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# REPORT

on the request for defence of the immunity and privileges of Luigi de Magistris  
(2010/2122(IMM))

Committee on Legal Affairs

Rapporteur: Bernhard Rapkay

## CONTENTS

	<b>Page</b>
PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	3
EXPLANATORY STATEMENT .....	5
RESULT OF FINAL VOTE IN COMMITTEE.....	9

## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for defence of the immunity and privileges of Luigi de Magistris (2010/2122(IMM))

*The European Parliament,*

- having regard to the request by Luigi de Magistris for defence of his immunity in connection with proceedings pending before an Italian court, as submitted on 5 July 2010 and announced in plenary sitting on 7 July 2010,
  - having heard Luigi de Magistris, in accordance with Rule 7(3) of its Rules of Procedure,
  - having regard to Article 8 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965, and to Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,
  - having regard to the judgments of the Court of Justice of the European Union of 12 May 1964, 10 July 1986, 15 and 21 October 2008 and 19 March 2010<sup>1</sup>,
  - having regard to Rules 6(3) and 7 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A7-0152/2011),
- A. whereas a Member of the European Parliament, Luigi de Magistris, has requested the defence of his parliamentary immunity in connection with proceedings before an Italian court,
- B. whereas the request by Luigi De Magistris relates to a writ of summons filed against him before the Court of Benevento on behalf of Clemente Mario Mastella, a Member of the European Parliament, in connexion with an interview Mr De Magistris gave to an Italian newspaper on 31 October 2009,
- C. whereas, according to the writ of summons, a fragment of that interview (‘Mastella was implicated in one of my investigations and tried to stop me’) constitutes libel, resulting in a claim for damages of €1 000 000 plus costs,
- D. whereas the interview was given at a time when Luigi de Magistris was a Member of the European Parliament, after standing successfully in the 2009 European Parliament elections,
- E. whereas, in accordance with Article 8 of the Protocol on the Privileges and Immunities of the European Union, Members of the European Parliament may not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by

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<sup>1</sup> Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2391, Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente* [2008] ECR I-7929, and case T-42/06 *Gollnisch v Parliament*.

them in the performance of their duties,

- F. whereas, in accordance with Parliament's established practice, the fact that the legal proceedings have been brought under civil or administrative law, or contain certain aspects falling under civil or administrative law, does not *per se* preclude the application of the immunity afforded by that article,
- G. whereas, in giving the interview in question, Luigi de Magistris was acting in performance of his duties as Member of the European Parliament and carrying out political activities by expressing his opinion on a matter of public interest to his constituents,
- H. whereas attempts to prevent Members of Parliament from expressing their opinions on matters of legitimate public interest and concern, and from criticising their political opponents, by bringing legal proceedings are unacceptable in a democratic society and represent a breach of Article 8 of the Protocol on the Privileges and Immunities of the European Union, which is intended to protect Members' freedom of expression when performing their duties in the interests of Parliament as an institution of the European Union,
  - 1. Decides to defend the immunity and privileges of Luigi de Magistris;
  - 2. Instructs its President to forward this decision immediately to the competent authority of the Italian Republic and to Luigi de Magistris.

## EXPLANATORY STATEMENT

### 1. Background

At the sitting of 7 July 2010 the President announced, under Rule 6(3) of the Rules of Procedure, that on 5 July 2010 he had received a request from Mr Luigi de Magistris concerning the defence of his parliamentary immunity with reference to Articles 8 and 9 of the Protocol on privileges and immunities of the European Union, with reference to Article 68 of the Constitution of the Italian Republic as amended by Constitutional Law No 3 of 29 October 1993. The President referred the request to the Committee on Legal Affairs under Rule 6(3). Mr De Magistris was heard by that Committee on 22 March 2011.

The background to the request for defence is as follows: Mr De Magistris was summoned before the Court of Benevento by Clemente Mario Mastella, a Member of the European Parliament, in connection with an interview he gave to an Italian newspaper (the Milan edition of the daily newspaper *Epolis*) which was published on 31 October 2009.

The content of the interview was wide-ranging and concerned the political situation in Italy at the time. The relevant extract which forms the subject of the writ of summons read as follows:

"[interviewer:] *Meanwhile, a new Mastella affair has emerged in Campania.*

[Mr De Magistris:] *Mastella was implicated in one of my investigations and tried to stop me. He says he only made recommendations, but in fact he was at the head of a criminal ring dealing in jobs. If that is how hiring worked at the Arpac (the environment authority, ed.), the environmental disaster in the region is no surprise."*

Mr Mastella alleges that the words "Mastella was implicated in one of my investigations and tried to stop me ..." were intended to give readers the idea that Mr Mastella had sought to abuse his position as Minister of Justice<sup>1</sup> in order to impede Mr De Magistris in his work as public prosecutor. Mr Mastella argues that this allegation is entirely untrue, malicious, and is liable to bring him into serious disrepute, thus constituting libel. His claim for damages amounts to € 1.000.000 plus costs which he intends to "charitably donate to the 'Villaggio dei Ragazzi' in Maddaloni".

On the other hand, Mr De Magistris, in his request of 5 July 2010, argues that the interview was given "as part of [his] political activities". He claims that he is "entitled to criticise a political opponent and should therefore be afforded protection under the Rules of Procedure of the European Parliament and the Protocol on the privileges and immunities of the European Union".

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<sup>1</sup> Although he was elected to the European Parliament in the 2009 Parliamentary elections, at the time-period which Mr De Magistris referred to in the interview, Mr Mastella was Minister of Justice of the Italian Republic and Mr De Magistris was a public prosecutor.

## 2. Law and procedure on the immunity of Members of the European Parliament

Articles 8 and 9 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, read as follows:

*Article 8:*

*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 9:*

*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 other Member States, immunity from any measure or 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.*

The procedure in the European Parliament is governed by Articles 6 and 7 of the Rules of Procedure. The relevant provisions read as follows:

*Rule 6 - Waiver of immunity:*

- 1. In the exercise of its powers in respect of privileges and immunities, Parliament shall seek primarily to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in performance of their duties. (...)*
- 3. Any request addressed to the President by a Member or a former Member to defend privileges and immunities shall be announced in Parliament and referred to the committee responsible.*
- 4. As a matter of urgency, in circumstances where Members are arrested or have their freedom of movement curtailed in apparent breach of their privileges and immunities, the President, after having consulted the chair and rapporteur of the committee responsible, may take an initiative to assert the privileges and immunities of the Member concerned. The President shall notify the committee of that initiative and inform Parliament.*

*Rule 7 - Procedure on immunity:*

- 1. 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.*
- 2. The committee shall make a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity or for the*

- defence of immunity and privileges.*
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. (...)*
  6. *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.*
  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. (...)*

### **3. Justification for the proposed decision**

Article 8 of the Protocol on the Privileges and Immunities of the European Union was expressly invoked by Luigi De Magistris in his request and is applicable in the present case.

The interview was given at a time when Luigi de Magistris was a Member of the European Parliament, following his election during the 2009 European Parliament elections.

In accordance with Parliament's established practice, the fact that the legal proceedings are of a civil or administrative law nature, or contain certain aspects falling under civil or administrative law, does not *per se* prevent the immunity afforded by that article from applying.

As the Court of Justice has held, the scope of the absolute immunity provided for in Article 8 "must be established on the basis of Community law alone"<sup>1</sup>.

The Committee considers that, in giving the interview in question, Luigi de Magistris was acting in the performance of his duties as Member of the European Parliament and carrying out political activities by expressing his opinion on a matter of public interest to his constituents. To seek to prevent Members of Parliament from expressing their opinions on matters of legitimate public interest and concern and from criticising their political opponents by bringing legal proceedings is unacceptable in a democratic society and in breach of Article 8 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 of the European

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<sup>1</sup> *Marra*, cited above, at paragraph 26.

Union.

#### **4. Conclusion**

On the basis of the above considerations and pursuant to Article 6(3) of the Rules of Procedure, after considering the reasons for and against defending the Member's immunity, the Committee on Legal Affairs recommends that the European Parliament should defend the parliamentary immunity of Luigi De Magistris.



## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	11.4.2011
<b>Result of final vote</b>	+: 12 -: 0 0: 0
<b>Members present for the final vote</b>	Marielle Gallo, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Diana Wallis, Zbigniew Ziobro, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Kurt Lechner, Eva Lichtenberger