JUDGMENT OF THE COURT
10 July 1986 *

In Case 149/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour d'appel de Paris (11ème chambre des appels correctionnels) [11th Criminal Appeal Chamber of the Court of Appeal, Paris] for a preliminary ruling in the proceedings pending before that court between

Roger Wybot

and

1. Edgar Faure,

2. Librairie Plon,

3. Ministère Public [Public Prosecutor's Office]

on the interpretation of Article 10 of the Protocol on the Privileges and Immunities of the European Communities,

THE COURT

composed of: U. Everling, President of Chamber, acting as President, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, O. Due, Y. Galmot and T. F. O'Higgins, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

(a) Mr Wybot, by D. Soulez-Larivière and J. Labbé, of the Paris Bar,

* Language of the Case: French.

(b) Mr Faure, by R. Bondoux, of the Paris Bar,

(c) Librairie Plon, in the oral procedure, by J. Lisbonne, of the Paris Bar,

(d) the Commission of the European Communities, by H. van Lier, a member of its Legal Department, acting as agent,

and the information provided on behalf of the European Parliament by its Jurisconsult F. Pasetti Bombardella and by its Legal Adviser R. Bieber,

after hearing the Opinion of the Advocate General delivered at the sitting on 3 June 1986, gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By a judgment of 9 May 1984 which was received at the Court on 17 May 1985, the cour d'appel, Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 10 of the Brussels Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities (hereinafter referred to as 'the Protocol').

2 That question was raised in the course of the hearing of an appeal brought by Roger Wybot against a judgment of the tribunal correctionnel [Criminal Court], Paris, which had declared inadmissible defamation proceedings initiated by Mr Wybot in so far as they were directed against Edgar Faure, who on the date of the summons was a Member of the European Parliament.

3 The tribunal correctionnel had found that the writ of summons was served on 27 January 1983 and that the European Parliament was in session from 9 March 1982 until 7 March 1983, although it was not actually sitting on 27 January 1983, and had referred to Article 10 of the Protocol, according to which: 'During the sessions of the Assembly, its Members shall enjoy . . . in the territory of their own State, the immunities accorded to members of their parliament'.

4 The cour d'appel, however, was unsure of the actual scope of the word 'session'. It referred to the judgment of the Court of 12 May 1964 (Case 101/63 *Wagner* v *Fohrmann* [1964] ECR 195) in which it was held that 'the European Assembly must be considered in session, even if it is not actually sitting, up to the time of the closure of the annual or extraordinary sessions'. It thought it possible, however, that that interpretation might have to be reconsidered in view of the change in the legal situation after the entry into force of the Brussels Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities (hereinafter referred to as 'the Merger Treaty'), which *inter alia* amended a number of provisions of the Treaties regarding the sessions of the European Parliament. On the basis of those amendments, it held, the Parliament had established a practice according to which the sessions lasted the whole year.

5 By its judgment of 9 May 1984 the cour d'appel de Paris referred the following question to the Court for a preliminary ruling:

'On the basis of the present wording of the relevant provisions and the European Parliament's practice, must Article 10 of the Protocol on the Privileges and Immunities of the European Communities be interpreted as granting to Members of the European Parliament permanent immunity for the whole duration of their term of office, subject to waiver of that immunity by the Parliament, or merely immunity during certain periods of the annual sessions?'

6 In his observations Mr Wybot, the civil claimant in the main proceedings, argues that the judgment of 12 May 1964 interpreting the word 'session' was based on a legal situation which was subsequently fundamentally changed by the Merger

Treaty. Under the provisions in force before 1965, that is to say Article 22 of the ECSC Treaty, which provided for an annual session opening on the second Tuesday in May and closing at the latest at the end of the financial year, that is to say, 30 June of each year, and Article 139 of the EEC Treaty and Article 109 of the EAEC Treaty, which provided for the opening of a session on the third Tuesday in October but did not lay down a closing date, there was necessarily a period during which Parliament was not in session and its Members were not entitled to immunity. Article 27 (1) of the Merger Treaty, amending those provisions, provides for a single annual session which, in the practice of the European Parliament, now lasts the whole year.

7 According to Mr Wybot, the provisions in force since 1965 coupled with the practice of the European Parliament make the convening of extraordinary sessions as provided for in Article 22 of the ECSC Treaty, Article 139 of the EEC Treaty and Article 109 of the EAEC Treaty impossible, although in its judgment of 12 May 1964 the Court clearly stated that 'the concept of "annual sessions" must . . . be regarded in such a way as to reconcile it with the possibility of extraordinary sessions'. Moreover, if the session were held to be a period covering the whole year, the result would be: (a) to confuse the system of immunity 'during the sessions' provided for by the Treaties with a system of immunity during a Member's term of office; (b) to prevent any legal proceedings against Members of the European Parliament in their own country for the whole duration of their term of office; (c) to create a difference between the immunity enjoyed by the Members of the European Parliament and the immunity enjoyed by members of national parliaments, contrary to the first paragraph of Article 10 of the Protocol; (d) to make redundant the second paragraph of Article 10 of the Protocol which grants immunity to Members of the European Parliament 'while they are travelling to and from the place of meeting of the Assembly'. He submits that such a result can be avoided only by interpreting the word 'session' as being confined to the periods during which the European Parliament is actually sitting.

8 Mr Faure, the accused in the main proceedings, considers that the relevant provisions of the Treaties and the Protocol, in the version in force since 1965, have made no alteration in the previously existing situation, and that the practice followed by the European Parliament since that date is no different from its previous practice, so that there is no reason to change the interpretation of the word 'session' given by the Court in its judgment of 12 May 1964.

9 The Commission of the European Communities points out that even before 1965 it was the practice of the European Parliament to close its annual session only on the eve of the opening of the following annual session. The Commission explains that the sessions could be adjourned and reconvened. It adds that there is no basis for concluding that after 1965 the provisions concerning the sessions or the practice of the Parliament were substantially changed in relation to the previous period. As at the time of the facts which gave rise to Case 101/63, the annual sessions of the Parliament follow each other without a break.

10 In accordance with Article 21 of the Statute of the Court of Justice of the EEC, the European Parliament was invited to provide information on the conclusions in relation to the scope of parliamentary immunity which in its view follow from the legal provisions concerning the organization of its sessions and from its own practice in that regard. It stated that in the absence of any definition of the word 'session' in the Treaties or any limit placed on their duration by the Treaties, it was for the Parliament itself to determine the duration of its sessions; it had done so by deciding that each session should last for a year. The Parliament emphasizes that that decision corresponds to the actual situation since, leaving aside the month of August and the Christmas and New Year holiday period, the activity of the European Parliament and its various organs (the Bureau, the enlarged Bureau, the College of Quaestors, *ad hoc* committees, parliamentary delegations) in fact continues without interruption throughout the year.

11 In order to reply to the cour d'appel's question, it is necessary in the first place to consider whether the first paragraph of Article 10 of the Protocol, according to which the Members of the European Parliament enjoy, 'during the sessions of the Assembly . . . (a) in the territory of their own State, the immunities accorded to members of their parliament', requires that reference should be made to national law not only in order to establish the actual scope of the immunity of Members of the European Parliament but also in order to interpret the word 'session'.

12 It must be pointed out in that regard that Article 10 expressly refers to the concept of a session of the European Parliament. It follows that to refer to national law in order to interpret that concept would be incompatible not only with the wording of the Protocol but also with the very objective of that provision, which is intended to ensure immunity for the same period for all Members of the European Parliament, whatever their nationality.

13 In view of the foregoing considerations it must therefore be held that the duration of sessions of the European Parliament can be determined only in the light of Community law.

14 It is therefore necessary to ascertain whether there are provisions of Community law determining the duration of sessions of the European Parliament.

15 It must be pointed out first of all that the first paragraph of Article 22 of the ECSC Treaty, the first paragraph of Article 139 of the EEC Treaty and the first paragraph of Article 109 of the EAEC Treaty were repealed by Article 27 of the Merger Treaty and replaced by the following provision: 'The Assembly shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March'. No indication as to the duration of that session can be inferred, even indirectly, from the other provisions of the Treaties concerning the European Parliament.

16 It follows that in the absence of any provision in the Treaties on the subject, the determination of the duration of its sessions falls within the European Parliament's power to adopt rules for its own internal organization under the first paragraph of Article 25 of the ECSC Treaty, the first paragraph of Article 142 of the EEC Treaty and the first paragraph of Article 112 of the EAEC Treaty, which provide that 'The Assembly shall adopt its rules of procedure, acting by a majority of its Members'. As appears from the judgment of 10 February 1983 (Case 230/81 *Grand Duchy of Luxembourg* v *European Parliament* [1983] ECR 255), that power to decide on its internal organization authorizes the European Parliament to take 'appropriate measures to ensure the due functioning and conduct of its proceedings'.

17 The decision on the date of closure of each annual session is therefore within the discretion of the European Parliament. The consistent practice of the Parliament until now has been that a session lasted for the whole year and was closed only on the eve of the opening of a new session.

18 It must be observed in that regard that Parliament's activities are not confined to the conduct of sittings which, according to its practice, are held for one week of each month, with the exception of August.

19 As the Parliament has explained to the Court in great detail, its activities, in fulfilment of its duties under the Treaties and under secondary law, go far beyond merely holding sittings and extend over virtually the whole year.

20 It must be observed first of all that, as in the case of any assembly with a large number of members, the dispatch of business in plenary sittings must be preceded by preparatory meetings of parliamentary committees, whose task is to prepare draft resolutions to be submitted to the assembly, and of political groups. Inasmuch as the Parliament has, in the exercise of its power to determine its internal organization, set aside one week a month for meetings of committees and one week a month for meetings of groups, it follows that the work of the Parliament is spread over at least three weeks a month throughout the year, with the exception of the month of August and the Christmas and New Year holiday period.

21 Furthermore, in order to carry out the tasks assigned to it by the Treaties the European Parliament has established a number of permanent or temporary organs, such as the Bureau, the enlarged Bureau, the College of Quaestors, *ad hoc* committees and parliamentary delegations which perform specific tasks independently of the plenary sittings.

22 In view of those findings it must be held that the activities of the European Parliament and of its organs in fact continue throughout the year without interruption, except for the month of August and the Christmas and New Year holiday period. An interpretation of the word 'session' limiting immunity to the periods when Parliament is actually sitting might thus prejudice the carrying on of the Parliament's activities as a whole.

23 It remains to be determined whether the practice followed by the European Parliament does not render nugatory the third paragraph of Article 22 of the ECSC Treaty, the second paragraph of Article 139 of the EEC Treaty and the second paragraph of Article 109 of the EAEC Treaty, under which not only a majority of its Members but also other institutions, namely the Council and the Commission, have the right to request that an extraordinary session should be convened. In accordance with the balance of powers between the institutions provided for by the Treaties, the practice of the European Parliament cannot deprive the other institutions of a prerogative granted to them by the Treaties themselves.

24 Article 9 (5) of the Rules of Procedure of the European Parliament expressly provides that Parliament may be convened 'exceptionally'. On at least one occasion the Parliament itself, before the adoption by the Council of Regulation No 1293/79, declared void by the Court in its judgment of 29 October 1980 (Case 138/79 *Roquette* v *Council* [1980] ECR 3333), drew the attention of the Council to the possibility available to it under Article 139 of the EEC Treaty of requesting an extraordinary session of the European Parliament in order to obtain the necessary opinion of the Parliament on the contemplated measure, which had to be adopted at very short notice. It must therefore be held that the provisions of the Treaties referred to above retain their entire effect where the European Parliament, as is its prerogative, decides to close its annual session early.

25 The second paragraph of Article 10 of the Protocol, according to which Members of the European Parliament are also entitled to immunity 'while they are travelling to and from the place of meeting of the Assembly', cannot be relied on in order to challenge an interpretation of the word 'session' which, having regard to the practice of the European Parliament, ensures that the all the objectives of that paragraph are achieved, albeit by means of another provision. Moreover, that paragraph is not without utility, for instance in the event that the European Parliament were to close its annual session early.

26 Finally, with regard to the objection that so extensive an immunity for Members of the European Parliament in fact makes it impossible, sometimes for a very long period, to bring legal proceedings in the national courts against a Member, it should be recalled that, like national parliaments, the European Parliament always has the right to waive a Member's immunity under Article 10 of the Protocol.

27 The answer to the cour d'appel's question should therefore be that Article 10 of the Protocol of 8 April 1965, which grants Members of the European Parliament immunity 'during the sessions of the Assembly', is to be interpreted as meaning that the European Parliament must be considered to be in session, even if it is not actually sitting, until the decision is taken closing its annual or extraordinary sessions.

Costs

28 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, and by the European Parliament, which provided information to the Court under Article 21 of the Statute of the Court of Justice of the EEC, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the cour d'appel, Paris, by judgment of 9 May 1984, hereby rules:

Article 10 of the Protocol of 8 April 1965, which grants Members of the European Parliament immunity 'during the sessions of the Assembly', is to be interpreted as meaning that the European Parliament must be considered to be in session, even if is not actually sitting, until the decision is taken closing its annual or extraordinary sessions.

Everling Bahlmann Joliet

Bosco Due Galmot O'Higgins

Delivered in open court in Luxembourg on 10 July 1986.

P. Heim
Registrar

U. Everling
President of Chamber acting as President