Authorisation for Mr Pacheco to be questioned as defendant in criminal - law proceedings brought against him; accused of the crime of abuse of press freedom for something he said during a television debate on a programme called 'Sem Reservas' on TV1, a statement considered to be aggravated thoroughgoing slander.	<i>'It is indisputable that Dr Pacheco's comments on a TV programme on the press qualify as part of a political debate and therefore paragraph 1 of article 157 of the Portuguese Constitution would be applicable. Under that provision he would have enjoyed immunity were he a member of the Portuguese Parliament. Accordingly, he does enjoy immunity as a Member of the European Parliament in respect of statements made and opinions expressed in the television programme to which the case relates.'</i>
A5-0151/00	13.06.2000	Not waived	Mr Brie To prosecute Mr Brie for the crime of holding an 'unauthorised assembly' within the meaning of Article 26(2) of the German law on assemblies. Mr Brie unrolled, at the Brandenburg Gate and elsewhere in Berlin, together with other persons, a banner with the inscription 'Auch die Grenze zwischen oben und unten muß weg. PDS' ('The divide between those at the top and those at the bottom should also disappear'. Signed: PDS). The event was intended to draw attention to the 'Day of Protest against unemployment'. He had not notified the competent authorities of his plans to organise the demonstration.	Based on several precedents of immunity not being waived relating to public assemblies and opinions expressed in public, it was decided that the facts Mr Brie is accused of form part of his political activity (NB: he was not an MEP at the time of the relevant facts) and that there was 'fumus persecutionis' in this case.

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0158/00	13.06.2000	Waived	Mr Kronberger To prosecute Mr Kronberger after a car accident in Vienna in which two people were injured; he was charged with the offence of involuntary bodily injury under paragraph 88 of the Austrian penal code.	<i>'... it is a matter for the European Parliament to interpret independently the matter of the parliamentary immunity enjoyed by its Members ... The scope of parliamentary immunity must be broadly interpreted in order, where necessary, to protect the functioning of the European Parliament. In the light of the European Parliament's practice with regard to traffic accidents and of Mr Kronberger's position, the Committee on Legal Affairs and its rapporteur recommend that Mr Kronberger's immunity should be waived in plenary sitting.'</i>
A5-0038/01	13.02.2001	Not waived	Mr Ribeiro e Castro Criminal - law proceedings on the accusation of being an accessory to slander. The case stemmed from the broadcasting on 16 February 1995 of a report on the trade practices of a private employment agency by 'TVI – Televisão Independente S.A.' for which Mr Ribeiro e Castro was programme director.	<i>'... immunity may not be waived when the acts of which a Member is accused come under the heading of political activity and/or are directly related thereto. Similarly, a waiver of immunity cannot be considered where there is a suspicion that the proceedings have been brought with the intention of causing the Member political damage, for example where there has been a lengthy period between the alleged offence and request for immunity to be waived. In the present case, the alleged offence took place in February 1995. The case has been before the courts since November 1995. The request for immunity to be waived so that criminal proceedings might be brought was not, however, submitted until May 2000, and not immediately after Mr Ribeiro e Castro took his seat...'</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0123/01	03.05.2001	Not waived	<p>Mr Sichrovsky</p> <p>Mr Sichrovsky was accused of slander and using abusive and insulting language. This charge was based on an interview given by Mr Sichrovsky to the Slovenian newspaper <i>DELO</i> and which appeared in the issue of 14 March 2000 under the title 'The Jew at Haider's Court'. In this interview, Mr Sichrovsky is alleged to have made disparaging and insulting remarks about Mr Ariel Muzicant, President of the Jewish community in Vienna. According to the complaint initiating criminal proceedings, Mr Sichrovsky allegedly described Mr Ariel Muzicant as an 'idiot', 'an aggressive, irascible, incredibly mean' and 'spiteful person', a 'professional Jew' who 'would take advantage of his dead parents to appear on television'.</p>	<p><i>'As regards Mr Sichrovsky's remarks about a "professional Jew" who "would take advantage of his dead parents to appear on television", they were made during an exchange of insults linked to the religious and political affiliation of the Member in question. We should give Mr Sichrovsky the benefit of the doubt and accept that these proposals, even though uncalled-for, constitute political criticism.</i></p> <p><i>This is why your rapporteur proposes that his immunity should not be waived on the count of slander.</i></p> <p><i>As regards the remarks "idiot", "aggressive, irascible, incredibly mean" and "spiteful person", your rapporteur considers that they should be deemed insulting or abusive language within the meaning of Article 115 of the Austrian Penal Code. Immunity is not intended to allow Members to make particularly uncalled-for and outrageous remarks, nor to protect them from prosecution in respect of acts which clearly have nothing to do with their political activity. For this reason your rapporteur would favour waiving the immunity of Mr Sichrovsky on the count of using insulting or abusive language.</i></p> <p><i>However, it is difficult to separate these remarks from the others he made, particularly since the act of prosecution designates them as both slander and using insulting or abusive language, which makes it impossible to distinguish clearly between the charges. As your rapporteur has already indicated, this is very much to be regretted.</i></p> <p><i>In practice, it is difficult to distinguish between invective of a purely political nature and invective which is not connected to any political activity.'</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0124/01	03.05.2001	Not waived	<p>Mr Voggenhuber was accused of slander and defamation under Articles 111 and 115 of the Austrian Penal Code. Mr Voggenhuber was alleged to have made the following statement at a press conference on 31 January 2000 in reference to Dr Jörg Haider, Governor of Carinthia province:</p> <p>‘He (the reference is to Dr Jörg Haider) is a fascist and the FPÖ is a neo-fascist party. The FPÖ and Jörg Haider exhibit all the essential features of fascism. The authoritarian tendencies, the myth of the strong man, the rabble-rousing against minorities, racism, the description of foreigners as parasites, the description of welfare recipients as spongers, the description of his own nation as a monstrosity, the description of his own country as a “banana republic”. All this betrays an attitude of mind which has been played down here over many years. History will blame the ÖVP for bringing neo-fascism to power in Austria.’</p>	<p><i>‘Such remarks by political opponents, even if they are pointed and excessive, must be regarded as remarks made by a Member while exercising his mandate. In recent years there has been a change in the tone of public debate between politicians. The language used is becoming harsher and more offensive, polite forms of address are giving way to ‘strong words’ and there is an increasing tendency to use ‘sound bites’. The media have also influenced politicians into using sharper, more direct and more offensive expressions than previously. It may be that this trend is regrettable but at this point it is an aspect of political reality and must therefore be accepted as such.’</i></p>
A5-0126/01	03.05.2001	Waived	<p>Mrs Jeggle was accused of driving dangerously on 4 May 1999, an offence under Section 315c, clause 2b, and Subsection 3, clause 2 of the German Code of Criminal Law. It was alleged that Mrs Jeggle acted recklessly by overtaking another vehicle at a point that did not afford sufficient visibility to do so. When a lorry approached from the opposite direction, its driver and the driver of the vehicle which Mrs Jeggle had overtaken were forced to brake hard in order to avert the collision that would otherwise have inevitably resulted. By driving in this manner, Mrs Jeggle seriously endangered two other road users.</p>	<p><i>‘...The charge against Mrs Jeggle relates to the offence of dangerous driving, since it is alleged that when driving her car on 4 May 1999, she “acted recklessly and in gross violation of road traffic regulations by overtaking another vehicle at a point that did not afford sufficient visibility to do so”. Given that this behaviour cannot be said to be connected with the political activity in which a Member typically engages, the rapporteur believes that Mrs Jeggle’s immunity should be waived.’</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0032/02	28.02.2002	Not waived	<p>Mr Pasqua was accused of two offences.</p> <p>The first procedure against Mr Pasqua for ‘illegal arms trading, influence peddling, misuse of corporate funds, breach of trust and receiving stolen goods’ was opened in July 2000. It was alleged that he took part in selling arms to several African countries, in breach of French law on arms trading. There were three counts of receiving stolen goods: an association and political club with which he was connected allegedly received one of the offending payments; various flights were allegedly paid for: finally, Mr Pasqua may have received sums in cash. In terms of influence peddling, there were a number of anomalies surrounding the award of the national order of merit, prompting the examining magistrates to suspect influence peddling.</p> <p>The second procedure concerned ‘illegal funding of an election campaign through acceptance of donations and funding of the European election campaign in breach of the provisions of Article L 52.8 of the Electoral Code’. In this case, Mr Pasqua obtained funds for the European Parliament elections exceeding the legal ceiling of FF 30 000.</p>	<p><i>‘...The present request for waiver of immunity does not concern the issue whether the prosecutions may continue in accordance with French law... [but] relates only to the issue whether the Court may issue binding orders restricting MEPs’ freedom of movement, or their freedom in making contact with other persons.</i></p> <p><i>This request for waiver seems unacceptably imprecise in its present form, and indeed the documents of the case indicate that no attention seems to have been paid to a recommendation by the Procureur General for the request for waiver to be taken forward only on the basis of a more specific statement concerning places and persons involved. There are other aspects of the case, such as the request for information concerning voting records in this parliament, which give rise to suspicions in the category of “fumus persecutionis”.</i></p> <p><i>‘In these circumstances, the request received from the Garde des Sceaux for waiver of immunity is one that ought to be rejected in the form in which it has been presented to Parliament.’</i></p>

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A5-0033/02	28.02.2002	Not waived	<p>Mr Marchiani</p> <p>The present request for waiver of immunity was part of two separate procedures concerning Mr Marchiani and Mr Pasqua. The first of these procedures was opened in July 2000 for 'illegal arms trading, influence peddling, misuse of corporate funds, breach of trust and receiving stolen goods'. These charges were brought against Mr Pasqua and Mr Marchiani.</p> <p>The second procedure concerned 'illegal funding of an election campaign through acceptance of donations and funding of the European election campaign in breach of the provisions of Article L 52.8 of the Electoral Code'. This procedure related only to Mr Pasqua.</p>	<p><i>'...the present request for waiver of immunity does not concern the issue whether the prosecutions may continue in accordance with French law... but relates only to the issue whether the Court may issue binding orders restricting MEPs' freedom of movement, or their freedom in making contact with other persons.</i></p> <p><i>This request for waiver seems unacceptably imprecise in its present form, and indeed the documents of the case indicate that no attention seems to have been paid to a recommendation by the Procureur General for the request for waiver to be taken forward only on the basis of a more specific statement concerning places and persons involved. There are other aspects of the case, such as the request for information concerning voting records in this parliament, which give rise to suspicions in the category of "fumus persecutionis".</i></p> <p><i>...In these circumstances, the request received from the Garde des Sceaux for waiver of immunity is one that ought to be rejected in the form in which it has been presented to Parliament.'</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0245/02	02.07.2002	Not waived	<p>Mr Korakas was accused of collaboration in threats, false allegations and defamation pursuant to Articles 47(1), 333, 229(1), and 363-362 of the Greek Criminal Code. It was alleged the Mr Korakas, in complicity with Mrs Houshang Erfany-Far had attempted to injure Mr Houshang Erfany-Far's honour and reputation by portraying him as intending to kidnap his own children and generally as a man who blackmails and defames others.</p> <p>It was also alleged that Mr Korakas, using means available to him as a former member of the Greek Parliament and as an MEP, supported Mrs Houshang Erfany-Far to drive Mr Houshang Erfany-Far out of Greece</p>	<p><i>'The acts of which Mr Korakas is accused can in no way be described as linked to his political activities. The facts as set out in section I above, which gave rise to the prosecution, concern an ordinary divorce case... Neither is there any sign, in the trial documents submitted to the European Parliament by the Greek authorities, of any political connection whatsoever... That would seem to argue in favour of lifting Mr Korakas's immunity.'</i></p> <p><i>'However, it is clear from the documents submitted to the European Parliament that reference is repeatedly made in the document bringing the charge to Mr Korakas's position as a Member of the European Parliament. It is alleged that he is making use of his position and greater influence to sway the authorities and bring about the economic and personal destruction of Mr Houshang Erfany-Far... The possibility cannot therefore be ruled out that Mr Korakas was to be prosecuted partly because he is an MEP. It is therefore possible that the Public Prosecutor's office allowed the applicant's appeal to the Athens Court of Appeal because it seemed likely to them on the grounds of Mr Korakas's position as a Member of the European Parliament that his position might of itself be a reason for the prosecution. Since this possibility is aired in the decision allowing the appeal, the criminal proceedings by the Public Prosecutor's office at the Athens Appeal Court might have been brought with a view to hindering the political activity of Mr Korakas, MEP (fumus persecutionis).'</i></p>
A5-0372/02	20.11.2002	Waived	<p>Mr Florenz was accused of negligent manslaughter, punishable under Article 222 of the German Criminal Code. On 3 August 2002, Mr Florenz accidentally ran over Mr Adrian Zygryd Kolodziej, with the second trailer of his farm vehicle. Mr Adrian Zygryd Kolodziej died at the scene of the accident from serious head injuries.</p>	<p><i>'Neither Article 9 nor the third paragraph of Article 10 of the Protocol on the privileges and immunities of the European Communities of 8 April 1965 can thus be invoked.'</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0243/03	01.07.2003	Not waived	<p>Mr Camre was accused of having made statements constituting derisory and humiliating treatment of a group of people contrary to the first paragraph of section 226b of the Danish Criminal Code, and having the nature of a propaganda activity contrary to the second paragraph of that provision. Mr Camre in a speech at the national conference of Dansk Folkeparti (Danish People's Party) held on 15-16 September 2001, said: 'All the countries of the West are infiltrated by Muslims – and some of them speak nicely to us while they are waiting to become sufficiently numerous to get rid of us as they have done in Sudan, Indonesia, Nigeria and the Balkans' and that 'There is a direct link between the despicable rapist, the man who circumcises his daughter and forces his wife to wear a headscarf, and the person who out of religious fanaticism flies a passenger plane into the World Trade Center'. Mr Camre also distributed a draft of the speech containing the words 'all the countries of the West are infiltrated by Muslims - and some of them speak nicely to us while they are waiting to become sufficiently numerous to kill us.'</p>	<p><i>'Although it is possible to conceive of circumstances in which Article 9 might apply to a Member in his own country (...), a conference of a national political party is not such a circumstance, particularly since Parliament has taken the approach of construing the expression "performance of [Members'] duties" narrowly'</i></p> <p><i>'...although point (a) of the first paragraph of Article 10 of the Protocol refers to the immunities accorded to members of the relevant national parliament, the European Parliament may create its own principles, thereby creating what may be termed "case law". Furthermore, whereas members of the national parliament and Members of the European Parliament from the Member State in question enjoy the same immunities, whether to waive the immunity in question depends on the European Parliament. The abovementioned principles or case law should have the effect of establishing a coherent concept of European parliamentary immunity which, in principle, should be independent of the various practices of the national parliaments.'</i></p> <p><i>'... it must be said that Parliament has consistently adopted a very liberal attitude to expressions of opinion made in the political arena and it is suggested that there is a tradition of robust political debate in Denmark. Furthermore, although there is no evidence of any fumus persecutionis, there has been some comment in the Danish press to the effect that the prosecution is unusual.'</i></p> <p><i>'Consequently... Mr Camre's case falls within Article 10 of the Protocol...'</i></p>

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A5-0246/03	01.07.2003	Not waived	<p>Mr Cohn-Bendit</p> <p>In February 2000, Mr Cohn-Bendit was accused of obstructing justice in order to help a criminal, punishable under Section 258 of the German Penal Code. It was alleged that Mr Cohn-Bendit, together with others, had helped Hans-Joachim Klein (who had meanwhile been sentenced in a court of law) to evade the investigating authorities since around 1977 by providing him with a number of opportunities to hide and contributing towards his upkeep. A number of witness statements and media reports confirmed these facts. It was also alleged that Mr Cohn-Bendit helped Hans-Joachim Klein end his association with terrorism by obtaining a place for him to stay in France.</p>	<p><i>‘...At the time of the offence... Daniel Cohn-Bendit was a Member of the European Parliament, having been elected in Germany... Since 13 June 1999 Daniel Cohn-Bendit has been a Member of the European Parliament elected in France. A question arises, therefore, concerning the interpretation of Article 10(a) of the Protocol on Privileges and Immunities... However, the rapporteur is inclined to take the view that, in view of the fact that the application has been submitted by the German authorities, the German law applies, and consequently there can be no question of the German authorities conducting investigations unless immunity is waived. Parliament reached the same conclusion in the last parliamentary term in connection with the request to waive the immunity of Mr Jean-Marie Le Pen.’</i></p> <p>Examination of the possible existence of <i>fumus persecutionis</i>: <i>‘...it must be made clear that the legal position in Germany leaves the public prosecutor no other option. If a charge is made, the public prosecutor must investigate, even if he deduces from the mere content of the charge that the accusations are manifestly unfounded. But the public prosecutor can institute criminal investigations only after immunity has been lifted. This means that all investigative proceedings are deferred until immunity has been waived. But it also means that, for example, it is not possible to drop the proceedings because they have not even begun yet. So the German authorities should not be suspected so swiftly of ‘fumus persecutionis’. They are obliged by the law of the land in Germany to proceed exactly as they are doing at present.</i></p> <p><i>‘... in view of the specific circumstances of the case (the fact that the Member of Parliament’s conduct was to some extent consistent with German constitutional safeguards, the background to the activities in question, the failure to prosecute other participants in those activities, the reasons adduced in the judgment in the Klein case and the proximity of the 2004 European elections), Mr Cohn-Bendit’s parliamentary immunity should not be waived.’</i></p>
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Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0213/02	11.06.2002	Resolution	<p>ITALIAN MEMBERS (Messrs Speroni, Marra, Dell'utri)</p> <p>The Committee on Legal Affairs and the Internal Market had been authorised to draw up a report on the immunity of Italian Members and the Italian authorities' practices on the subject. In Italy there is a practice enshrined in judgment No 1150/88 of the Constitutional Court under which, in cases of absolute immunity (Italian Constitution; Article 68(1)), it falls to the national court alone, after it has decided whether the facts are covered by absolute immunity, to decide whether to close the case definitively or to examine its substance; whereas, in the latter event, the Senator or Deputy concerned may bring the case before his Chamber; whereas the Chamber then makes a declaration that proceedings may or may not be pursued and the court must comply with that declaration, unless it decides to challenge it in the Constitutional Court.</p>	<p>Extract from the EP decision:</p> <p><i>'...decides that Parliament should take the following action: (a) on receipt of a communication from a Member or a Member's lawyer seeking a ruling that conduct complained of in court proceedings qualifies for the protection of the absolute immunity enjoyed by Members of the EP under Article 9 of the Protocol, the matter should be referred to the competent committee for its consideration; (b) the competent committee should give a ruling on whether the evidence submitted to it appears to raise a prima facie case of absolute immunity covered by Article 9 of the Protocol and draw up a draft report for the plenary; (c) the President should be instructed to forward the decision of the Assembly and the report of its committee to the appropriate national authority or, until such time as that authority is notified to it, to the Permanent Representative of the Italian Republic marked for the attention of the authority competent for questions of parliamentary immunity; (d) in the event that the competent committee is unable to decide whether a prima facie case of absolute immunity is involved on the basis of the documentation and other evidence available to it, the decision of the plenary session may call on the appropriate authority to provide Parliament with the necessary evidence (case files); in the event that it determines that a prima facie case of immunity is involved, the decision of the plenary session should state that the national court should take formal note (donner acte) of Parliament's determination; (e) the decision of the plenary session must be communicated to the competent national court; Decides (a) that the cases of Francesco Enrico Speroni, Alfonso Marra and Marcello dell'Utri raise a prima facie case of absolute immunity and that the competent courts should be put on notice to transmit to Parliament the documentation necessary to establish whether the cases in question involve absolute immunity under Article 9 of the Protocol in respect of opinions expressed or votes cast by the members in question in the</i></p>

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				<i>performance of their duties and (b) that the competent courts should be invited to stay proceedings pending a final determination by Parliament.'</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0248/03	01.07.2003	Resolution: Mr Musotto's immunity to be upheld	<p>Mr Musotto had asked Parliament to act to uphold his parliamentary immunity. According to the information provided by Mr Musotto in his letter to the President of the European Parliament of 29 August 2002, the circumstances relating to his request in defence of his parliamentary immunity were as follows:</p> <p>After being elected a Member of the European Parliament on the list of the Forza Italia political party, Mr Musotto was interviewed by the journalist Paolo Ligurio as part of a television programme broadcast by Italia Uno on 16 June 1999.</p> <p>On 26 July 1999, Dr Alfonso Sabella brought an action against Mr Musotto on behalf of the public prosecution service asking the competent judicial authorities to initiate proceedings for the offence of libel in the media in connection with statements made by Mr Musotto during the television programme broadcast on 16 June 1999.</p>	<p><i>'It is necessary to determine whether the time conditions governing the application of the immunity provisions have been met.'</i></p> <p><i>[Several interpretations of Articles 9 and 10 have been discussed concerning when an MEP's mandate begins.]</i></p> <p><i>'A fourth alternative would be the possibility of applying Article 10 of the PPI, after having concluded that the conditions contained in Article 9 of the PPI do not apply to the current case of Mr Musotto, so that he no longer enjoy the protection accorded to Members of the European Parliament pursuant to Article 10 of the PPI.'</i></p> <p><i>'strict adherence to the text favours the last alternative which indeed is the one to be applied in the case in question. Although the result thus achieved may be textually pure, it is nonetheless shocking in legal terms since it is contrary to the spirit of the text. In fact, the protection thus accorded seems to be of a fragmented nature since Members are not usually regarded as enjoying such status as from the opening of the first sitting but rather as from the evening of the election. Therefore, Members may be attacked in their capacity as Members of the European Parliament immediately after the results are proclaimed and not enjoy any protection at the time.'</i></p> <p><i>'...the Convention and the next intergovernmental conference are called on to correct this anomaly by amending the text of Article 3 of the 1976 Act. Such a revision would allow optimum protection of Members, guaranteeing them real freedom of expression and filling the legal vacuum which exists by making the beginning of the mandate and the proclamation of the results of elections to the European Parliament coincide in time. Parliamentary immunity should take effect as of the proclamation of the election results and should cover all actions undertaken by Members in exercising their mandate including those undertaken after the last session of the European Parliament.'</i></p> <p><i>'..... the Committee on Legal Affairs and the Internal Market recommends that the European Parliament uphold the parliamentary immunity of Mr Francesco Musotto.'</i></p>
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Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0309.03	23.09.2003	To uphold the Member's immunity	<p>Mr Sakellariou</p> <p>According to the information supplied by Mr Sakellariou in his letter of 20 January 2003 to the President of Parliament, the circumstances which might warrant measures to defend Mr Sakellariou's parliamentary immunity could be summarised as follows:</p> <p>On 3 September 2001 a lawyer brought an action before the civil division of the Athens Court of First Instance, in accordance with the procedure laid down in Article 681 of the Greek Code of Civil Procedure, on behalf of Mr Stylianos Papatthemelis, Member of Parliament for Thessaloniki, against several directors and journalists at the magazine <i>Epsilon tis Eleftherotypias</i>, and against Jannis Sakellariou, Member of the European Parliament.</p> <p>In an interview which a journalist from the magazine conducted with Mr Sakellariou and which appeared in the 18 March 2001 issue of the magazine, Mr Sakellariou answered a question about the future of Greco-Turkish relations by saying that the consequences were likely to be serious if 'a neighbourhood Mussolini such as Mr Papatthemelis practises foreign policy'.</p> <p>The application stated that in making these remarks Mr Sakellariou defamed the applicant in an unprovoked, unjustified manner which was 'clearly detrimental to my dignity, honour and reputation as a man and figure in society and also as a politician and active member of the public life of my country for decades'.</p> <p>For these reasons, the court was called upon to require the six defendants jointly and severally to pay the applicant the sum of GDR 50 million (50 000 000) (roughly EUR 150 000), together with statutory interest for the period from the submission of the application, in compensation for the moral injury he had suffered.</p>	<p><i>The civil action against Jannis Sakellariou does indeed constitute 'legal proceedings' within the meaning of Article 10(b) of the PPI. No criminal proceedings are involved and, in response to the allegedly defamatory remarks, the applicant has not brought a criminal action, for example for slander. The applicant has brought proceedings against the Member solely under the civil law.</i></p> <p><i>In contrast, the level of damages claimed (roughly EUR 150 000) is clearly intended to be punitive. Damages whose primary purpose is punitive are generally awarded to the victim of an unlawful act. In US law the focus is on the deterrent nature of punitive damages: the aim is to discourage the perpetrator from repeating the act which prompted the damages award and potential imitators from perpetrating such an act for the first time,</i></p> <p><i>Given that, in recent years, this legal instrument has increasingly become an established part of the legal systems of the EU Member States, through the recognition and enforcement of foreign court judgments, such as those handed down in the USA, there is every possibility that it will be used as a roundabout means of taking legal action against Members in a manner similar to criminal proceedings.</i></p> <p><i>The reference to 'legal proceedings' in the 1965 text of the PPI must thus today be interpreted as covering an attempt to secure punitive damages by means of civil proceedings.</i></p> <p><i>It is therefore clear that, pursuant to Article 10(b) of the PPI, the MEP Jannis Sakellariou may not be the subject of "legal proceedings" in Greece.'</i></p> <p><i>With regard to Article 9, the same principles apply. '... in the light of the courts' increasing willingness, as seen in recent years, to award punitive damages, the wording of Article 9 must be interpreted in such a way as to provide Members of the European Parliament with effective protection against state</i></p>

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				<p><i>prosecution in respect of views expressed in connection with the performance of their duties.'</i></p> <p><i>'Greco-Turkish relations have always been of fundamental relevance to the European Union's common foreign and security policy and Mr Sakellariou is also a member of the parliamentary committee responsible for foreign affairs. The statements must be seen in the political context of the interview and relate to a matter of genuine public importance and interest. The right to make such statements is central to the role of a Member elected by the people. State prosecution might undermine the independence and freedom of speech enjoyed by the Members of the European Parliament.'</i></p>

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A5-0420.03	04.12.2003	Not waived	<p>Mr Korakas</p> <p>The Greek authorities requested that the parliamentary immunity of Mr Korakas be waived for criminal proceedings to be brought against him after the complaint made by Mr Houshang Erfany-Far of Safar Ali, a resident of Athens. Mr Korakas was accused of perjury as a witness. This was alleged to have taken place on 12 March 2001 during Mr Korakas's deposition before the Court of First Instance of Athens in an action, brought by the plaintiff's estranged wife, with whom Mr Korakas is alleged to have had extra-marital relations, concerning the payment of a monthly allowance to his dependant children.</p> <p>The background of this affair dates back to 27 April 2000, when Mr Houshang Erfany-Far lodged an application with the Athens Criminal Court for criminal proceedings to be brought against his estranged wife and Mr Korakas.</p> <p>That request for waiver of the immunity of Mr Korakas was addressed to the European Parliament by the competent Greek authorities and the EP rejected the request at its sitting of 2 July 2002 .</p>	<p><i>As in the previous case brought against Mr Korakas by Mr Houshang Erfany-Far of Safar Ali, the facts - in this particular case perjury as a witness during Mr Korakas deposition before the Court of Athens - again concern the consequences of a divorce... the circumstances [of which] were examined by the Committee during the previous request to waive Mr Korakas' immunity.</i></p> <p><i>In that case, the Committee concluded that, despite the fact that there was no sign of any political connection, the criminal proceedings by the Public Prosecutor's office at the Athens Appeal Court might have been brought with a view to hindering the political activity of Mr Korakas.</i></p> <p><i>The Parliament thus considered that fumes persecutionis might apply. In the present case, the Committee decided that the circumstances were the same and that therefore this request should be treated in the same way as the previous one, and that fumes persecutionis should also apply in this instance.</i></p>
A5-0421.03	16.12.2003	To uphold the Member's immunity	<p>Mr Gargani</p> <p>According to the information supplied by Mr Gargani in his letter of 24 September 2003 to the President of Parliament, the circumstances which might warrant measures to defend Mr Gargani's parliamentary immunity could be summarised as follows.</p> <p>On 30 April 2003, Mr Giancarlo Caselli, Public Prosecutor at the Court of Appeal of Turin, issued an 'atto di citazione' (a form of originating summons incorporating a statement of claims) requiring Mr Gargani to attend a hearing and admit liability before the Investigating Judge at the Court of Milan on 7 October 2003, and ordering him to pay EUR 154 937.07</p>	<p><i>... that, when he made the statements incorporated in the article published by Il Giornale on 10 August 2003, Mr Giuseppe Gargani was exercising his freedom of speech in connection with the performance of his duties as a Member of Parliament. The statements must be seen in the political context of the current political controversy between some part of the judiciary and a part of the political establishment and relate to a matter of genuine public importance and interest. The right to make such statements is central to the role of a Member elected by the people.'</i></p> <p><i>[For the principles applicable to punitive damages, see case of Mr SAKELLARIOU, A5-0309.03]</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
			<p>as compensation for the damage caused to the plaintiff by the publication of certain articles in the Italian press.</p> <p>The dispute originated from an article written by Mr Giancarlo Caselli entitled 'Mafia press law', which appeared in <i>L'Unità</i> on 4 August 2002. In the article, Mr Caselli labelled a proposed bill on 'legitimate suspicion' and the initiatives put forward by Mr Gargani's political party as opening the way to 'Mafia press law'. The article explained how the law would make it more difficult to proceed against Mafia organisations and complained about the fast-track procedure adopted by the Italian Parliament to pass the law.</p> <p>In an article that appeared in <i>Il Giornale</i> on 10 August 2002, Mr Gargani responded that in Mr Caselli's case, 'legitimate suspicion' was 'legitimate certainty', and that 'Caselli shows clearly, as perhaps he had never done before, that a judge can use his position to express his political views and demonstrate his partiality for all the world to see'. These, and other similar statements and assertions, led M Caselli to bring a civil action against Mr Gargani in defence of his honour and seeking compensation of EUR 154 937.07 for the damage caused.</p>	<p><i>Accordingly, the reference to 'legal proceedings' in the 1965 text of the PPI must today be interpreted as covering any attempt to secure punitive damages by means of civil proceedings.</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0422.03	04.12.2003	Not waived	<p>Mr Marchiani</p> <p>Mr Marchiani was the subject of judicial investigations in respect of the following offences provided for in the French Criminal Code : aggravated laundering - aiding and abetting; embezzlement, forgery of documents, breach of trust; tax fraud; bribery and illegal trade in arms. Waiver of the parliamentary immunity of Jean-Charles Marchiani was called for in the light of the gravity of the offences (punishable by 10 years' imprisonment and a fine of EUR 150 000); the risk that he might seek to abscond (in view of the sums he was supposed to have received and the existence of Swiss bank accounts); the risk that he might hinder the investigations (he might remove bank assets and make arrangements with banks to have himself declared insolvent).</p> <p>In view of the above, the authorities were considering having Mr Marchiani remanded in custody, pursuant to Article 144 of the French Code of Criminal Procedure. Article 145 of this Code provides that the judge for civil liberties and detention makes decisions on detention at the request of the investigating magistrate on the basis of requests by the public prosecutor and the submissions of the defence. At that stage in the procedure it was then essential to question Jean-Charles Marchiani. The order to have Jean-Charles Marchiani remanded in custody was necessary to ensure that he did not abscond and to prevent him exerting pressure on witnesses who were willing to testify.</p> <p>It was also requested that Jean-Charles Marchiani be placed under exceptionally strict judicial supervision in order to:</p> <ul style="list-style-type: none"> prevent the accused meeting his co-accused or witnesses; restrict his freedom of movement to prevent him travelling to Switzerland where he had his assets; require him to post bail in proportion to the commissions he had received. 	<p><i>The facts on which the present request is based have already been the subject of a similar request by the French authorities. That request was rejected by the European Parliament. As a number of members noted in the discussion in the Committee on Internal Affairs and the Internal Market on 8 July 2003, no new elements have emerged in the meantime which would justify taking a different decision today.</i></p> <p><i>On the occasion of the first request in 2002, the Committee on Internal Affairs and the Internal Market noted that it was out of the question to waive the parliamentary immunity of Jean-Charles Marchiani in particular because the criminal procedure initiated by the judicial authorities was motivated by a desire to prejudice the political activities of the Member in question (fumus persecutionis). This impression has if anything been strengthened particularly in view of the press coverage: on 13 May 2003 an article appeared in the French daily Le Monde quoting extensively from the investigation documents of the judicial authorities.</i></p> <p><i>Finally in September 2003 it was reported in the French press that Philippe Courroye, the examining magistrate responsible, was now himself the subject of an internal investigation by the French administration of justice.</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0423.03	04.12.2003	Not waived	<p>Mr Marchiani</p> <p>This new request by the First Examining Magistrate of the Court of First Instance of Paris was based on a statement made by a Swiss examining magistrate in Geneva to the French judicial authorities stating that Jean-Charles Marchiani received a sum totalling FF 9 703 826 into one of his Swiss bank accounts between August 1991 and January 1994.</p> <p>This sum allegedly corresponded to commission paid by an engineering consultancy for securing a contract with 'Aéroports de Paris' for a baggage transport, storage and sorting system. The ensuing investigations led on 22 October 2003 to the opening of a judicial investigation by the Court of First Instance against Jean-Charles Marchiani and two other persons accused of receiving stolen goods and embezzling company assets.</p>	<p><i>This is the third request for the waiver of the parliamentary immunity of Jean-Charles Marchiani, but the charges on which it is based are different from those in the two previous procedures.</i></p> <p><i>All the procedures were initiated by Mr Philippe Courroye, First Examining Magistrate of the Court of First Instance of Paris. The application for the waiver of the parliamentary immunity of Jean-Charles Marchiani of 2001 (on a different charge) was rejected by the European Parliament inter alia because it could not rule out that this was a case of fumus persecutionis. This principle is designed to ensure that Members of the European Parliament are protected from politically motivated prosecution....</i></p> <p><i>Your rapporteur takes the view that if this tried and tested principle is applied to the special circumstances of the case under review, it is impossible to rule out that these criminal proceedings which have been initiated by isolated individuals in the French judiciary may be motivated by the desire to prejudice the political activities of the Member in question.</i></p> <p><i>A number of Members pointed this out during the discussion of 8 July 2003 in the Committee on Legal Affairs and the Internal Market. They noted in particular that under the French Constitution it would have been possible to conclude the investigations against the accused before requesting the waiver of parliamentary immunity. Furthermore, the magistrate in question has clearly failed to respect the principle of the confidentiality of judicial investigations, as the comprehensive leaks in the French press show.</i></p> <p><i>It has also emerged that the investigating magistrate is himself the subject of an internal investigation by the judicial administration on charges of forging documents.</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0433.03	04.12.2003	Not to uphold immunity	<p>Mr Cappato</p> <p>On 1 September 2002, Mr Cappato sent Judge Bernard Salvador, a member of the Court of First Instance in Mende (France), a fax stating that on 13 June 2002 he had ordered certain items to be seized from the home of Mr Alexandre de Perlinghi in Ardèche. He asked him to return certain documents belonging to Mr Cappato and used in his work as a Member of the European Parliament, which were among the items seized.</p> <p>On 5 September 2002, Bernard Salvador, examining judge at the Court of First Instance in Mende, gave an order rejecting Mr Cappato's request for restitution on the grounds that the documents in question were needed not only for the judicial investigation under way but also as evidence under the relevant criminal legislation. According to the order, the judicial investigation related to the offences of assisting others to use drugs and damage to property belonging to another, contrary to the French Criminal Code.</p> <p>In a series of letters sent to the President, Mr Cappato asked the European Parliament to intercede with the French authorities concerned. Mr Cappato emphasised that his request was concerned with the defence of Members' prerogatives under Article 6 of the EP Rules of Procedure.</p>	<p><i>Given that it is not claimed that the relevant proceedings were brought on account of opinions expressed or votes cast in the performance of a Member's duties, the only article of the Protocol on Privileges and Immunities which could have any bearing is Article 10. Given that Mr Cappato is Italian and was elected in Italy, Article 10(b) does apply. 'During the sessions of the European Parliament, its members shall enjoy: (...) (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.'</i></p> <p><i>Leaving aside the question of the precise construction to be put upon the phrase 'immunity from legal proceedings', account should be taken of the fact that the proceedings in question were not brought against Mr Cappato himself and that fumus persecutionis is not apparent.</i></p> <p><i>Accordingly, this does not seem to be a case in which the President of Parliament should be asked to defend privileges and immunities.</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0450.03	16.12.2003	No action recommended	<p>Mr Dupuis</p> <p>In the context of a non-violent action of civil disobedience carried out in Rome in 1997, Mr Dupuis, a Belgian citizen elected Member of the European Parliament in Italy with the 'Lista della Associazione Politica Pannella/Bonino', together with 20 other militants, was distributing free hashish, after prior notification to the authorities. The purpose of such action, which had taken place before in some many occasions, was said to be to highlight the irrational nature of the punitive prohibitionist laws in force in Italy.</p> <p>As a consequence of the above-mentioned action, Mr Dupuis and 20 other radical militants and leaders were arraigned by the Italian judicial authorities and charged with offences under Article 110 of the Criminal Code and Article 73, paragraphs 4 and 6, of Presidential Decree 309/90, as stated in the order to proceed issued by the judge in charge of preliminary investigations at Rome Magistrate's Court. The trial proceedings culminated in some of the accused being acquitted and others convicted, while in the case of Mr Dupuis the court issued an order instituting separate proceedings pending clarification of the question of his parliamentary immunity. At present, the trial is still pending before the Criminal Court in Rome, Section 10, in connection with legal proceedings number RG 14985/97.</p>	<p><i>Mr Dupuis was elected to the European Parliament from Italy in 1999, and Parliament verified his credentials on 13 December 1999. Mr Dupuis was thus elected as a Member of Parliament from Italy, in an Italian list, and the Committee has unanimously considered that, notwithstanding the fact that Mr Dupuis is a Belgian citizen, he should be considered as Italian from the point of view of the PPI. Any other interpretation of the Protocol would go against the spirit of the text. When the protocol was drafted this kind of situation was not envisaged and therefore not regulated. The Committee considers that it would go against the PPI to recognise different protection to Mr Dupuis and to the other Italian Members of the List where he was elected.</i></p> <p><i>In the present case only Article 10(a) can be applied. Article 10 remits to national law and therefore to national immunity arrangements in Italy. Article 68, first paragraph, of the Italian Constitution provides for the uncensurability (insindacabilità) of Members of Parliament, who may not be called to answer for opinions expressed and votes cast in the performance of their duties. Inviolability (inviolabilità) is established in the second and third paragraphs of Article 68 of the Constitution. The new Law of 20 June 2003 provides in its Article 3 further interpretation of Article 68 of the Constitution. This article of the interpreting law does a quite extensive or liberal interpretation of Article 68 of the Constitution and, somehow, seems to enlarge the protection given by the Constitution as it has been understood by this Committee.</i></p> <p><i>Nevertheless the 'funzione di critica e di denuncia politica' mentioned in the law cannot go as far as to justify criminal offences.</i></p> <p><i>The Committee has considered that Members of the Italian Parliament do not enjoy Parliamentary immunity in respect of legal proceedings in the circumstances reported in part I of this</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
				<i>report.</i>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0051.04	10.02.2004	To uphold the Member's immunity	<p>Mr Pannella</p> <p>According to the information provided by Mr Pannella in his letter to the President of the European Parliament of 1 October 2003, the circumstances relating to his request in defence of his parliamentary immunity were as follows:</p> <p>Mr Pannella wrote a political statement expressing strong disapproval of the way in which the Italian judicial system consistently dealt with paedophilia.</p> <p>This statement was published on the Italian Radical Party's website (www.radicali.it) on 23 June 2001.</p> <p>In response to a complaint by Dr Alfredo Ormanni against Mr Pannella, the Rome Court notified Mr Pannella that a hearing would be held on 31 October 2003.</p>	<p><i>Mr Pannella has expressed disapproval of the steps taken by Italy's judicial authorities to deal with paedophilia. Although such remarks may appear scathing or exaggerated, they are in keeping with the overall tone of the political debate. To state that someone is not sufficiently able or impartial to perform his or her duties is to express a subjective and debatable opinion, but in no way does it go beyond the legitimate right to voice criticism. To accept that it does would amount to placing severe restrictions on freedom of speech.</i></p> <p><i>In a climate of increasingly harsh and hostile political language, the European Parliament has staunchly maintained a very liberal attitude to the opinions expressed in the political arena. It is therefore your rapporteur's view that, in making the remarks contained in the political item published on the www.radicali.it website, Mr Pannella was exercising his freedom of speech in his capacity as a Member of the European Parliament.</i></p> <p><i>These remarks ought to be viewed in the context of the current political controversy surrounding an issue of general interest which has pitted a section of the judicial system against a section of the political establishment.</i></p> <p><i>Hence Mr Pannella's case falls within the scope of Article 9 of the Protocol.</i></p>

Session document	Date of decision	Decision	Member concerned Details of the request	Reasons for the decision (Committee responsible)
A5-0180.04	30.03.2004	No action recommended	<p>Mr Pannella</p> <p>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 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.</p> <p>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 served 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.'</p>	<p><i>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.</i></p> <p><i>In the present case only Article 10(a) can be applied. 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.</i></p> <p><i>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. 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.</i></p>

A5-0184.04	30.03.2004	To uphold the Member's immunity	<p>Mr Schulz</p> <p>On 23 February 2004, without oral proceedings and without hearing the party concerned, the Hamburg District Court issued an order, in the form of a temporary injunction, prohibiting Mr Martin Schulz MEP from making certain statements, described in greater detail below, about 'BILD-Zeitung', on pain of a fine for contempt of court and, if payment could not be enforced, on pain of imprisonment for contempt of court of up to six months (a fine for each instance of contempt of court of up to EUR 250 000.00; imprisonment for contempt of court of up to two years in total). The statements that the Hamburg District Court has prohibited the Member making are as follows:</p> <p>I. In connection with the debate concerning what is known as the 'Statute for Members' and the associated implications for the financial benefits of Members of the European Parliament including, in particular, their entitlements to allowances, to claim or to publish the following about <i>BILD-Zeitung</i>, or to arrange for it to be claimed or published:</p> <ol style="list-style-type: none"> 1. 'Since last autumn an unparalleled smear campaign has been conducted against the European Statute for Members ... compliantly taken up by Germany's "most colourful" tabloid'; 2. The facts were 'deliberately misreported' (<i>bewusst falsch berichtet</i>) by the newspaper. <p>II. With regard to the implications of the Statute for Members, as originally planned, for the pension entitlements of Members of the European Parliament, to claim or to publish, or to arrange for it to be claimed or published, with reference to reports by <i>BILD-Zeitung</i>:</p> <ol style="list-style-type: none"> 1. 'Now the next fairy story is being served up in a bid to use sensationalism to drive up circulation'; 	<p><i>Article 9 of the PPI is directly applicable in the Member States of the European Union and, in accordance with the principles developed by the European Court of Justice, may not be restricted by national law. It protects Members, in particular, against civil proceedings in connection with press publications concerning controversial political topics¹. There are therefore serious doubts as to whether the second sentence of Article 5 of the German Europaabgeordnetengesetz, cited by the applicant in the proceedings to secure the temporary injunction, is compatible with Community law.</i></p> <p><i>Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties.</i></p> <p><i>Although the case in point relates to the defence of parliamentary immunity, the same principles must apply. In accordance with those principles, [the Committee] notes that when the statements at issue were made by Mr Schulz in the press release of 15 January, he was exercising his freedom of speech in connection with the performance of his duties as a Member of Parliament. The question of whether the constitutional task laid down in Article 190(5) of the Treaty establishing the European Community, which requires the adoption of regulations and general conditions governing the performance of the duties of Members of the European Parliament ('Statute for Members'), is being fulfilled is one of public interest. The publisher of Mr Schulz's press release of 15 January 2004 was the press department of the PSE Group of the Social Democratic Party in Europe, comprising the PSE Members in the European Parliament. This press release was</i></p>
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¹ Cf. Recent decisions of the European Parliament of 1 July 2003 (A5-0243/2003), 23 September 2003 (A5-0309/2003) and 16 December 2003 (A5-0421/2003).

		<p>2. 'the statement that Members of the European Parliament will receive an increase of up to 68% in their pensions following the planned reform of the Statute for Members is "a complete fabrication".'</p> <p>The background to this temporary injunction on the Member was a statement made by him, as chairman of the PSE Group in the European Parliament, in a press release issued by the PSE Group on 15 January 2004, concerning reporting in Germany about the Statute for Members. The press release is the subject of Notice to members No 10/2004.</p>	<p><i>published on 15 January 2004 during a plenary session of the European Parliament in Strasbourg. Pursuant to the 'Protocol annexed to the Treaty of Amsterdam on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol' the European Parliament has its seat in Strasbourg.</i></p> <p><i>Since it is one of the primary duties of Members elected directly by the people to express their opinions on political issues orally or in writing, and since the press releases in question are directly linked to a matter under discussion in Parliament, it is undoubtedly the case that the statements in question were made in performance of the Member's duties (Article 9 of the Protocol on the privileges and immunities of the European Communities of 8 April 1965).</i></p> <p><i>Your rapporteur further considers that the order by the Hamburg District Court constitutes inadmissible legal proceedings against a Member within the meaning of Article 9 of the Protocol on the privileges and immunities of the European Communities.</i></p> <p><i>The size of the threatened fine for contempt of court in the order of 24 February 2004 (a maximum of EUR 250 000 in each instance) is intended to act as a deterrent against a repetition of the statement, and to prevent potential imitators from making similar statements. In the event of contravention of the order, the Member is even threatened with imprisonment for contempt of court of up to two years. It can therefore be assumed that the threat of a fine and imprisonment for contempt of court is akin to a punitive measure, since both individual prevention and general prevention are significant characteristics of criminal prosecution.</i></p> <p><i>The documents forwarded to the European Parliament show that the Hamburg District Court interpreted the scope of the immunity of Members of the European Parliament exclusively in accordance with German law. The objection to this is that the legal situation of Members is governed primarily by the Protocol on privileges and immunities of 8 April 1965, which is primary Community law and is thus directly applicable by each Member</i></p>
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A5-0185.04	30.03.2004	To uphold the Member's immunity	<p>Mr Lehne</p> <p>On 23 February 2004, without oral proceedings and without hearing the party concerned, the Hamburg District Court issued an order, in the form of a temporary injunction, prohibiting Mr Klaus-Heiner Lehne MEP from making certain statements, described in greater detail below, about <i>BILD-Zeitung</i>, on pain of a fine for contempt of court and, in the event that payment thereof cannot be enforced, on pain of imprisonment for contempt of court of up to six months (fine for each instance of contempt of court of up to EUR 250 000; imprisonment for contempt of court of up to two years in total).</p> <p>The statements that the Hamburg District Court has prohibited the Member making are as follows:</p> <p>I. In connection with the debate concerning what is known as the 'Statute for Members' and the associated implications for the financial benefits of Members of the European Parliament</p>	See Mr Schulz, A5-0184.04, identical reasons

			<p>including, in particular, their entitlements to allowances, to claim or to publish the following about <i>BILD-Zeitung</i>, or to arrange for it to be claimed or published:</p> <ol style="list-style-type: none"> 1. 'For five days an unparalleled campaign, verging on a smear campaign, has been conducted against the European Statute for Members in <i>BILD-Zeitung</i>'; 2. The facts were 'deliberately misreported' (<i>bewusst falsch berichtet</i>) by the newspaper. <p>II. With regard to the implications of the Statute for Members, as originally planned, for the pension entitlements of Members of the European Parliament, to claim or to publish, or to arrange for it to be claimed or published, with reference to reports by <i>BILD-Zeitung</i>:</p> <p>'that it is "a complete fabrication" that Members of the European Parliament will receive an increase of up to 68% in their pensions under the new arrangements'.</p> <p>The background to this temporary injunction on the Member is a statement made by him, as coordinator and shadow rapporteur of the PPE-DE Group on the Committee on Legal Affairs and the Internal Market, in a press release issued by that Group on 15 January 2004, concerning reporting in Germany about the Statute for Members. The press release is the subject of Notice to members No 9/2004. See also Mr Schulz, A5-0184.04, identical grounds.</p>	
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A5-0281.04	22.04.2004	To uphold the Member's immunity	<p>Mr Bossi</p> <p>The background to these proceedings was a civil action brought before the Court in Brescia by Ms Paola Braggion, the petitioner, resident in Como, with the following objectives:</p> <ul style="list-style-type: none"> - to establish that the statements by Umberto Bossi, in the newspaper articles of 24 May 2001 and 25 May 2001 in various Italian newspapers, have damaged the honour, reputation and personal integrity, as well as the general personal rights of the petitioner; - to sentence Mr Bossi to pay damages owing to these statements as the court sees fit. 	<p><i>A civil action may also constitute prosecution by the state of a Member of Parliament within the meaning of Article 9 of the PPI.</i></p> <p><i>Two separate criteria must be borne in mind:</i></p> <ul style="list-style-type: none"> - <i>the manner and the political context in which the contentious statements by a Member of the European Parliament were made;</i> - <i>the amount of the civil damages sought by the petitioner.</i> <p><i>Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts or statements of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties. The right to make such statements is of key importance for the role of a Member of Parliament elected by the people.</i></p> <p><i>In accordance with those principles [it is noted] that the statements at issue by the former MEP Umberto Bossi constitute an expression of opinions during a political exchange of views. These statements must be seen in the political context of the current political dispute between some sections of the judiciary and part of the political establishment and concern a matter of genuine public interest and concern. The right to make such statements is of paramount importance for the role of a Member of Parliament elected by the people.</i></p> <p><i>The former MEP Umberto Bossi has placed the substantial suspended prison sentence handed down to him in a general political context by accusing the Italian judiciary as a whole of administering justice in too political a manner.</i></p> <p>...</p>
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A5-0282.04	22.04.2004	No action recommended	<p>Mr Bossi</p> <p>The background to these proceedings was a civil action brought before the Court in Brescia by Ms Paola Braggion, the petitioner, resident in Como, with the following objectives:</p> <ul style="list-style-type: none">- to establish that the statements by Umberto Bossi, in the newspaper articles of 24 May 2001 and 25 May 2001 in the <i>Padania</i> newspaper, damaged the honour, reputation and personal integrity, as well as the general personal rights, of the petitioner;- to sentence the accused to pay damages owing to these statements, as the court sees fit.	<p><i>The Committee responsible had recommended that the European Parliament should defend the immunity of Mr Bossi on the same grounds as in the previous case (A5-0281.04). The plenary did not follow this recommendation.</i></p>
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A6-0059/2004	08.12.2004	To waive immunity	<p>Mr Rainer Wieland</p> <p>At 6.54 p.m. on 22 June 2004, Mr Rainer Wieland was driving through Gerlingen on the L 1180, travelling out of Stuttgart. The vehicle he was driving turned left at the intersection with Fritz von Graevenitz Strasse. In the course of this manoeuvre, Mr Wieland's vehicle struck a motorcycle travelling in the opposite direction. The driver of the motorcycle sustained contusions, and his passenger was seriously injured.</p> <p>The first on-the-spot investigation was carried out by the police, which collected evidence. The public prosecution service stayed proceedings because of Mr Wieland's parliamentary immunity. Through his barrister, Mr Wieland made it known that he wished the case to be dealt with as swiftly as possible and consequently would not oppose the waiver of his parliamentary immunity.</p> <p>In that request, the principal prosecutor of the Stuttgart public prosecution service asked leave to initiate proceedings against Mr Rainer Wieland, on two charges of causing physical injury by negligence (coincidence of offences arising from the same punishable act), pursuant to Articles 229 and 52 of the German Criminal Code (<i>Strafgesetzbuch</i>).</p>	<p><i>Under Article 3(1) of the Act concerning the Election of Representatives of the European Parliament by Direct Universal Suffrage of 20 September 1976, the 2004 to 2009 parliamentary term had not yet begun on the date of the road accident in question, 22 June 2004. The first session held after the elections opened on 20 July 2004. However, under Article 3(2) the term of office of Mr Rainer Wieland, who had been a Member of the European Parliament in the 1999 to 2004 parliamentary term, had not yet expired. As it follows from the very purpose of parliamentary immunity that its effects apply throughout a Member's term of office, Mr Rainer Wieland still enjoyed parliamentary immunity.</i></p> <p><i>The acts of which Mr Wieland, a German Member of the European Parliament, is accused were committed on the territory of the Federal Republic of Germany. Mr Wieland enjoys, therefore, the immunity accorded to Members of the Bundestag, as set out in Article 46 of the Basic Law of the Federal Republic of Germany (Grundgesetz).</i></p> <p><i>Article 46 of the Basic Law of the Federal Republic of Germany lays down the scope of parliamentary immunities. Paragraph 1 thereof stipulates that 'at no time may a Member be subjected to court proceedings or disciplinary action, or otherwise called to account outside the Bundestag for a vote cast or for any speech or debate in the Bundestag or in any of its committees' (Indemnität). Paragraphs (2) and (4) of Article 46 lay down rules on parliamentary immunity. The law further stipulates that a Member 'may not be called to account or arrested for a punishable offence without permission of the Bundestag'.</i></p>
NT585779EN.doc (external translation)			PE 360.487/REV2	

NT585779EN.doc (external translation)			PE 360.487/REV2	<p><i>It is also necessary to take into account Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities, together with the principles established by the European Parliament and applied consistently over the years in connection with requests for waivers of immunity. There can be no question of waiving a Member's immunity if the acts of which the Member is accused form part of, or are directly related to, his political activities. Nor can there be any question of waiving immunity if there are any grounds for suspecting that the bringing of criminal proceedings was motivated by a desire to thwart a Member of Parliament's political activities.</i></p> <p><i>In the case in question, the proceedings brought against Mr Rainer Wieland relate to a criminal charge of causing physical injury by negligence arising from a car accident. These actions have no bearing on Mr Wieland's political activities.</i></p>
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A6-0006/2005	09.02.2005	Not to uphold immunity	<p>Mr Koldo Gorostiaga</p> <p>1. A certain sum of money (EUR 200 304), that Mr Gorostiaga claims to be his property, was seized by the Court of First Instance of Paris in Case P.02.082.3902/5.</p> <p>The above-mentioned sum was found in possession of the treasurer of the 'Euskal Herritarrok' party and Mr Gorostiaga claimed that this came from the allowances paid to him by Parliament. The seizure of the money was the subject of an unsuccessful appeal by the former Member.</p> <p>Mr Gorostiaga maintained that this seizure violated his parliamentary immunity as conferred by Article 9 of the Protocol on Privileges and Immunities of 8 April 1965 (PPI), because, as he wrote in his letter, 'parliamentary immunity is intended to ensure the personal protection of Members of Parliament and constitute a procedural safeguard, and because immunity protects the beneficiary against any attempt to deprive him of his property'.</p> <p>He also affirmed that the seizure violated Article 10(b) of the Protocol, because he considered that 'legal proceedings ... should be interpreted as including any measure provided ... which prevents the Member from performing his duties...'. The seizure of the money constituted - according to Mr Gorostiaga - a 'legal proceeding' impeding the Member in the performance of his duties as a parliamentarian.</p> <p>Thirdly, he claimed that the seizure of the money from the treasurer on the grounds of contravention of customs regulations was in breach of Article 7 of the PPI (he clearly meant Article 8).</p> <p>In conclusion, Mr Gorostiaga asserted that the seizure of his alleged property amounted to a violation of the PPI.</p>	<p><i>1. Before assessing the possible infringement of the PPI, it is useful <u>to state three facts</u> which affect every transgression denounced by the former Member:</i></p> <p><i>(a) it has not been proved that the money seized by the French authorities is undoubtedly the money paid by Parliament as indemnities or as travel expenses to the former Member. The money was seized from the treasurer of a political party, 'Euskal Herritarrok', not from the former Member. <u>Mr Gorostiaga's claim that the money seized is the money paid to him by Parliament remains to be ascertained.</u></i></p> <p><i>(b) <u>Case No P.02.082.3902/5 initiated in France has been brought not against the former Member but against two other members of 'Euskal Herritarrok', Mikel Corcuera and Jon Gorrotxategi.</u> Mr Gorostiaga was later involved in the procedure only because he claimed to be the owner of the money seized.</i></p> <p><i>(c) Mr Gorostiaga has not at any time been prosecuted.</i></p> <p><i>Only the judgment of the 'Cour d'appel de Paris' of 11 June 2004 makes reference to Mr Gorostiaga as a person mis en examen; <u>no other point of the judgment makes reference to any kind of proceedings brought or to be brought against Mr Gorostiaga.</u></i></p> <p><i>2. It is instructive to consider how and to what extent the above-mentioned facts and allegations fall within the scope of the privileges and immunities granted by Chapter III, Articles 8 to 10(b) of the PPI:</i></p> <p><i>(1) <u>Article 8, second paragraph, point (b)</u> grants MEPs in other Member States, with respect to customs and exchange control, the same facilities as those accorded to representatives of foreign governments on temporary official missions.</i></p> <p><i>This <u>protection is granted only to Members</u> and not to their aides or assistants or any other persons working with them. The wording of the article admits of no other interpretation.</i></p>
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NT585779EN.doc			<p>2. The second complaint made by Mr Gorostiaga was that he would have been declared ‘<i>mis en examen</i>’ (under examination) by the second investigating Chamber of the Court of Appeal of Paris, on 11 June 2004, in connection with Case P.02.082.3902/5.</p> <p>He therefore considered that he had been somehow prosecuted or under investigation, and hence that the proceedings were conducted in breach of Article 9 of the PPI.</p> <p>PE 360.487/REV2</p>	<p><i>But even if this protection could be extended to assistants (an argument which it is difficult to uphold given the wording of this article and the following), the formalities provided for by Article 27 of the <u>Vienna Convention of 18 April 1961 on diplomatic relations (which requires an official document indicating the status of the diplomatic courier)</u> have not been met.</i></p> <p><i>(2) <u>Article 9</u> grants full protection to members in respect of opinions expressed or votes cast by them in the performance of their duties.</i></p> <p><i>In the light of the cases considered by the Committee on Legal Affairs and the clear-cut language of this article of the Protocol, it is difficult to accept that the facts established could fall within the circumstances considered in this article. Moreover, the money was seized from a third person and not from the Member himself. Article 9 protects members in respect of opinions expressed or votes cast in Parliament, or even when they are not physically within the premises of the House, but is limited to circumstances in which they are acting solely as parliamentarians.</i></p> <p><i>Even if the money had been seized from Mr Gorostiaga, or even if the connection between the money and the Member were clearly established, it would still be very difficult to conclude that the situation under consideration falls within the scope of the protection afforded by Article 9: <u>The Committee on Legal Affairs has always been very careful not to extend the scope of this article beyond its natural purpose.</u></i></p> <p><i>(3) <u>Article 10</u> provides: ‘During the sessions of the European Parliament, its members shall enjoy: (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.’</i></p> <p><i>As has already been established, <u>there are no proceedings against Mr Gorostiaga in France.</u> This fact confounds his ambiguous declaration as to his having been <i>mis en examen</i> - an affirmation that has not had any follow-up or effect at any time throughout the proceedings against the treasurer.</i></p> <p><i>Secondly, it is highly doubtful that <u>Article 10 can apply to former Members of Parliament.</u> There exists no case-law covering this situation.</i></p>
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A6-0208/2005	05.07.2005	To uphold the Member's immunity	<p>Mr Jean-Charles Marchiani</p> <p>By decision No 1784 of 16 March 2005, the French Court of Cassation annulled without remand judgment No 2 of the <i>Chambre de l'instruction</i> (investigation procedure section) of the Paris Court of Appeal of 8 December 2004, which had declared null and void the tapping of a telephone line registered in the name of Mr Jean-Charles Marchiani in the period from 14 June to 19 July 2004.</p> <p>The interception of telephone calls had been ordered by the investigating judge at the Paris <i>Tribunal de Grande Instance</i> (Court of First Instance) in connection with a criminal investigation into suspected receiving of stolen property and misappropriation of corporate assets by Mr Jean-Charles Marchiani and others: including the supposed payment, between August 1991 and January 1994, of sums amounting to FF 9 703 826 into Mr Marchiani's Swiss bank accounts. This sum allegedly represented an illegal commission paid by a company to obtain a contract with Paris Charles De Gaulle Airport for a baggage transport, storage and retrieval system.</p> <p>The relevant documentation clearly shows that the interception of the telephone line was ordered by the French investigating judge from 14 June 2004, the day after the elections to the European Parliament, and ended on 9 August 2004. It is obvious that the judge mistakenly believed that, once the elections were in progress, Mr Marchiani's term of parliamentary office had come to an end, whereas, under Article 5(1) and (3) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage, it did not come to an end until the eve of the new parliamentary term, in other words at midnight on 19 July 2004.</p>	<p><i>Mr Jean-Charles Marchiani had been a Member of the European Parliament during the fifth parliamentary term, from 20 July 1999 to 19 July 2004.</i></p> <p><i>The question at issue is whether the parliamentary immunity enjoyed by Mr Marchiani should have prevented the judicial authorities of the French Republic from tapping his telephone line.</i></p> <p><i>Article 10(a) of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 applies in this case:</i></p> <p><i>'During the sessions of the European Parliament, its Members shall enjoy in the territory of their own state, the immunities accorded to members of their parliament.'</i></p> <p><i>This provision refers back, therefore, to the rules applying in France to members of the national parliament, which also apply, by virtue of the Protocol, to French Members of the European Parliament.</i></p> <p><i>The case in question is covered by Article 100-7 of the French Code of Criminal Procedure, which reads as follows:</i></p> <p><i>'No interception may be made on the telephone line of a Member of Parliament or Senator unless the President of the assembly to which he belongs is informed of the interception by the investigating judge.</i></p> <p><i>(...)</i></p> <p><i>The formalities set out by the present article are prescribed under penalty of nullity.'</i></p> <p><i>It follows that, by virtue of the combined provisions of Article 10(a) of the Protocol on the Privileges and Immunities of the European Communities and Article 100-7 of the French Code of Criminal Procedure, the French judicial authority could not lawfully carry out any interception of Mr Marchiani's telephone line without having previously informed the President of the European Parliament.</i></p>
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A6-0213/2005	05.07.2005	To waive immunity	<p>Mr Ashley Mote</p> <p>Mr Mote has been indicted in relation to the wrongful payment of welfare benefits. This relates to events that occurred some years before Mr Mote's election to Parliament, between February 1996 and September 2002.</p> <p>During that time Mr Mote received from various government agencies EUR 105 699 in benefit money.</p> <p>The Prosecutor alleges that Mr Mote was dishonest in his applications for benefits in that he failed to declare his business interests in four companies.</p> <p>The prosecution's case is that Mr Mote lied in his application form and review form for Income Support, Housing Benefit and Council Tax Benefit. He received these benefits for years without declaring his involvement in various businesses, assets and incomes.</p> <p>The prosecutor's case is very well substantiated.</p> <p>Mr Mote faces imprisonment for a period of between 18 months and 3 years if found guilty.</p> <p>The Prosecutor has emphasised the seriousness with which fraud is viewed in the UK. It is also the case in most other Member States of the Union.</p> <p>The Prosecutor also mentions that Mr Mote's political views or responsibilities in no way influence the prosecution and that the investigations were conducted as expeditiously as possible. There is no reason to doubt these affirmations. The proceedings seem well engaged.</p> <p>The Prosecutor emphasised that a Member of the UK Parliament would be liable for prosecution in the same circumstances as in the current case.</p>	<p><i>The law applicable is the Protocol on Privileges and Immunities (PPI) of 8 April 1965, the Rules of Procedure of the European Parliament and the European Parliament practice on dealing with immunity issues.</i></p> <p><i>It has to be pointed out, in the first place, that there has never been a single request for waiving immunity from the UK. There is also very little case law on Article 8 and nothing relating to Article 8(1).</i></p> <p><i>As regards Article 8 and Article 10, second paragraph, it is useful to note the purpose of immunity as it has been defined since the Donnez report in 1986: 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, and with a view to explore whether immunity has to be waived or not, the principle set by Parliament over the years is that of the 'independence of European parliamentary immunity from national parliamentary immunity'.</i></p> <p><i>Therefore, when the effect of the proceedings brought against a Member is to diminish his own or Parliament's independence, immunity should not be waived. It follows from this that the EP must not concern itself with the substance of the criminal proceedings except when considering whether or not fumus persecutionis may exist.</i></p>
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		<p>Her Majesty's Attorney General asks the EP:</p> <p>a) to confirm that the prosecution against Mr Mote may proceed in accordance with the Protocol on Privileges and Immunities, in particular Article 8;</p> <p>b) that in the event that Mr Mote is held to enjoy any privilege, to waive it so that he may be prosecuted and, if convicted, punished.</p> <p>Mr Mote, argues through his lawyer that he would be protected by immunity as established in Articles 8 and 10 second paragraph, of the 1965 Protocol. He claims 'that the requirement for Mr Mote to attend Court for his trial was incompatible with the free movement of members of the European Parliament under Article 8 of the Protocol'.</p> <p>This interpretation of Article 8 has made the Court hesitate and compelled it to request the waiving of Mr Mote's immunity in case Parliament considers that it does in fact exist under Article 8.</p>	<p><i>Articles 8 and 10, second paragraph, protect Parliament's independence, granting Members of Parliament certain rights not necessarily covered by Articles 9 and 10(a) and (b). It is important to examine which kind of privileges these two articles may reasonably cover:</i></p> <p><i>1. With respect to Article 10, second paragraph, it is linked to the first paragraph of Article 10 and completes the immunity granted in (a) and (b). When a Member is in the territory of their own state, she/he enjoys the immunities granted to the Members of her/his Parliament. When in the territory of another state (i.e. giving a conference or in a demonstration), from any measure of detention and from legal proceedings. Immunity is also applied when the members are travelling to or from the place of meeting of the European Parliament. Mr Mote was not travelling from England to France when he committed the wrongful acts alleged by the Prosecutor. He was not travelling at all. This argumentation is also admitted by the Court which does not consider it necessary to request Parliament to waive immunity on the basis of Article 10(2). Mr Mote cannot be reasonably protected by Article 10, second paragraph.</i></p> <p><i>2. With respect to Article 8 of the Protocol, which is the one strongly voiced by Mr Mote's Attorney, and at the core of the Prosecutor's Application, it should be considered whether or not this article gives protection to Mr Mote against prosecution in the UK.</i></p> <p><i>Article 8 is clearly intended to ensure the freedom of movement of Members. It was drafted at a time when it was not as easy for European citizens to move around the Union as it is now. Its main purpose is to prohibit restrictions of any kind on the free movement of Members. This article also provides protection on customs issues and exchange control facilities.</i></p>
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				<p><i>When Parliament has decided not to uphold immunity (see later Pannella or Dupuis cases) or not to waive immunity (see Florenz or Jeggle cases), it has not envisaged asking the Courts to guarantee Member's rights to attend plenary sessions or other Parliament meetings.</i></p> <p><i>If the House wants to introduce this new possibility (that while a Member is on trial and the waiving of immunity has been requested and accepted by Parliament, the Court should guarantee the right to attend Parliament's meetings), then it should consider doing it through the EP's right and autonomy to waive or not to waive immunity or to waive it in a conditional way. This new right of Members would then be established through Article 10(1a), as has been done, for example, with fumus persecutionis.</i></p> <p><i>Regardless, in this particular case the Court has shown its readiness to ensure Mr Mote's attendance at plenary and it is not necessary to consider such an extension of immunity rights.</i></p> <p><i>Mr Mote has not claimed either way and neither has the Court that he may be protected by Article 9. This Article is obviously not applicable here and should automatically be excluded.</i></p> <p><i>On the contrary, Article 10(a) would be applicable to Mr Mote, but would not provide him with any kind of immunity. It refers back to British law and we already know that no protection at all is given to British MPs in these circumstances. Mr Mote's defence has also accepted this situation.</i></p> <p><i>It may also be said that the British judge would not have been obliged, under Article 10(a), to request the waiving of Mr Mote's immunity to proceed against him, except, perhaps, if the Court had had doubts about the intentions of the Prosecutor or any other person (which obviously is not the case).</i></p>
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				<i>Nevertheless, once the request has been submitted, there is nothing to prevent the European Parliament considering other issues i.e. whether a Member's immunity should be waived or not, as it has been done. Article 19 of the PPI states that the Institutions will cooperate with the authorities of the Member States and Rule 7(2) of the Rules of Procedure says that the committee responsible 'shall make a proposal for a decision which simply recommends the adoption or the rejection of the request'.</i>
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A6-0209/2005	05.07.2005	To uphold immunity	<p>Mr Umberto Bossi</p> <p>Mr Fabrizio Comencini, former member of Mr Bossi's party (Lega Nord), sued Mr Bossi for damages before the Padua District Court.</p> <p>In his pleadings, Mr Comencini complained that Mr Bossi, on several occasions, had spoken in terms which had been seriously offensive and detrimental to his reputation.</p> <p>In particular, the <i>Giornale di Vicenza</i> of 9 October 1998, referring to the Lega Nord Congress in Bassano del Grappa, reported that Mr Bossi had said towards Mr Comencini and his supporters: 'Spit in his eye'. 'Traitors, insects, scroungers, layabouts. First he split the MSI and then the Lega Nord: schism is in his DNA'. 'We are men, we are not Comencini'. 'A puppet in the hands of the puppet master from Arcore'. 'Crush him'.</p> <p>On other occasions Mr Bossi declared that Mr Comencini 'was plotting in the shadows' and 'was considering giving a hand to the Polo delle Libertà coalition and its leader, Silvio Berlusconi the mafioso' to allow the 'mafioso's party to win' and 'we shall never ally ourselves with the mafioso' ('La Padania' of 27 October 1998, 29 September 1998 and 13 October 1998). Also: 'Cosa Nostra dictates the line to be followed by Berlusconi, who manipulates Galan and Comencini in the Veneto' ('La Padania' of 13 October 1998): 'Comencini (...) the bought man, the man bribed by Berlusconi' ('Il Gazzettino' of 1 December 1998).</p>	<p><i>The key point in this case is to determine whether the statements, which are the subject of the legal proceedings, were made by Mr Bossi in the performance of his duties as Member of the European Parliament.</i></p> <p><i>A civil action may also constitute prosecution by the state of a Member of Parliament within the meaning of Article 9 of the PPI.</i></p> <p><i>Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts or statements of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties. The right to make such statements is of key importance for the role of a Member of Parliament elected by the people.</i></p> <p><i>The statements by Mr Umberto Bossi constitute an expression of opinions during a political exchange of views. These statements must be seen in the context of a political dispute between politicians, after the division of a political party, and concern a matter of genuine public interest. In conclusion these statements do not exceed the bounds of legitimate political criticism.</i></p>
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A6-0210/2005	05.07.2005	To uphold immunity	<p>Mr Umberto Bossi</p> <p><u>I. Brescia District Court</u></p> <p>On the evening of 26 February 1996, Umberto Bossi, leader of the <i>Lega Lombarda</i> (Lombard League) political organisation and Member of the Italian Chamber of Deputies, held a meeting in Tradate, during which he made a number of remarks about the judiciary or, more precisely, about a representative thereof, expressing himself as follows: '<i>There are magistrates who just love to put people in jail. In the province of Varese, too, there's one of them, who's a big bastard. I won't give his name, because everyone knows who he is.</i>' Mr Bossi's remarks were reported in the press and, in particular, in the newspapers <i>Il Giorno</i> and <i>La Prealpina</i> on 6 March 1996.</p> <p>On 28 March 1996, Mr Agostino Abate, Deputy Public Prosecutor at the Varese District Court, brought an action for defamation on the basis of the news reported in the newspapers referred to above.</p> <p>On the basis of the above facts Mr Bossi was charged with the offence of defamation, aggravated by having been committed in the press and also against a public servant (Article 595 (I) and (III) and Article 61(10) of the Italian Criminal Code).</p> <p>The District Court of Brescia found Umberto Bossi guilty of the offence of defamation ascribed to him, and sentenced him to a period of imprisonment of one month and ten days and ordered him to pay the costs of the proceedings and the damages to the aggrieved party.</p>	<p><i>The key point is to determine whether the statements, which are the subject of the legal proceedings, were made by Mr Bossi in the performance of his duties as Member of the European Parliament.</i></p> <p><i>Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts or statements of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties. The right to make such statements is of key importance for the role of a Member of Parliament elected by the people.</i></p> <p><i>In accordance with those principles, the statements at issue by Mr Umberto Bossi constitute an expression of opinions during a political exchange of views.</i></p>
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		To uphold immunity	<p><u>II. Bergamo District Court</u></p> <p>On the evening of 4 August 1995, Mr Bossi gave two speeches at public meetings, in the presence of several hundred onlookers, first in Brembate Sopra and then in Albano Sant'Alessandro, as part of the <i>Lega</i> Festivals in those two locations.</p> <p>During the meeting in Brembate, Mr Bossi, after expressing his own views about Italian political affairs in recent years and about the role played by the political force that he represented, directed criticism towards the 'fascists', saying, 'Anyone who enters Parliament knows that this has always been a political force for sale, that it was and is a political force close to and fit for use by the wealthy, gluttonous Andreotti faction, which means the most mafia-like section of the Christian Democrats; that it's the same party as always, which gave its votes there, always in proximity, with close relations - I'm saying that because I'm a nice guy - but I really mean continuous relations with the mafia; fascist means mafioso, right? (Applause.) We should ... we must ... take care to identify whoever's voted fascist, it doesn't involve the A.N., etc., we're dealing with fascists. Every one of them is an enemy of the North, remember that well and identify them one by one. I said so, I said so, so we'll do it if they grab the votes, house by house, because we booted out the fascists after the war (Applause.) Enemies of the North, identify them one by one, house by house, don't let that riff-raff escape'. A little later in the speech, he said, 'And so we need to pay attention, remember them one by one, remember and tell each other. "I've heard that he votes fascist", let's go and get them, filthy trash. The times are right for that riff-raff. They say that they want to come to Mantua for the Youth Festival. Oh, poor lads, poor fascists; Lombardy's a place for respectable people, but don't tread on our toes, because we'll eat you alive, you fascists, rotten, stinking fascists.</p>	<p><i>The key point is to determine whether the statements, which are the subject of the legal proceedings, were made by Mr Bossi in the performance of his duties as Member of the European Parliament.</i></p> <p><i>Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts or statements of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties. The right to make such statements is of key importance for the role of a Member of Parliament elected by the people.</i></p> <p><i>In accordance with those principles, the statements at issue by Mr Umberto Bossi constitute an expression of opinions during a political exchange of views.</i></p>
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		Not to uphold immunity	<p><u>III. Milan Magistrates' Court</u></p> <p>Mr Bossi was charged with the offences set out in Articles 110, 337 and 339 of the Italian Criminal Code, in that each of them, acting in complicity and with each other's moral support and material assistance and that of other, unidentified persons, thereby reinforcing each others' criminal intentions and engendering the material conditions for the offence to be committed, used violence against, and threatened, officers of the state police, namely the Verona and Milan general investigations and special operations division (DIGOS) and the Milan general crime prevention office, who were conducting a search of the premises of the Milan headquarters of the Lega Nord, ordered by the Verona Public Prosecutor, in Milan on 18 September 1996.</p> <p>In the course of that police operation, inter alia, the officers were pushed, pulled, kicked and punched. Some of them were also injured.</p> <p>In particular Mr Bossi violently tugged an Inspector's uniform, tearing off his jacket and tunic. He also insulted, with other people, the officers of the state police in the course of the search referred to above under (A), railing against them as 'fascists', 'mafiosi' and 'Pinochet'.</p> <p>At that time Mr Bossi was a Member of the Italian Parliament. After a first decision, taken by the Chamber of Deputies (on 16 March 1999), that the facts at issue in the criminal proceedings pending before the Magistrate's Court in Milan, were covered by Italian parliamentary privilege, the Constitutional Court, as the outcome of a conflict of powers between the Parliament and the Court of Appeal of Milan, pursuant to Article 68(1) of the Constitution, annulled that decision, finding that insults and acts of resistance and violence are in no way acts to which parliamentary privilege may apply.</p>	<p>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.</p> <p>In the present case, only Article 10(a) can be applied:</p> <p><i>'During the sessions of the European Parliament, its members shall enjoy:</i></p> <p><i>(a) in the territory of their own State, the immunities accorded to members of their parliament;</i></p> <p>Article 10 remits to national law and therefore to national immunity arrangements in Italy. Article 68, first paragraph, of the Italian Constitution provides for uncensurability of Members of Parliament, who may not be called to answer for opinions expressed and votes cast in the performance of their duties. Inviolability is established in the second and third paragraphs of Article 68 of the Constitution.</p> <p>In the case in point the second paragraph of Article 68 shall be applied:</p> <p><i>'Without authorization 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.'</i></p> <p>In the light of these provisions, Italian MPs do not qualify for parliamentary immunity in these circumstances.</p>
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A6-0268/2005	14.9.2005	To waive immunity	<p>Mr Matsakis</p> <p>The request is based on the submission of the Attorney-General of the Republic of Cyprus addressed to the President of the European Parliament for the waiver of parliamentary immunity in order to undertake criminal investigations of two cases in which Mr Matsakis is personally involved. The first case concerns accusations raised by a police officer who was in charge of the operation during which he wounded a client of Mr Matsakis. The police officer claims that Mr Matsakis offered his personal assistance with the case against him in exchange for certain monetary sum, ensuring that the police officer be freed from any responsibility for wounding Matsakis' client. The second case ensues from these accusations, giving rise to a suspicion that Mr Matsakis might have trafficked certain amount of antiquities without being officially registered to acquire and possess them.</p>	The committee responsible held that since the charges do not relate to the political activities of Mr Matsakis nothing hinders criminal investigation to be held against him.
A6-0289/2005	6.10.2005	To waive immunity	<p>Mr Zelezny</p> <p>The request to waive parliamentary immunity was raised by the Prague Metropolitan Court carrying out proceedings against Mr Zelezny for evasion of taxes, duties, and other compulsory payments. Prior to becoming MEP Mr Zelezny was a senator of the Parliament of the Czech Republic. The Senate has waived his parliamentary immunity on the grounds of the same and/or similar changes as are those for which the Prague Metropolitan Court requests his MEP immunity to be waived.</p>	Since the Senate has waived the immunity of Mr Zelezny he does not enjoy parliamentary immunity in his own state. Having claimed that charges raised against him are politically motivated attempt to cause him a damage the European Parliament has examined whether or not there is an evidence of <i>fumus persecutionis</i> . <u>Regarding</u> the background of the case, response from the Senate, explanations provided by relevant Czech authorities, and arguments presented by Mr Zelezny the Parliament has decided to waive his immunity for the purposes of prosecution proceedings.

A6-0290/2005	6.10.2005	To waive immunity	Mr Zelezny The request to waive parliamentary immunity was raised by the Prague Public Prosecutor accusing Mr Zelezny of a fraud on creditor. During the criminal prosecution Mr Zelezny was elected a senator of the Parliament of the Czech Republic. The Senate has waived his immunity based on the same charges as are those for which the Prague Public Prosecutor requests his MEP immunity to be waived.	Since the Senate has <u>waived</u> the immunity of Mr Zelezny he does not enjoy parliamentary immunity in his own state. Having claimed that charges raised against him are groundless and fabricated the European Parliament has examined whether or not there is an evidence of <i>fumus persecutionis</i> . <u>Regarding</u> the background of the case, response from the Senate, explanations provided by relevant Czech authorities, and arguments presented by Mr Zelezny the Parliament has concluded that his parliamentary immunity be waived for the sole purposes of prosecution proceedings.
A6-0291/2005	6.10.2005	To waive immunity	Mr Zelezny The request to waive parliamentary immunity was raised by the Prague Public Prosecutor on the grounds of accusations that Mr Zelezny has committed acts constituting evasion of taxes, duties, and other compulsory payments. During the criminal prosecution Mr Zelezny was elected a senator of the Parliament of the Czech Republic. The Senate has waived his immunity based on the same charges as are those for which the Prague Public Prosecutor requests his MEP immunity to be waived.	Since the Senate has <u>waived</u> the immunity of Mr Zelezny he does not enjoy parliamentary immunity in his own state. Having claimed that charges raised against him are groundless and fabricated the European Parliament has examined whether or not there is an evidence of <i>fumus persecutionis</i> . <u>Regarding</u> the background of the case, response from the Senate, explanations provided by relevant Czech authorities, and arguments presented by Mr Zelezny the Parliament has concluded that his parliamentary immunity be waived for the sole purposed of prosecution proceedings.

A6-0376/2005	22.11.2005	Not to uphold immunity	<p>Mr Gollnisch</p> <p>The request to defend parliamentary immunity of Mr Gollnisch relates to criminal proceedings initiated against him by Public Prosecutor in Lyon for calling in question crimes against humanity. The accusations concern Mr Gollnisch's performance at the press conference in Lyon where he commented on the so-called "Rousso report". Having made rather critical remarks about political underpinnings of this account, he was questioned on this matter. In response he brought up the issue of World War II. history, demeaning Stalinist crimes, Nuremberg trials, and Katyn massacre. All these comments were perceived as impugning the war atrocities.</p>	<p>The key point in this matter is to determine whether the statements, which are subject of the criminal accusations, were made by Mr Gollnisch in the performance of his duties as MEP. Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts or statements of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties. The right to make such statements is of key importance for the role of a Member of Parliament elected by the people.</p> <p>Having examined the deeds the Parliament has concluded that statements made by Mr Gollnisch do not directly relate to his political activities but rather to his academic involvement as a professor of Japanese and civilisation. Based on these findings, the Parliament has concluded that respective statements do not constitute an expression of opinions during a political exchange of views. Therefore, it cannot be maintained that Mr Gollnisch was acting in performance of his duties as a MEP.</p>
A6-0330/2005	21.11.2005	Not to uphold immunity	<p>Mr Pęczak</p> <p>The request to defend parliamentary immunity relates to criminal investigation initiated by Public Appeal Prosecutor in Łódź that accused Mr Pęczak of receiving a bribe in exchange for certain benefits in the privatisation of Polish energy sector. Having been waived the immunity by Polish Parliament criminal proceedings were brought against Mr Pęczak by the District Court in Łódź that decided on his detention and arrest. Mr Pęczak maintains that the reasons for this detention and arrest as well as subsequent extension of the arrest have political background and as such resulted in the breach of the presumption of innocence, right for defence, and civil rights.</p>	<p>The detention and provisional arrest do not relate to the performance of Mr Pęczak's duties as a MEP. Rather they relate to corruption practices in the period when he was performing his duties as a MEP. Doubts about the legality of the proceedings before the District Court are upon Polish judiciary to decide since the criminal proceedings took place after he was a MEP. Since Mr Pęczak is no longer a MEP the committee is not entitled to examine the allegations regarding possible <i>fumus persecutionis</i>.</p>

A6-0331/2005	21.11.2005	To uphold immunity	Mr Fava The request to defend the immunity of Mr Fava relates to civil proceedings, which have been brought against him for publishing defamatory article about Mr Cintola, a city councillor in Sicily. In his article he reported about police records documenting how Mr Cintola receives bribes from a well-acclaimed tax advisor who coincidentally had been investigated for money laundering. On this basis, he questioned Mr Cintola's suitability to hold public office.	Mr Fava based his article on the previous findings released by the police in the media. Therefore, these accounts were merely a reproduction of the information published in connection with court proceedings. In commenting on the suspicions he was expressing his views on the matter of public concern, which clearly falls under the scope of legitimate political debate. In doing so Mr Fava was carrying out his duties as a MEP.
A6-0084/2006	21.3.2006	Not to uphold immunity	Mr Tomczak The request to defend the immunity of Mr Tomczak relates to charges brought by General Prosecutor accusing him of insulting police officers in performance of their duties. While driving his car the wrong way on a one way street he was repeatedly stopped by police officers. Having refused to identify himself and condemned the police men he was handcuffed and brought to the police station. Mr Tomczak asserts that the charges raised against him are politically motivated, judicial authorities have been manipulated, and the trial is based on false evidence.	The charges against Mr Tomczak do not refer to the opinions expressed or votes cast in the performance of his duties since he was not a MEP at the moment of the event. The allegations regarding <i>fumus persecutionis</i> are unfounded. Mr Tomczak contested he was driving the wrong way. Although there are some doubts as to Mr Tomczak's alleged insults it is upon courts to decide their authenticity. Furthermore, overruling a decision to discontinue the proceedings falls within legal competence of public prosecutor.
A6-0156/2006	19.4.2006	To waive immunity	Mr Pflüger The request to waive parliamentary immunity was raised by the German Federal Ministry of Justice with respect to judicial proceedings pending before the Munich Public Prosecutor Office suspecting Mr Pflüger of insulting behaviour, ill-treatment, deliberate assault, and battery. While taking part on the counter-revolutionary demonstrations, witnessing an arrest of few extremist participants Mr Pflüger was alleged to insult police officers who prevented him from getting into the police cordon to see the arrested person. Mr Pflüger was forbidden to enter the police cordon because he failed to identify himself as a MEP.	The committee responsible held that the charges raised against Mr Pflüger do not relate to his political activities. Further, any presumptions have not been proved that would give rise to doubts that criminal proceedings stem from an intention to damage Mr Pflüger's political reputation. On the basis of these findings, there are no legal and/or factual obstacles in waiving Mr Pflüger's parliamentary immunity.

<u>A6-0273/2006</u>	11.9.2006	To uphold immunity	Mr Sakellariou The request for defence of parliamentary immunity relates to civil proceedings for defamation initiated against Mr Sakellariou. In an interview conducted by a journalist (also a defendant in this case) Mr Sakellariou commented on the future of Greek-Turkish relations stating that the situation might escalate if the claimant, a Member of the Parliament for Thessaloniki, that he named "a neighbourhood Mussolini" practices his foreign policy. The claimant found these remarks as damaging of his reputation as a public figure.	The interview for the newspaper was provided under Mr Sakellariou's capacity as a coordinator for foreign policy of the Socialist Group and was conducted in his office in the Parliament under the presence of photographers. By making these statements Mr Sakellariou was expressing his view on the matter of public interest, exercising thereby his duties as MEP. There is a reason to believe that claimant attempted to avenge Mr Sakellariou for his remarks since he never reacted on the out-of-court settlement and allowed his action to lie dormant for considerable time period.
<u>A6-0329/2006</u>	3.10.2006	Not to uphold immunity	Mr Borghezio The request for defence of parliamentary immunity refers to criminal proceedings initiated by Public Prosecutor in Milan for spraying " Disgrace to Forleo" on the sidewalk in front of the Palace of Justice in Milan during the demonstration induced by a judgment in a terrorist case.	Mr Borghezio alleged that by spraying the inscription on the sidewalk he was expressing his opinion as a MEP. His real intention was not to commit deliberate criminal damage. The central issue here, however, is not the matter of expressing political opinion but rather the matter surrounding these actions, i.e. the damage of spray at the pavement. The charges raised against him were not politically motivated. In fact any other Italian citizen misbehaving in similar manner should be prosecuted since respective actions constitute an offence for which criminal prosecution is mandatory under Italian law. There is not well-founded evidence that a suspicion of tendentious prosecution (<i>fumus persecutionis</i>) arose from the very fact that such a trivial matter had been brought to the criminal courts.
<u>A6-0317/2006</u>	3.10.2006	To waive immunity	Mr Golik The request to waive parliamentary immunity was raised by the Public Prosecutor in Brussels to carry out the investigation for rape and other charges to which the related allegations may give rise to.	The committee responsible held that the charges raised against Mr Golik do not relate to his political activities. Further, any presumptions have not been proved that would give rise to doubts that criminal proceedings stem from an intention to damage Mr Golik's political reputation. On the basis of these findings, there are no legal and/or factual obstacles in waiving Mr Golik's parliamentary immunity.

<p><u>A6-0383/2006</u></p>	<p>14.11.2006</p>	<p>No action recommended</p>	<p>Mr Gabriele Albertini</p> <p>The request relates to the criminal proceeding against Mr Albertini before the Court of Milan. Mr Albertini was accused to assist in the offence of ideological falsity, the offence of attempted abuse of office and the offence of attempted material falsity.</p> <p>The accuses concerned Mr Albertini in his capacity as Mayor of Milan and were connected with the adoption of the draft budget of the municipality of Milan for the year 2003. Precisely Mr Albertini was accused of assisting in tabling false amendments for consideration by the municipal council, signed by members of the political majority and unlawfully intended to prevent discussion of as many as possible of the amendments tables by the opposition.</p>	<p>The immunity of Mr Albertini falls under Italian legislation and can not be considered as immunity to be defended by the Parliament. In the case of Mr. Albertini a question of discrimination might be raised, cause of diametrically opposed attitude of Court of Milan in two similar cases.</p> <p>The committee responsible states, that <i>the Protocol on the Privileges and Immunities of the European Communities</i> of 8 April 1968 does not afford the European Parliament with the means of taking binding action in order to protect Gabriele Albertini.</p>
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<u>A6-0386/2006</u>	14.11.2006	No action recommended	<p>Mr. Gérard Onesta</p> <p>The request for defence of parliamentary immunity relates to criminal proceedings before the Third Chamber of the Court of Criminal Appeals of Toulouse. 15 November 2005 , the above-mentioned court sentenced Mr Onesta to a period of imprisonment of three months and ordered him to pay the costs of proceedings, to pay compensation to the aggrieved parties and to refund to the aggrieved parties the costs of joining the proceedings and of legal representation therein. The reason of that judgement was the participation at the demonstration against genetically modified food which took place in Menville(France) during which the participants destroyed a field of maize measuring about 13.00 sq.m. However le number of the participants amounted about 400 people, Mr Onesta found oneself between the 9 persons who were incriminated by the prosecutors of Toulouse. Only two persons, M. Onesta (MEP) and Noel Mamère (MP) were submitted to the special procedure applicable to offenders found in the act of committing a crime.</p>	<p>The committee responsible stressed that Mr Onesta's case cannot be regarded as a case of immunity to be defended by the European Parliament. Mr Onset's case falls under French legislation. The committee states that Article 26 of French Constitution cannot endanger Mr Onesta's prerogatives as a parliamentarian. The committee underlines that the facts of the punishment more severely than other participants which concern Mr. Onesta " <i>constitutes a clear discrimination against elected politicians, in so far as it seems that, since they can have other and more effective means of expression, they are not permitted to engage in public demonstration in the same way as other citizens, which would entail the unacceptable conclusion that parliamentarians can only act in political assemblies and that, out of those fora, they enjoy fewer rights and means of expression than other citizen.</i></p>
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<p><u>A6-0071/2007</u></p>	<p>29.03.2007</p>	<p>To uphold immunity</p>	<p>Mr. Giuseppe Gargani</p> <p>The request relates to the civil proceedings brought by Ms Di Giovanni, the President of the Tribunale di Sorveglianza, Naples against Mr. Gargani. Ms Di Giovanni requests to pay her EUR 500,000 for the damage allegedly done to her reputation by Mr Gargani's article published in an Italian magazine. The article, entitled "Illogical justice (...) Treating freedom of speech as a crime/Another means of turning the justice system into a travesty of justice? The question inevitably arises after yet another court case causes doubt and dismay". The article criticised the state of justice in Italy on the base of the case of Lino Januzzi, an Italian senator and journalist, who was sentenced to a term of over 2 years' imprisonments, "because the Tribunale de Sorveglianza of Naples, on the basis of an extraordinary interpretation of the law, has rejected applications to suspend the sentence passed on Januzzi for defamation in the course of his activities as a journalist in previous years". Furthermore Mr Gargani criticised the fact that the Court in Naples did not have recourse to penalties other than imprisonment generates an instinctive suspicion of <i>fumus persecutionis</i>. Mr Gargani examined alternatives penalties to imprisonment and the question of the lack of rules on parliamentary immunity as a means of achieving a balance between the arms of the State and of avoiding the judiciary's being able to put pressure on the Parliament. Moreover Mr. Gargani dealt with the subject of politicisation of the judiciary and the role of judicial officers.</p>	<p>Mr Gargani, taken in consideration his special function of Chairman of Parliament's Committee on Legal Affairs, which is responsible for privileges and immunities of members, has a legitimate interest in expressing his opinion on the situation appertaining to parliamentary immunity in Italy. In publishing the article in question Mr Gargani was simply doing his job as a Member of Parliament and Chairman of the Legal Affairs Committee. The committee responsible held that the fact of the deprivation of Parliament from expressing their opinions on matters of legitimate public interest and concern by bringing legal proceedings is unacceptable in a democratic society and manifestly in breach of Article 9 of the Protocol, which is intended to protect Members' freedom of expression in the performance of their duties in the interests of Parliament as an institution.</p> <p>Furthermore the fact that the civil proceedings in question were brought after criminal proceedings were unsuccessfully initiated at the instance of the claimant in respect of the same facts suggests that there is a <i>fumus persecutionis</i>.</p> <p>On the basis of these findings, the Parliament decided to defend the parliamentary immunity.</p>
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<p><u>A6-0140/2007</u></p>	<p><u>24.04.2007</u></p>	<p><u>To uphold immunity</u></p>	<p>Mr Vural Oger</p> <p>The request for waiver of immunity came from the public prosecutor of Brussels Court of Appeal. The public prosecutor 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. The request is motivated by 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</p>	<p>The committee responsible held that the Article 9 of the Protocol on Privileges and Immunities (PPI) does not apply in this case. <i>Absolute immunity is only applicable to "opinions expressed or votes cast by (members) in the performance of their duties".</i></p> <p><i>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. (...) if the intention of the Belgian authorities is to summon Mr Oger 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.</i></p> <p>The committee responsible held that the request for waiver of Oger's immunity cannot be interpreted as a means to enable an investigation to be conducted against him as a defendant. Cause of the lack of the informations concerning the suspicions against Mr Oger and any criminal offences of which he might be accused, it is unable to consider whether there any evidence to suggest that this case is a matter of <i>fumus persecutionis</i>.</p> <p>The committee responsible has decided not to waive Mr Oger's immunity.</p>
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<u>JURI/6/44915</u>			<p>Mr. Gian Paolo Gobbo</p> <p>The 22nd of December 2006 the Italian authorities addressed to the European Parliament and transmitted a request on the consultation on the parliamentary immunity of Mr. Gian Paolo Gobbo. The demand is connected to the penal procedure in front of district Court of Verona</p>	Status : confidentiel
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<p><u>A6-0251/2007</u></p>	<p><u>10.07.2007</u></p>	<p>To uphold immunity</p>	<p>Ms. Mussolini</p> <p>The 24th of July 2006 Anna Maria Pagliari, examining Judge of the District Court of Rome addressed to the European Parliament and transmitted a request of consultation on the immunity of Alessandra Mussolini. The demand relates to civil proceedings that Mr Giuseppe Pisanu, the then Italian Minister for the Interior, brought before the District Court of Rome. Mr Pisanu demanded to confirm the unlawful nature of certain statements made about him by Ms Alessandra Mussolini which were reported and referred to in the press between 13 and 19 March 2005. Furthermore Mr Pisanu requested to obtain redress from Ms Mussolini with respect of those statements. On 13 March 2005, the national media reported statements by Alessandra Mussolini concerning an alleged, but unsubstantiated, plot against her. Ms Mussolini suggested that the then President of the Lazio Region, Mr Francesco Storace with the help of Mr Giuseppe Pisanu, had hatched a political plot to damage the "Alternativa Sociale" list to favour Mr Storaces coalition, whose election candidates included Dr Angelo Pisanu, the claimant's son.</p>	<p>According to Article 9 of the Protocol on privileges and immunities Members of the European Parliament have absolutely Immunity from legal proceedings "<i>in respect of opinions expressed in the performance of their duties</i>".</p> <p>Ms Mussolini in her statements "<i>commented on facts in the public domain which had a European political dimension as they were directly linked to the voter's right to a fair electoral competition and their interest in having all candidates duly admitted to it. In spite of the merely local scope of the Italian administrative elections, the wildest exercise of such a right concerned every European citizen as it was a particular expression of the general and fundamental freedoms as guaranteed by Article 6 of the TEU.</i>"</p> <p>The committee responsible stressed that Ms Mussolini was carrying out her duty as a Member of Parliament in expressing her opinion. Moreover "<i>to seek to gag Members of Parliament in expressing their opinions on matters of legitimate public interests and concern by bringing legal proceedings is unacceptable in a democratic society and manifestly in breach of Article 9 of the Protocol</i> "on privileges and immunities.</p> <p>On the basis of these findings, the Parliament in respect of applicability of Article 9 and 10 of Protocol on the Privileges and Immunities , and the fact that Article 68 of the Italian Constitution covers the statements made by Ms Mussolini and decided to defend the parliamentary immunity.</p>
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<u>A6-0250/2007</u>	<u>10.07.2007</u>	No action recommended	<p>Mr. Ashley Mote</p> <p>Mr Mote addressed to the European Parliament 4 May 2007 and transmitted a request for defence of his immunity relating to criminal proceedings before a court in the United Kingdom.</p>	<p>The immunity of Mr Mote cannot be considered according to committee responsible as immunity to be defended by the Parliament. The committee responsible stressed that Article 10 of the Protocol on privileges and immunities provides that "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..." Having regard to the fact that the criminal proceedings in question have been brought against Mr Mote in the territory of the United Kingdom and taking in to consideration that Members of the United Kingdom Parliament do not enjoy immunity from criminal prosecution.</p> <p>The committee responsible has decided not to defend Mr Mote's immunity</p>
<u>JURI/6/50040</u>			<u>Mr. Witold Tomczak</u>	<u>Status : confidential</u>

<u>A6-0233/2007</u>	<u>19.06.2007</u>		<p>Mr Borghezio</p> <p>Mr Borghezio addressed to the European Parliament 8 November 2006 and transmitted a request for defence of his immunity relates to civil proceedings before the Civil Court of L'Aquila. The request is connected to a civil claim for damages relating to statements of Mr Borghezio that were published in the press. The claimant is magistrate et the Civil Court of L'Aquila and seek to claim compensation for the damage caused to his personal professional reputation, honour, status and personal dignity by a several politicians of various political background.</p>	<p>The absolute immunity applies to "opinions expressed or votes cast by them in the performance of their duties".</p> <p>Mr Borgezio expressed his opinion that was published in the press. In his opinion referring to a judgement of the Civil Court of L'Aquila he was dealing as a politician taking part in the political discussion on the question of the display of crucifixes in the classrooms of nursery schools and primary schools in Italy. Commenting on a subject of public interest, Mr Borghezio was Carrying out his duty as a Member of Parliament .</p> <p>On the basis of these findings, the Parliament decided to defend the parliamentary immunity.</p>
			<p>Mr. Jozsef Szajer</p> <p>The consultation on the immunity of Mr Jozsef Szajer is connected to the wish of Mr Szajer to renounce his immunity relates to judicial proceeding in Hungary.</p>	<p>Status : confidential</p>