Possible infringement of the Protocol on the privileges and immunities of the European Communities by a Member State

2005/2187(INI) - 15/11/2005 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution drafted by Giuseppe **GARGANI** (EPP-ED, Italy) and decided to ask the Commission to initiate proceedings under Article 226 of the EC Treaty against the French Republic for infringement of primary Community law. The background to this matter is as follows:

In its Judgment No 1784 of 16 March 2005 the French Court of Cassation argued that no law or convention, nor any constitutional principle, allowed it to conclude that Article 100-7, first subparagraph of the French Code of Criminal Procedure was applicable to Members of the European Parliament. Therefore, it did not apply Article 10 of the Protocol on the privileges and immunities of the European Communities, thus denying a French Member of the European Parliament the benefit of Article 100-7, first subparagraph of the French Code of Criminal Procedure enjoyed by national members of parliament.

Parliament has called for the judgment to be annulled or overturned, and at all events for it to cease to have any practical or legal effects. Following Parliament's statements, the Minister of Justice of the French Republic has said that, since the judgment of the Court of Cassation had become final, no legal action allowed it to be annulled or overturned as requested by that resolution.

Parliament pointed out in its resolution that the Protocol on the privileges and immunities of the European Communities forms part of primary Community law. By refusing to apply Article 100-7 of the French Code of Criminal Procedure to a Member of the European Parliament of French nationality, the competent French court has infringed primary Community law. It is clear from the case-law of the Court of Justice that a Member State may be held responsible for a decision by a national court. Since the Commission has a duty as guardian of the Treaties to initiate proceedings under Article 226 of the EC Treaty, the European Parliament asked it to do so against France.