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*Plenary sitting*

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**A8-0312/2016**

20.10.2016

# **REPORT**

on the request for defence of the privileges and immunities of Mario Borghezio  
(2016/2028(IMM))

Committee on Legal Affairs

Rapporteur: Angel Dzhambazki

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## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for defence of the privileges and immunities of Mario Borghezio (2016/2028(IMM))

*The European Parliament,*

- having regard to the request by Mario Borghezio of 5 January 2016, announced in plenary on 1 February 2016, for the defence of his privileges and immunities in connection with criminal proceedings pending before the Court of Milan (RGNR No 41838/13, RG GIP No 12607/14),
  - having heard Mario Borghezio in accordance with Rule 9(5) of its Rules of Procedure,
  - having regard to Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union and 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, 19 March 2010, 6 September 2011 and 17 January 2013<sup>1</sup>,
  - having regard to Article 1(a) of Italian Law No 205/1993,
  - having regard to Rule 5(2) and Rules 7 and 9 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0312/2016),
- A. whereas a Member of the European Parliament, Mario Borghezio, has requested the defence of his parliamentary immunity, under Articles 8 and 9 of Protocol No 7, in connection with criminal proceedings pending before the Court of Milan; whereas, according to the notice served by the Public Prosecutor's Office, Mr Borghezio is alleged to have advocated ideas founded on superiority and racial or ethnic hatred during a radio programme, which behaviour is punishable under Article 1(a) of Italian Law No 205/1993;
- B. whereas Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union are mutually exclusive<sup>2</sup>; whereas the case in point only concerns allegedly discriminatory opinions expressed by a Member of the European Parliament; whereas, therefore, the applicability of Article 8 alone of the Protocol is self-explanatory;

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<sup>1</sup> Judgment of the Court of Justice of 12 May 1964, *Wagner v Fohrmann and Krier*, 101/63, ECLI:EU:C:1964:28; judgment of the Court of Justice of 10 July 1986, *Wybot v Faure and others*, 149/85, ECLI:EU:C:1986:310; judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440; judgment of the Court of Justice of 21 October 2008, *Marra v De Gregorio and Clemente*, C-200/07 and C-201/07, ECLI:EU:C:2008:579; judgment of the General Court of 19 March 2010, *Gollnisch v Parliament*, T-42/06, ECLI:EU:T:2010:102; judgment of the Court of Justice of 6 September 2011, *Patriciello*, C-163/10, ECLI:EU:C:2011:543; judgment of the General Court of 17 January 2013, *Gollnisch v Parliament*, T-346/11 and T-347/11, ECLI:EU:T:2013:23.

<sup>2</sup> Joined Cases C-200/07 and C-201/07 *Marra*, cited above, paragraph 45.

- C. whereas, according to Article 8 of Protocol No 7, 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 them in the performance of their duties;
- D. whereas the Court of Justice has held, that, in order to enjoy immunity, an opinion must be expressed by a Member of the European Parliament in the performance of his duties, thus entailing the requirement of a link between the opinion expressed and the parliamentary duties; whereas such link must be direct and obvious<sup>1</sup>;
- E. whereas, during the radio programme in question, Mario Borghezio was asked to comment on the appointment and competence of a new member of the Italian Government, namely the new Minister for Integration;
- F. whereas the facts of the case, as manifested in the documents provided to the Committee on Legal Affairs and in the hearing before the latter, indicate that the statements he made during the interview have no direct and obvious connection with his parliamentary activities;
- G. whereas, in particular, the statements alleged to have been made exceed the tone generally encountered in political debate and are, moreover, profoundly unparliamentary in nature; whereas they are contrary to Article 21 of the Charter of Fundamental Rights of the European Union and cannot therefore be deemed to have been made in the performance of the duties of a Member of the European Parliament;
- H. whereas Mario Borghezio cannot therefore be deemed to have been acting in the performance of his duties as a Member of the European Parliament;
- I. whereas the Court of Justice held that, where an action has been brought against a Member of the European Parliament before a national court and that court is informed that a procedure for defence of the privileges and immunities of that Member, as provided for in Parliament's Rules of Procedure, has been initiated, that court must stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible<sup>2</sup>; whereas the Court of Milan, before which legal proceedings had been instituted against Mr Borghezio, refused to stay the proceedings and ordered that they be continued despite a request made by Mr Borghezio on the basis of the relevant case-law of the Court of Justice;
1. Decides not to defend the immunity and privileges of Mario Borghezio;
  2. Deplores the fact that the Court of Milan, in spite of the relevant case-law of the Court of Justice, refused to stay the proceedings brought against Mr Borghezio;
  3. Expects the Italian authorities always to comply with the principle held by the Court of Justice in relation to the obligation upon the competent court to stay the judicial proceedings when a request for defence of the privileges and immunities of a Member of the European Parliament has been submitted;

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<sup>1</sup> Case C-163/10 *Patriciello*, cited above, paragraphs 33 and 35.

<sup>2</sup> Joined Cases C-200/07 and C-201/07 *Marra*, cited above, paragraph 43.

4. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authorities of the Italian Republic and to Mario Borghesio.

## RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	12.10.2016
<b>Result of final vote</b>	+: 15 -: 4 0: 0
<b>Members present for the final vote</b>	Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Enrico Gasbarra, Mary Honeyball, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Evelyn Regner, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Pascal Durand, Heidi Hautala, Sylvia-Yvonne Kaufmann, Virginie Rozière