

Verification of credentials of Mr Beniamino Donnici

European Parliament decision of 24 May 2007 on the verification of credentials of Mr Beniamino Donnici (2007/2121(REG))

The European Parliament,

- having regard to the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage¹,
 - having regard to Rules 3, 4 and 9 of and Annex I to its Rules of Procedure,
 - having regard to the official communication from the Italian authorities concerning the election to the European Parliament of Mr Beniamino Donnici,
 - having regard to the contestation of the validity of the election to the European Parliament of Mr Beniamino Donnici received from Mr Achille Occhetto on 25 March 2007,
 - having regard to the report of the Committee on Legal Affairs (A6-0198/2007),
- A. whereas paragraphs 1 and 2 of Article 7 of the Act of 20 September 1976 enumerate the positions which are incompatible with membership of the European Parliament,
- B. whereas under Rule 9 of the Rules of Procedure and Annex I thereto, Members of the European Parliament are obliged to make a declaration clearly specifying their professional activities and any other paid position or activity,
- C. whereas Rule 3(5) of the Rules of Procedure states: 'Where the appointment of a Member is due to the withdrawal of candidates from the same list, the committee responsible for the verification of credentials shall ensure that such withdrawals have taken place in accordance with the spirit and the letter of the Act of 20 September 1976 and Rule 4(3)',
- D. whereas national provisions concerning the European electoral procedure must be in keeping with the fundamental principles of the Community legal system, Community primary law and the spirit and letter of the Act of 1976; whereas, therefore, the competent national legislative, administrative and judicial authorities, when applying and/or interpreting their national provisions on the European electoral procedure, cannot fail to take due account of the principles of Community electoral law,
- E. whereas the compatibility of Mr Achille Occhetto's withdrawal with the letter and spirit of the Act of 1976 must be evaluated in the light of Article 6 of that Act, which states that Members of the European Parliament 'shall not be bound by orders or instructions', thus defining the freedom and independence of Members as an authentic key principle,
- F. whereas the Statute for Members of the European Parliament (which will be in force from

¹ OJ L 278, 8.10.1976, p. 5. Act as last amended by Decision 2002/772/EC, Euratom (OJ L 283, 21.10.2002, p. 1).

2009) states in its Article 2(1) that 'Members shall be free and independent', while the second paragraph of the same article, clearly deriving from the first paragraph, adds: 'Agreements concerning the resignation from office of a Member before or at the end of a parliamentary term shall be null and void',

- G. whereas those provisions of the Statute merely spell out the principle of freedom and independence already contained in the Act of 1976, which are explicitly endorsed by the Statute for the protection of Parliament and its Members,
- H. whereas, although it will not enter into force until the start of the next parliamentary term in 2009, the Statute for Members of the European Parliament is, as the Community legal system currently stands, an instrument of primary law, adopted by the European Parliament with the unconditional approval of the Council and duly published in the Official Journal of the European Union,
- I. whereas the European Parliament and the national authorities responsible for implementing and/or interpreting national provisions on the European electoral procedure must take due account of the principles and provisions of the Statute for Members and must – among other things, in keeping with the principle of loyal cooperation established in Article 10 of the EC Treaty – refrain from adopting measures or provisions that are clearly at odds with that Statute,
- J. whereas the principles and provisions of the Statute for Members unquestionably form part of the principles which are referred to in Article 6 of the Treaty on European Union and on which the European Union is founded (including the principles of democracy and the rule of law) and which it must respect as general principles of Community law,
- K. whereas the legal scope of Article 6 of the Act of 1976 includes candidates who are officially on a post-electoral list, this being in Parliament's interest since such candidates are potential Members of the European Parliament,
- L. whereas Mr Achille Occhetto's withdrawal arises from an agreement, made prior to the proclamation of those elected in the elections to the European Parliament of 12 and 13 June 2004, with the other member of the list 'Società civile Di Pietro-Occhetto', and should therefore be regarded as incompatible with the letter and spirit of the Act of 1976 and, consequently, as null and void,
- M. whereas if Mr Achille Occhetto's withdrawal is to be regarded as null and void, then the mandate of his successor Beniamino Donnici cannot be justified in law or in fact,
- N. whereas, in a decision of 21 July 2006, the Lazio Regional Administrative Tribunal (the court of first instance in the matter) ruled that Mr Achille Occhetto's withdrawal, made before the proclamation of the names of those elected, could not be regarded as a withdrawal from his position on the post-electoral list, on the grounds that respect for the will of the people requires that the election results cannot be altered, and that it is without effect as regards the adoption of any possible acts of substitution in cases of incompatibility, loss of civil rights, ineligibility or resignation from an appointment or position on the part of those originally entitled thereto; whereas it follows that a candidate who does not wish to take up the position to which he has been elected has the right, where the conditions for substitution apply, to cancel his own withdrawal with a view to occupying the place to be covered by means of substitution,

- O. whereas the Italian Council of State, in a final judicial ruling, annulled the proclamation of Mr Achille Occhetto's election to the European Parliament,
- P. whereas under Article 12 of the Act of 1976 it is the European Parliament – and the European Parliament alone – that verifies the credentials of its Members elected by universal suffrage; whereas this fundamental prerogative of the European Parliament may not be challenged or, still less, invalidated by a decision adopted by national authorities in clear breach of the relevant rules and principles of Community law, even if that decision was finally adopted by the supreme judicial body of the relevant State, as was the case with the ruling of the Italian Council of State that is at issue here; whereas in its case-law the Court of Justice has confirmed the validity of this prerogative, including *vis-à-vis* final national rulings handed down in breach of Community law, and has found against the State,
- Q. whereas Parliament may legitimately both refuse to validate the mandate of Mr Beniamino Donnici and ignore the decision of the Italian Council of State on the grounds that it contradicts the letter and spirit of the Act of 1976, thus upholding the mandate of Mr Achille Occhetto,
 - 1. Declares the mandate as Member of the European Parliament of Mr Beniamino Donnici, whose election was communicated by the national authorities, to be invalid;
 - 2. Confirms the validity of the mandate of Mr Achille Occhetto;
 - 3. Instructs its President to forward this decision to the Italian national authorities, to Mr Beniamino Donnici and to Mr Achille Occhetto.