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on the request for defence of the immunity and privileges of Gabriele Albertini
(2012/2240(IMM))

Committee on Legal Affairs

Rapporteur: Bernhard Rapkay

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for defence of the immunity and privileges of Gabriele Albertini

(2012/2240(IMM))

The European Parliament,

- having regard to the request by Gabriele Albertini of 19 July 2012, announced in plenary on 10 September 2012, for defence of his immunity in connection with proceedings pending before the Court of Milan, Italy,
 - having heard Gabriele Albertini in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Article 68 of the Constitution of the Italian Republic, as amended by Constitutional Law No 3 of 29 October 1993,
 - having regard to Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the Treaty on the Functioning 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 Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0149/2013),
- A. whereas a Member of the European Parliament, Gabriele Albertini, has requested the defence of his parliamentary immunity in connection with proceedings before an Italian court;
- B. whereas the request by Gabriele Albertini relates to a writ of summons filed against him before the Court of Milan on behalf of Alfredo Robledo, in connection with statements made by Gabriele Albertini in a first interview published by the Italian newspaper *Il Sole 24 Ore* on 26 October 2011 and in a second interview published by the Italian newspaper *Corriere della Sera* on 19 February 2012;
- C. whereas, according to the writ of summons, statements made in those interviews constitute libel, resulting in a claim for damages;
- D. whereas the statements made in both interviews concern the ‘derivatives trial’ on the investigation into facts dating back to 2005, involving the municipality of Milan and

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 ECR).

relating to the function of Gabriele Albertini as mayor of that city;

- E. whereas both interviews were given at a time when Gabriele Albertini was a Member of the European Parliament, following his election in the 2004 and 2009 European Parliament elections;
 - F. whereas, according to 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 them in the performance of their duties;
 - 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 Gabriele Albertini's oral explication to the Committee on Legal Affairs, indicate that the statements made do not have a direct and obvious connection with Gabriele Albertini's performance of his duties as a Member of the European Parliament;
 - I. whereas Gabriele Albertini, in granting both interviews in question on the 'derivatives trial', 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 Gabriele Albertini;
 - 2. Instructs its President to forward this decision immediately to the competent authority of the Italian Republic and to Gabriele Albertini.

EXPLANATORY STATEMENT

1. Background

At the sitting of 10 September 2012 the President announced, under Rule 6(3) of the Rules of Procedure, that on 19 July 2012 he had received a request from Mr Gabriele Albertini 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 and 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 Gabriele Albertini was heard by the Committee on 17 December 2012, in accordance with Rule 7(3).

The background to the request for defence is as follows:

Gabriele Albertini was summoned before the Court of Milan by Alfredo Robledo, in connection with statements made by Gabriele Albertini in a first interview published by the Italian newspaper *Il Sole 24 Ore* on 26 October 2011 and in a second interview published by the Italian newspaper *Corriere della Sera* on 19 February 2012.

The claimant is magistrate at the Court of Milan and seeks to claim compensation for the damage caused to his personal and professional reputation, honour and status by a series of statements, reported in the two interviews concerning the “derivatives trial”.

Gabriele Albertini states, in the two interviews in question, that “*the investigations are arbitrary. They simply prefer to focus on this matter rather than looking into other issues. And this is not the first time this has happened. The public prosecutor, - Alfredo Robledo - who was so keen to bring this matter to court (this is the public prosecutor who brought the regrettable and irregular proceedings in the ‘blank amendments’ case, which lasted seven years and ended with a total acquittal), refused for six years to look into the purchase of Serravalle by Filippo Penati*”... “*This trial will lead nowhere. It may, perhaps, serve to further the career of a certain public prosecutor, or, as we have seen in the past, help him to enter politics*”... “*The investigation was initiated by a public prosecutor who questioned councillors and senior municipal officials about ‘blank amendments’ at night, using Gestapo-style methods, only for it then to be found that it was not an offence*”.

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

Articles 8 and 9 of the Protocol (No 7) to the TFEU on the Privileges and Immunities of the European Union read as follows (emphasis added):

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 (emphasis added):

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 [9] 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 Gabriele Albertini in his request.

Both interviews in question were given and published at a time when Gabriele Albertini was a Member of the European Parliament, following his election during the 2004 and 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"¹. However, the Court has also recently held that "a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties"² (emphasis added).

¹ Marra, cited above, at paragraph 26.

² Patriciello, cited above, in the operative part and at paragraph 41.

Against this background, the Committee considers that the facts of the case, as manifested in the writ of summons and explained by Gabriele Albertini at the *in camera* hearing in the Committee on Legal Affairs on 17 December 2012, show that the statements made do not have a direct and obvious connection with Gabriele Albertini's performance of his duties as a Member of the European Parliament. In fact, the statements made by Gabriele Albertini concern the behaviour of a particular prosecutor in the context of investigations led by him into, the "derivatives trial".

The statements in question constitute subjective appraisals and thus opinions in the sense of Article 8 of the Protocol. However, the "derivatives trial" concerns facts dating back to 2005 and relating to the function of Gabriele Albertini as mayor of the City of Milan. The European Parliament is not dealing with these facts in any respect, nor with the methods of investigation applied by the investigator concerned. Therefore, the opinion expressed by Gabriele Albertini appear to be rather far removed from his duties of a Member of the European Parliament and hardly capable of representing a direct link with a general interest of concern to citizens. Moreover, Gabriele Albertini has made the two statements not on an occasion on which he was invited in his capacity as Member of the European Parliament but when he was interviewed as former mayor of the city of Milan. Even if such a link could be demonstrated, it would at least not be "obvious" in the sense of quoted jurisprudence.

The Committee therefore considers that, in granting the two interviews in question, Gabriele Albertini was not acting in the performance of his duties as Member of the European Parliament.

Mr Albertini also invoked Article 9 of the Protocol. However, as he has taken office as Member of the Italian Senate on 15 March 2013, Article 9 of the Protocol is no longer applicable to him. The office of Member of the Italian Senate is incompatible with the function of Member of the European Parliament in accordance with Article 7(2) of the 1976 Act on Direct Elections.

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 not defend the parliamentary immunity of Gabriele Albertini.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	24.4.2013
Result of final vote	+ : 10 - : 1 0 : 2
Members present for the final vote	Luigi Berlinguer, Françoise Castex, Giuseppe Gargani, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Mary Honeyball, Eva Lichtenberger