

Defence of the immunity and privileges of Luigi de Magistris

European Parliament decision of 29 March 2012 on the request for defence of the immunity and privileges of Luigi de Magistris (2011/2098(IMM))

The European Parliament,

- having regard to the request by Luigi de Magistris of 3 May 2011, announced in plenary on 9 May 2011, for the defence of his immunity in connection with proceedings pending before the Court of Milan, Italy,
 - having heard Luigi de Magistris in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to the written submissions made by Luigi de Magistris in accordance with Rule 7(3) 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 and 6 September 2011¹,
 - having regard to Article 68 of the Constitution of the Italian Republic,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0074/2012),
- 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 Milan on behalf of Mr Giancarlo Pittelli in connection with statements made by Luigi de Magistris in his book *Assalto al PM, storia di un cattivo magistrato* ('Attack on the public prosecutor – the story of a bad magistrate'), which was published in April 2010;
- C. whereas according to the writ of summons, statements made in that book constitute libel, resulting in a claim for damages;

¹ 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, Case T-42/06 *Gollnisch v Parliament* [2010] ECR II-1135 and Case C-163/10 *Patriciello* (not yet published in the European Court Reports).

- D. whereas the book was published at a time when Luigi de Magistris was a Member of the European Parliament, following his election at the 2009 European Parliament elections;
 - E. whereas, according to Article 8 of the Protocol on the Privileges and Immunities of the European Union, 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, and whereas, according to Article 9 of that Protocol Members shall enjoy, in the territory of their own State, the immunities accorded to members of their Parliament;
 - F. whereas Luigi de Magistris makes reference to both Articles 8 and 9 of the Protocol, but whereas Article 9 is not relevant in view of Article 68 of the Italian Constitution and he is therefore obviously relying solely on Article 8;
 - G. whereas, 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;
 - H. whereas the facts of the case, as manifested in the writ of summons and in Luigi de Magistris's written submissions to the Committee on Legal Affairs, indicate that the statements made do not have a direct, obvious connection with Luigi de Magistris's performance of his duties as a Member of the European Parliament;
 - I. whereas Luigi de Magistris, in publishing the book in question, was therefore not acting in the performance of his duties as a Member of the European Parliament;
1. Decides not to defend the immunity and privileges of Luigi de Magistris;
 2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of the Italian Republic and to Luigi de Magistris.