

JUDGMENT OF THE COURT OF FIRST INSTANCE (Seventh Chamber)

15 October 2008^{*}

In Case T-345/05,

Ashley Neil Mote, Member of the European Parliament, represented by J. Lofthouse and C. Hayes, Barristers, and M. Monan, Solicitor,

applicant,

v

European Parliament, represented by H. Krück, D. Moore and M. Windisch, acting as Agents,

defendant,

APPLICATION for the annulment of the decision of the Parliament of 5 July 2005 waiving the applicant's parliamentary immunity,

^{*} Language of the case: English.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Seventh Chamber),

composed of N.J. Forwood, President, D. Šváby and L. Truchot (Rapporteur), Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 21 February 2008,

gives the following

Judgment

Legal context

- ¹ Chapter III of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 annexed to the Treaty establishing a single Council and a single Commission (OJ 1967 152, p. 13) ('the Protocol') states as follows:

'Chapter III

Members of the European Parliament

Article 8

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.

...

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.’

Background to the dispute

- ² Ashley Neil Mote, a British citizen, received various State benefits between 1996 and 2002. Criminal proceedings were brought against him in November 2003 on the ground that those benefits had been obtained on the basis of false declarations. A summons was served on him in January 2004, he was committed on charges on 27 April 2004 and on 10 June 2004 the indictment and case summary were served on him.
- ³ Following his election to the European Parliament in June 2004, the applicant applied for the criminal proceedings pending against him to be stayed, relying on the privileges and immunities that he enjoys in his capacity as a Member of the European Parliament. The prosecution was stayed by Chichester Crown Court on 25 November 2004. That court held that the bail condition under which Mr Mote had been placed

constituted an obstacle to the free movement of Members of the European Parliament (hereinafter ‘Members’), and thus infringed Article 8 of the Protocol.

4 By application dated 3 February 2005, the Attorney General of England and Wales asked the European Parliament:

— to confirm that the prosecution brought against the applicant did not infringe the Protocol, in particular Article 8 thereof;

— in the event that Mr Mote was held to enjoy any privilege or immunity under the Protocol, to waive that privilege or immunity.

5 The application was forwarded to the Committee on Legal Affairs of the Parliament (‘the Committee on Legal Affairs’) and was discussed within that committee on 21 April, 24 May and 20 June 2005. Mr Mote was represented by another Member at the hearing organised by the Committee on Legal Affairs on 24 May 2005. In submissions provided to the Committee on Legal Affairs on the same day (‘the submissions’), he sought the rejection of the application for waiver of immunity.

6 On 20 June 2005, the Committee on Legal Affairs unanimously adopted a report recommending that the Parliament waive Mr Mote’s immunity (‘the report’). That report includes an explanatory statement and a proposal for a decision of the European Parliament.

- 7 By decision of 5 July 2005, the plenary assembly of the Parliament decided to waive Mr Mote's immunity and ordered that the decision and report be sent to the competent authority in the United Kingdom of Great Britain and Northern Ireland ('the contested decision').
- 8 Relying on the waiver of Mr Mote's immunity issued by the Parliament, the national prosecuting authorities applied to the High Court of Justice of England and Wales for the lifting of the stay on the criminal proceedings. By decision of 17 October 2006, that court ordered that the proceedings against the applicant should be resumed.
- 9 On 4 May 2007, the applicant lodged a request for defence of his immunity and of his privileges, which was rejected by the Parliament by decision of 10 July 2007.
- 10 On 17 August 2007, Mr Mote was found guilty at Portsmouth Crown Court and on 4 September 2007, he was sentenced there to nine months' imprisonment. By judgment of 21 December 2007, the Court of Appeal of England and Wales rejected the pleas raised against the conviction of 17 August, except on one count. The applicant applied for leave to appeal on 18 January 2008.

Procedure and forms of order sought

- 11 By application lodged at the Registry of the Court of First Instance on 5 September 2005, the applicant brought this action.
- 12 On 3 November 2005, the applicant sought anonymity in the main proceedings, which he was granted on 14 November 2005. After receiving the parties' observations at the hearing on 21 February 2008, the President of the Seventh Chamber lifted anonymity.
- 13 By an application for interim measures lodged at the Registry of the Court of First Instance on 28 December 2006, the applicant sought the suspension of the operation of the contested decision, pursuant to Articles 225(1) EC, 242 EC and 243 EC. The President of the Court of First Instance dismissed the application by order of 16 March 2007.
- 14 By an application for interim measures lodged on 8 May 2007, the applicant again sought the suspension of the contested decision. That application was dismissed by order of the President of the Court of First Instance on 27 June 2007.
- 15 On 29 August 2007, the applicant brought a third application for interim measures on the same basis, which was dismissed by order of the President of the Court of First Instance on 22 November 2007.

16 The applicant claims that the Court should:

- annul the contested decision;
- in any event declare the decision void as to waiver of privilege, such as that of Article 8 of the Protocol, since the decision speaks only of immunity;
- order the defendant to pay the costs.

17 The European Parliament contends that the Court should:

- dismiss the application as inadmissible;
- in the alternative, dismiss the application as unfounded;
- order the applicant to pay the costs.

Law

Admissibility

- ¹⁸ The Parliament submits that the application should be declared inadmissible on the ground that the applicant is not directly concerned, for the purposes of the fourth paragraph of Article 230 EC, by the decision to waive immunity, in particular in that such a decision leaves a discretion to its addressee.
- ¹⁹ In support of the admissibility of his action, Mr Mote states that, although the privileges and immunities belong to the Communities, the Members are the beneficiaries thereof in accordance with Rule 5 of the Rules of Procedure of the European Parliament (OJ 2005 L 44, p. 1) and that consequently any decision relating to those privileges and immunities is of direct concern to the Member involved.
- ²⁰ It is necessary to examine at the outset whether the decision of 5 July 2005 to waive Mr Mote's parliamentary immunity constitutes a decision which is open to challenge.
- ²¹ It is apparent from settled case-law that the European Community is based on the rule of law inasmuch as neither its Member States nor its institutions can avoid a review of the question whether their acts are in conformity with the constitutional charter, the Treaty, which established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of acts of the institutions (Case 294/83 *Les Verts v Parliament* [1986] ECR 1339, paragraph 23;

Case C-314/91 *Weber v Parliament* [1993] ECR I-1093, paragraph 8; and Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and Others v Parliament* [2001] ECR II-2823, paragraph 48). The Court has also ruled that acts adopted by the Parliament have not, as a matter of principle, been excluded from actions for annulment (*Les Verts v Parliament*, paragraph 24).

- 22 Under the first paragraph of Article 230 EC, the Court of Justice is to review the legality of acts of the Parliament intended to produce legal effects vis-à-vis third parties and, for that purpose, it distinguishes between two categories of acts.
- 23 Acts of the Parliament which relate only to the internal organisation of its work cannot be challenged in an action for annulment (order in Case 78/85 *Group of the European Right v Parliament* [1986] ECR 1753, paragraph 11; order in Case C-68/90 *Blot and Front national v Parliament* [1990] ECR I-2101, paragraph 11; and *Weber v Parliament*, paragraph 9).
- 24 That class of measures includes acts of the Parliament which either do not have legal effects or have legal effects only within the Parliament as regards the organisation of its work and are subject to review procedures laid down in its Rules of Procedure (*Weber v Parliament*, paragraph 10, and *Martinez and Others v Parliament*, paragraph 52).
- 25 By contrast, acts of the Parliament which produce or are intended to produce legal effects in regard to third parties or, in other words, acts whose legal effects go beyond the internal organisation of the work of the institution are open to challenge before the Community judicature (*Weber v Parliament*, paragraph 11, and *Martinez and Others v Parliament*, paragraph 53).

- 26 The Court of First Instance has pointed out that Members, elected as representatives of the peoples of the States brought together in the Community, must, with respect to an act emanating from the Parliament and producing legal effects as regards the conditions under which the electoral mandate is exercised, be regarded as third parties within the meaning of the first paragraph of Article 230 EC (*Martinez and Others v Parliament*, paragraph 61).
- 27 As regards the Protocol, in particular, the privileges and immunities which it grants to the European Communities have a purely functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the Communities (orders in Case 1/88 *SA Générale de Banque v Commission* [1989] ECR 857, paragraph 9, and in Case C-2/88 *IMM Zwartfeld and Others* [1990] ECR I-3365, paragraph 19).
- 28 However, although the privileges and immunities have been granted solely in the interests of the Community, the fact remains that they have been expressly accorded to the officials and other staff of institutions of the Community and to the Members. The fact that the privileges and immunities have been provided in the public interest of the Community justifies the power given to the institutions to waive the immunity where appropriate but does not mean that these privileges and immunities are granted to the Community and not directly to its officials, other staff and Members. Therefore the Protocol confers an individual right on the persons concerned, compliance with which is ensured by the right of recourse provided for in Article 230 EC (see, by analogy, Case 6/60 *Humblet v Belgian State* [1960] ECR 559).
- 29 A decision by which the Parliament waives the immunity of one of its Members has legal effects going beyond the internal organisation of the Parliament since the decision makes it possible for proceedings to be brought against that Member in respect of the matters identified.

- 30 The conditions under which the electoral mandate of the Member concerned is exercised are affected by such a decision, which makes it possible for criminal proceedings against that Member to be brought or continued, accompanied where appropriate by measures restricting his freedom which would interfere with the exercise of his parliamentary mandate. In the present case, the contested decision made it possible for the national prosecuting authorities to request and secure the lifting, by order of the High Court of Justice of England and Wales of 17 October 2006, of the stay on the criminal proceedings brought against Mr Mote.
- 31 The contested decision must thus be considered to be an act which produces or is intended to produce legal effects with respect to third parties. It follows that, in accordance with the criteria established by the Court of Justice in *Weber v Parliament*, it must be possible for the Community judicature to review its legality under the first paragraph of Article 230 EC.
- 32 As regards the Parliament's plea alleging that the action is inadmissible under the fourth paragraph of Article 230 EC, it should be noted that the Parliament accepts that the applicant is individually concerned, but disputes that he is directly concerned.
- 33 By virtue of settled case-law, the notion of direct concern requires the Community measure complained of to affect directly the legal situation of the individual and leave no discretion to the addressees of that measure, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules alone without the application of other intermediate rules (see Case C-404/96 P *Glencore Grain v Commission* [1998] ECR I-2435, paragraph 41 and the case-law cited; Case C-486/01 P *Front national v Parliament* [2004] ECR I-6289, paragraph 34; and Case C-417/04 P *Regione Siciliana v Commission* [2006] ECR I-3881, paragraph 28).

34 In the present case, the immunity provided for by Articles 9 and 10 of the Protocol protects Members against certain measures which are liable to interfere with the exercise of their functions, with the result that a decision to waive that immunity alters the legal situation of a Member, simply because it removes that protection, re-establishing his status as a person who is subject to the general law of the Member States and thus laying him open, without the necessity for any intermediary rule, to measures, *inter alia* those ordering detention and the bringing of legal proceedings, imposed by the general law. It follows that the applicant is directly concerned by the contested decision.

35 The discretion left to the national authorities, following the waiver of immunity, as regards the resumption or discontinuance of proceedings brought against a Member has no bearing on the fact that his legal situation is directly affected, since the effects attached to the decision to waive immunity are restricted to the removal of the protection he enjoyed on account of his status as a Member, which does not involve any additional implementing measure.

36 It follows from the above that the action for annulment must be declared to be admissible.

Substance

37 In support of the action for annulment, Mr Mote relies on four pleas in law. By the first, alleging an error of law, the applicant submits that the Parliament should have determined that the privilege conferred by Article 8 of the Protocol had been infringed. The second plea contains two parts. The first is based on a breach by the Parliament of the Rules of Procedure because it expressed an opinion on the merits of the prosecution brought against Mr Mote. Under the second part, the applicant submits that there was a lack of a fair and complete consideration on the part of the Parliament of the facts and arguments which he had submitted to the Committee

on Legal Affairs. The third plea alleges a lack of full and adequate reasons for the contested decision. The last plea alleges that the decision is unreasonable and disproportionate. According to the applicant, the arguments which he submitted should have led to a refusal to waive his immunity.

The error of law

Arguments of the parties

38 The applicant submits that the contested decision contains an error of law, on the ground that the Parliament should have concluded that the privilege which he enjoyed under Article 8 of the Protocol had been infringed. A distinction must be drawn between the privilege, recognised by Article 8, relating to the free movement of Members, and the immunity laid down in Article 10, which concerns their inviolability in the event of legal proceedings. In the present case, the nature of bail under English criminal law prejudices the privilege in Article 8 in so far as the accused must make himself available to the national court. His participation at parliamentary sessions, but also at committee sessions, therefore depends on the discretion of the judge, which constitutes a restriction on the free movement of Members and an interference with the independence of the Parliament, regardless of whether the judicial authorities in the United Kingdom display a willingness to cooperate. That interpretation of Article 8 led Chichester Crown Court to stay the prosecution, pending the Parliament's response to the application for waiver of immunity. By adopting a different interpretation of Article 8 in the explanatory statement of the report and by failing to decide on the waiver of privilege, the Parliament erred in law.

- 39 The Parliament takes the view that the plea is unfounded. It explains that it merely responded to an application for waiver of immunity. It states that the explanatory statement does not necessarily reflect its position as an institution, and sets out its interpretation of Articles 8 and 10 of the Protocol, stating that those provisions have a functional character.
- 40 According to the Parliament, Article 8 of the Protocol, adopted at a time when movement within the Communities was not as easy as now, seeks essentially to prevent any restriction of an administrative, police or customs nature on the movement of a Member. As such, it does not provide immunity in judicial matters. Article 10 of the Protocol provides for inviolability of Members for acts carried out in the territory of the Member's own State or in that of any other Member State, other than opinions expressed or votes cast by them in the performance of their duties, which fall within Article 9. In addition, Article 10 grants Members immunity while they are travelling to and from the place of meeting of the Parliament. Those provisions would be redundant if the privilege granted by Article 8 could impede legal proceedings. The Parliament adds that no privilege granted by Article 8 could be waived on the basis of Article 10.
- 41 As regards the possibility of the national court's impeding the activity of the European Parliament if it could control the applicant's movements, the Parliament recalls that relations between Member States and Community institutions are governed by a principle of sincere cooperation, under Article 10 EC. The national judicial authorities are under an obligation to support as far as possible the proper functioning of the Community institutions and to respect their prerogatives, as the United Kingdom court did, failing which the Member State could be held to account before the Community judicature.
- 42 The applicant accepts that the privileges and immunities of the Communities are primarily of a functional character and disputes that he ever claimed that Article 8 provides for absolute immunity against criminal proceedings. None the less, he explains that he maintains that the interpretation of the privilege granted by Article 8

should be very general and that, in specific circumstances, it may constitute an obstacle to a prosecution process the nature of which involves measures restricting freedom of movement. That privilege prevents interferences with the functions of a Member in a completely different way from the provisions of Article 10.

- 43 The Parliament submits that Mr Mote's interpretation of Article 8 must be rejected, since the prohibition on restrictions on the movements of a Member cannot confer greater protection than the immunity granted in Article 10. In that case, the immunity conferred on the Member would be absolute, since a privilege cannot be waived, unlike immunity.

Findings of the Court

- 44 The applicant criticises the Parliament for failing to find that he was protected by the privilege established by Article 8 of the Protocol and that that privilege was infringed by the prosecution brought against him, although it is for the Parliament, and not the national court, to determine that issue by ruling on the risk of legal proceedings hindering the Member in the exercise of his parliamentary functions.

- 45 It is apparent from the last paragraph of Article 10 of the Protocol, according to which immunity cannot prevent the European Parliament from exercising its right to waive the immunity of one of its Members, that the Parliament is competent to decide on an application for waiver of the immunity of a Member. Rules 6 and 7 of the Rules of Procedure of the European Parliament supplement that provision by specifying the rules governing the procedure for waiver of immunity.

46 By contrast, there is no rule, either in the Protocol or in the Rules of Procedure of the European Parliament, establishing the Parliament as the competent authority for deciding whether the privilege provided for by Article 8 of the Protocol applies.

47 Furthermore, the field of application of Articles 8 and 10 of the Protocol is not the same.

48 The Court has held that the effect of the first paragraph of Article 8 of the Protocol is to prohibit Member States from imposing, inter alia by their practices in matters of taxation, administrative restrictions on the free movement of Members (Case 208/80 *Bruce of Donington* [1981] ECR 2205, paragraph 14). As that provision states, the privilege is intended to ensure that Members may exercise their freedom to travel to or from the place of meeting of the Parliament.

49 However, those restrictions, although not listed comprehensively by the first paragraph of Article 8 of the Protocol, which refers to administrative 'or other' restrictions, do not include restrictions arising out of legal proceedings since such restrictions fall within the scope of Article 10, which sets out the legal regime governing immunities, except in the specific area, provided for in Article 9, of opinions expressed or votes cast by Members in the performance of their duties. Legal proceedings are expressly mentioned by subparagraph (b) of the first paragraph of Article 10 of the Protocol as being among the restrictions from which the Member is immune, in the territory of any Member State other than his own, during the sessions of the Parliament. Likewise, under subparagraph (a) of the first paragraph of Article 10 of the Protocol, Members enjoy, during the same period, in the territory of their own States, the immunities accorded to members of their parliaments, some of which protect members of national parliaments from legal proceedings to which they may be subject. Lastly, the second paragraph of Article 10 provides that immunity likewise applies to Members while they are travelling to and from the place of meeting of the Parliament. The existence of that provision, which, like the first paragraph of Article 8 of the Protocol, protects Members against interference with

their freedom of movement, confirms that the restrictions mentioned by the first paragraph of Article 8 do not include all possible interference with the freedom of movement of Members and that, as shown by the provisions of Article 10 examined above, legal proceedings must be regarded as being covered by the legal regime established by Article 10.

50 The objective of Article 10 of the Protocol is thus to safeguard the independence of Members by ensuring that pressure, in the form of threats of arrest or legal proceedings, is not brought to bear on them during the sessions of the Parliament (order in Case T-17/00 R *Rothley and Others v Parliament* [2000] ECR II-2085, paragraph 90).

51 Article 8 of the Protocol has the function of protecting Members against restrictions on their freedom of movement, other than judicial restrictions.

52 As it has not been asserted that the risks of interference with the exercise by Mr Mote of his parliamentary functions were constituted by restrictions of a kind other than those stemming from the proceedings brought by the law enforcement authorities of his Member State of origin, it must be concluded that the Parliament did not err in law when it decided to waive Mr Mote's immunity without ruling on the privilege which was granted to him in his capacity as a Member or deciding that Article 8 of the Protocol had been infringed in the present case.

53 It follows from the above that the plea must be rejected.

The expression of an opinion by the Committee on Legal Affairs on the merits of the prosecution in breach of the Rules of Procedure of the European Parliament and the lack of a fair and complete consideration of the facts and arguments

Arguments of the parties

54 The plea relied on by the applicant is divided into two parts.

— First part: breach of the Rules of Procedure of the European Parliament and expression of an opinion on the merits of the prosecution

55 The applicant submits that, under Rule 7(7) of the Rules of Procedure of the European Parliament, the Committee on Legal Affairs was forbidden to express an opinion, in its report, upon the merits of the prosecution brought against him. The breach of that rule affects the validity of the contested decision. He adds that the opinion expressed by the Parliament in the report lacks any reference to the comments which he had made in that regard.

56 The Parliament contends that the plea is manifestly unfounded. It observes that the explanatory statement included in the report was the sole responsibility of the rapporteur and that an opinion expressed by the rapporteur cannot be invoked as a ground for challenging the resolution adopted by the Parliament. In any event, the words used by the rapporteur do not relate to the merits of the prosecution, but to the fact that it is well substantiated.

— The second part: lack of fair and complete consideration of the facts and arguments

⁵⁷ The applicant maintains that there is no sign in the report of the Committee on Legal Affairs that it, and therefore the Parliament, considered adequately or at all the substantive arguments he had raised. That lacuna impedes the applicant's right to know the conclusions which the Committee on Legal Affairs reached and therefore renders the decision void.

⁵⁸ The Parliament contends that that submission is unfounded. It recalls that, in accordance with Rule 7(3) of its Rules of Procedure, Mr Mote had the opportunity to be heard before the Committee on Legal Affairs on 24 May 2005, when he was represented by another Member. It maintains that the contested decision refers expressly to that hearing in its preamble.

Findings of the Court

— The first part of the plea

⁵⁹ It should be stated at the outset that, by following the proposal made to it by the Committee on Legal Affairs to waive Mr Mote's immunity and by referring, in the contested decision, to the report of that committee without voicing any reservations

regarding the content of the explanatory statement contained in that document, the Parliament adopted as its own the reasons in the report. It follows that the criticism made in the first part of this plea must be regarded as directed against the reasons for the contested decision.

⁶⁰ Rule 7(7) of the Rules of Procedure of the European Parliament provides that '[t]he [C]ommittee [on Legal Affairs] ... 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'.

⁶¹ It must be examined whether the Committee on Legal Affairs adopted a view in its report in favour of the prosecution brought and expressed an opinion on Mr Mote's guilt. At point II.2 of the report, the rapporteur states, first, that the prosecutor's case is 'substantiated'. That assessment, which expresses the rapporteur's opinion as to whether the prosecution brought against Mr Mote had an adequate basis, cannot be equated with an opinion relating to his guilt or the expediency of that prosecution. Secondly, the same is true, at point II.3, of the purely objective statement by the rapporteur regarding the seriousness with which the offence in question is viewed in the United Kingdom and in most Member States. In stating, lastly, at the same point, that 'the prosecutions seem[ed] well engaged', the rapporteur merely pointed out that the proceedings were at an advanced stage and should culminate in a hearing, and he did not prejudge their outcome.

⁶² It follows from the above that Rule 7 of the Rules of Procedure of the European Parliament was not breached and that consequently the first part of the plea must be rejected.

— The second part of the plea

- ⁶³ The substantive arguments which the applicant submits were not considered adequately or at all by the Parliament are the following: the delay in the proceedings initiated against him, which has had the effect of prejudicing the proper functioning of the Parliament, contrary to Article 10 EC; the way in which the United Kingdom authorities dealt with the application for waiver of his immunity; the lack of clarity of the application for waiver of immunity as regards the seriousness of the alleged offences and the merits of the prosecution; and the possibility of the Parliament's waiving a privilege.
- ⁶⁴ As regards, first, failure to take into consideration the submission regarding the delay affecting the prosecution brought by the national law enforcement authorities against him, Mr Mote submits that that delay interfered with the exercise of his parliamentary mandate and, therefore, with the functioning of the Parliament, giving rise to an infringement by the United Kingdom of the principle of sincere cooperation, which is provided for by Article 10 EC.
- ⁶⁵ It should be pointed out that, in stating that there was no ground to doubt the affirmations of the Attorney General according to which 'Mr Mote's political views or responsibilities in no way influence[d] the prosecution and ... the investigations [had been] conducted as expeditiously as possible' and that Chichester Crown Court could have made an application for a waiver of immunity if it had 'had doubts about the intentions of the Prosecutor or any other actors (which obviously is not the case)', the Parliament implicitly but definitely rejected the submission regarding delay. It took the view that there was no intention of interfering with the exercise of Mr Mote's parliamentary mandate behind the prosecution, basing its decision not only on the information provided by the Attorney General but also on the analysis of Chichester Crown Court.
- ⁶⁶ It must be added that it is not apparent from the arguments raised by the applicant before the Committee on Legal Affairs that the length of the investigations and, therefore, the delay in his appearing before the criminal court disclose a desire to

prejudice his activity as a Member. The observations by Mr Mote were made in response to the Attorney General's assertions that the length of the investigations was due to the concealment of information on Mr Mote's part, in particular as regards a bank account on the Isle of Man, and to his lack of cooperation. Mr Mote submitted that he disputed that he refused to cooperate with the investigators, and that he wished to remain silent, as the rights of defence permit him to. Furthermore, he submitted that the investigators' delay in questioning Barclays Bank on the Isle of Man was unjustifiable. None of those details could prove that there was any wish to prejudice his activity as a Member.

⁶⁷ Secondly, as regards the conduct of the United Kingdom authorities in dealing with the application for waiver of immunity, it must be pointed out that the Parliament stated that there was no doubt that the application had been properly submitted. In making that statement, the Parliament considered the applicant's arguments relating to the way in which the application for waiver of immunity had been dealt with and concluded that none of them precluded the examination of that application.

⁶⁸ Thirdly, the Parliament did not express a view on the arguments relating to lack of clarity, including in respect of the merits of the prosecution, of the application for waiver of immunity and to the seriousness of the alleged offences. The Parliament thus refrained from making any assessment as regards the merits of the prosecution — which an examination of that submission called for — and, in so doing, complied with the provisions of Rule 7(7) of its Rules of Procedure.

⁶⁹ Finally, as regards the submission concerning the possibility of waiving the privilege established by Article 8 of the Protocol, the Parliament did not err in law, as has been explained in paragraphs 44 to 52 above, when it decided on Mr Mote's immunity without ruling on the privilege which was granted to him in his capacity as a Member or deciding that Article 8 of the Protocol had been infringed in the present case. As the Parliament lacks the competence to waive the privilege provided for by Article 8, it cannot be complained that it did not consider the arguments set out in that respect.

70 It follows from the above that it has not been established that the contested decision failed to take into consideration adequately or at all the facts and arguments relied upon by the applicant.

71 Accordingly, the second part of the plea must be rejected.

The lack of full and adequate reasons

Arguments of the parties

72 The applicant submits that the Parliament is required to state reasons for a decision to waive immunity. The lack of reasons infringes the democratic requirements to which the European Parliament is subject under Article 6 EU, but also under the principle of transparency of its activities which is set out in its Rules of Procedure.

73 In the present case, the applicant submits that the report of the Committee on Legal Affairs provides the reasons for the contested decision but disputes that they are full and adequate on the ground that they did not deal with all the arguments put forward in support of maintaining his immunity. According to the applicant, the earlier case-law of the Parliament in the field of immunity should have resulted in adequate reasoning, whereas the reasoning provided does not make it possible either for readers of the decision to understand the reasons which led to its adoption or for the parties to assess its validity and possibly challenge it.

74 The Parliament contends that the plea should be rejected.

Findings of the Court

75 Under Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, each application is required to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. According to consistent case-law it is necessary, for an action to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. Whilst the body of the application may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application, cannot make up for the absence of the essential arguments in law which, in accordance with the abovementioned provisions, must appear in the application (Case C-52/90 *Commission v Denmark* [1992] ECR I-2187, paragraph 17; orders in Case T-56/92 *Koelman v Commission* [1993] ECR II-1267, paragraph 21, and Case T-154/98 *Asia Motor France and Others v Commission* [1999] ECR II-1703, paragraph 49; and Case T-201/04 *Microsoft v Commission* [2007] ECR II-3601, paragraph 94). Consequently, it is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (Case T-84/96 *Cipeke v Commission* [1997] ECR II-2081, paragraph 34, and *Microsoft v Commission*, paragraph 94).

76 In the present case, the applicant submits that there was a lack of full and adequate reasons for the contested decision without stating the points on which he feels that reasons were lacking. The application merely notes the necessity for a modern democratic body to give reasons for its decisions fully and adequately and to deal with all the points raised, and the importance of such reasons. Mr Mote does not specify the matters of law and fact which, in his opinion, required further explanation on

the part of the Parliament. The only specific submission relates to the expression of opinions, contrary to Rule 7(7) of the Rules of Procedure of the European Parliament, which constitutes the subject-matter of the first part of the second plea and has been rejected by this judgment.

77 It follows from the above that this plea must be declared inadmissible.

The unreasonable and disproportionate nature of the decision

Arguments of the parties

78 The applicant submits that the arguments which he presented against waiver of immunity were such that the Parliament ought to have made a reasonable and proportionate decision and thus have refused to waive immunity. He refers to the arguments in the submissions annexed to the application, stating that the arguments will not be set out *in extenso*.

79 The applicant submits that, in the absence of any reason for rejecting the argument relating to delay, no decision-making body could reasonably have granted waiver and that the Parliament should have refused to waive privilege or immunity.

80 He raises the point as to the ability of the Parliament to waive a privilege rather than an immunity, since there is no reference in the Rules of Procedure of the European Parliament to waiver of privilege.

- 81 The applicant states that a full and apposite examination of his arguments would not have led the Parliament to waive his immunity and refers to the report of the Committee on Legal Affairs in the Sichrowsky case in order to submit that the Parliament applies a presumption against waiver of immunity in situations of *fumus persecutionis*.
- 82 The applicant focuses attention on the delay in the prosecution against him, which disrupts the activities of the Parliament and prejudices the principle of sincere cooperation between Community institutions and Member States. He explains that he would have wished to know the Parliament's analysis on that point.
- 83 Lastly, in the reply, he submits that the Committee on Legal Affairs did not examine the requests as to further information set out in his submissions.
- 84 The Parliament contends that the plea is unfounded.

Findings of the Court

- 85 As regards the plea, put forward at the stage of the reply, relating to failure to examine the requests as to further information set out in the submissions, it must be noted that it follows from Article 44(1)(c) in conjunction with Article 48(2) of the Rules of Procedure that the application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based, and that the introduction of a new plea in law in the course of proceedings is not allowed unless it is based on matters of law or of fact which come to light in the course of the procedure. However, a plea which constitutes an amplification of a plea previously made, either expressly or by implication, in the original application and is closely linked to it must be declared admissible (Case T-37/89 *Hanning v Parliament* [1990] ECR II-463,

paragraph 38). The same applies to a complaint made in support of a plea in law (Case T-231/99 *Joynton v Commission* [2002] ECR II-2085, paragraph 156).

86 In the present case, the applicant makes the complaint that the Committee on Legal Affairs failed to examine his requests or suggestions for seeking further information for the first time in his reply. That complaint, which specifically concerns the investigation of the Committee on Legal Affairs in respect of the application for waiver of immunity and not the examination of the factors which should have been taken into account by the Parliament in adopting the contested decision, cannot be regarded as constituting an amplification of the complaints made in the original application.

87 It must therefore be found to be inadmissible.

88 As regards the ground of challenge that the arguments presented in the submissions should have resulted in the Parliament's making a reasonable and proportionate decision by refusing to waive immunity, it must be stated that those arguments are not set out in the application and that the applicant requests that reference be made to the submissions, which are attached as an annex. According to the settled case-law referred to in paragraph 75 above, it is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based.

89 That ground of challenge must therefore be found to be inadmissible, except in so far as it relates to the delay of the national law enforcement authorities. However, as the Court has already decided on that argument in paragraphs 64 to 66 above, it must be rejected as unfounded.

90 It follows from all of the above that the plea must be held to be partially inadmissible and partially unfounded and that the application must be dismissed.

Costs

- ⁹¹ Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, and the Parliament has applied for costs, he must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Seventh Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Ashley Neil Mote to bear his own costs and to pay those of the European Parliament.**

Forwood

Šváby

Truchot

Delivered in open court in Luxembourg on 15 October 2008.

Registrar

N.J. Forwood

E. Coulon

President