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2004



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RAPORT

Umberto Bossi immuuteedi ja privileegide kaitse taotlus
(2004/2101(IMM))

Õiguskomisjon

Raportöör: Diana Wallis

SISUKORD

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1. EUROOPA PARLAMENDI OTSUSE ETTEPANEK

Umberto Bossi immuniteedi ja privileegide kaitse taotluse kohta 2004/2101(IMM)

Euroopa Parlament,

- võttes arvesse Umberto Bossit esindava vandeadvokaadi 7. mail 2004 esitatud taotlust kaitsta Bossi immuniteti seoses poolelioleva kriminaalmenetlusega Brescia ringkonnakohtus, millest teatati täiskogu istungil 22. juulil 2004;
 - võttes arvesse 8. aprilli 1965. aasta Euroopa ühenduste privileegide ja immunitetide protokollis artikleid 9 ja 10 ning 20. septembri 1976. aasta otsustel ja üldistel valimistel Euroopa Parlamendi saadikute valimist käsitleva akti artikli 6 lõiget 2;
 - võttes arvesse Euroopa Kohtu 12. mai 1964. aasta ja 10. juuli 1986. aasta otsuseid¹;
 - võttes arvesse kodukorra artikli 6 lõiget 3 ja artiklit 7;
 - võttes arvesse õiguskomisjoni raportit (A6-0210/2005),
- A. arvestades, et Umberto Bossi oli Euroopa Parlamendi neljanda koosseisu (mandaadi algus 19. juuli 1994, mandaat kinnitatud 15. novembril 1994, mandaadi lõpp 19. juuli 1999) ja viienda koosseisu (mandaadi algus 20. juuli 1999, mandaat kinnitatud 15. detsembril 1999, mandaadi lõpp 10. juuni 2001) liige;
- B. arvestades, et Euroopa Parlamendi liikmeid ei või üle kuulata, neid kinni pidada ega neid kohtumenetlusele allutada nende poolt oma kohustuste täitmisel avaldatud arvamuste või antud häälte tõttu²,
1. otsustab kaitsta Umberto Bossi immuniteti ja privileege;
 2. teeb vastavalt ülalnimetatud protokollis artiklile 9 ning võttes arvesse asjaomase liikmesriigi menetlusi ettepaneku kinnitada, et kõnealuseid menetlusi ei tuleks jätkata; kutsub seepärast kohut üles tegema asjakohased otsused;
 3. teeb presidendile ülesandeks edastada käesolev otsus ja vastutava komisjoni raport viivitamatult Brescia ringkonnakohtule.

¹ Kohtuasi 101/63: *Wagner vs Fohrmann ja Krier* [1964] EKL 195 ja kohtuasi 149/85: *Wybot vs Faure ja teised* [1986] EKL 2391.

² Euroopa ühenduste privileegide ja immunitetide protokollis artikkel 9.

2. EUROOPA PARLAMENDI OTSUSE ETTEPANEK

Umberto Bossi immuniteedi ja privileegide kaitse taotluse kohta (2004/2101(IMM))

Euroopa Parlament,

- võttes arvesse Umberto Bossit esindava vandeadvokaadi 7. mail 2004 esitatud taotlust kaitsta Bossi immuniteti seoses poolelioleva kriminaalmenetlusega Bergamo ringkonnakohtus, millest teatati täiskogu istungil 22. juulil 2004;
 - võttes arvesse 8. aprilli 1965. aasta Euroopa ühenduste privileegide ja immunitetide protokolli artikleid 9 ja 10 ning 20. septembri 1976. aasta otsestel ja üldistel valimistel Euroopa Parlamendi saadikute valimist käsitleva akti artikli 6 lõiget 2;
 - võttes arvesse Euroopa Kohtu 12. mai 1964. aasta ja 10. juuli 1986. aasta otsuseid¹;
 - võttes arvesse kodukorra artikli 6 lõiget 3 ja artiklit 7;
 - võttes arvesse õiguskomisjoni raportit (A6-0000/2005),
- A. arvestades, et Umberto Bossi oli Euroopa Parlamendi neljanda koosseisu (mandaadi algus 19. juuli 1994, mandaat kinnitatud 15. novembril 1994, mandaadi lõpp 19. juuli 1999) ja viienda koosseisu (mandaadi algus 20. juuli 1999, mandaat kinnitatud 15. detsembril 1999, mandaadi lõpp 10. juuni 2001) liige;
- B. arvestades, et Euroopa Parlamendi liikmeid ei või üle kuulata, neid kinni pidada ega neid kohtumenetlusele allutada nende poolt oma kohustuste täitmisel avaldatud arvamuste või antud häälte tõttu²,
1. otsustab kaitsta Umberto Bossi immuniteti ja privileege;
 2. teeb vastavalt ülalnimetatud protokolli artiklile 9 ning võttes arvesse asjaomase liikmesriigi menetlusi ettepaneku kinnitada, et kõnealuseid menetlusi ei tuleks jätkata; kutsub seepärast kohut üles tegema asjakohased otsused;
 3. teeb presidendile ülesandeks edastada käesolev otsus ja vastutava komisjoni raport viivitamatult Bergamo ringkonnakohtule.

¹Kohtuasi 101/63: *Wagner vs Fohrmann ja Krier* [1964] EKL 195 ja kohtuasi 149/85: *Wybot vs Faure ja teised* [1986] EKL 2391.

² Euroopa ühenduste privileegide ja immunitetide protokolli artikkel 9.

3. EUROOPA PARLAMENDI OTSUSE ETTEPANEK

Umberto Bossi immuniteedi ja privileegide kaitse taotluse kohta (2004/2101(IMM))

Euroopa Parlament,

- võttes arvesse Umberto Bossit esindava vandeadvokaadi 7. mail 2004 esitatud taotlust kaitsta Bossi immuniteti seoses poolelioleva kriminaalmenetlusega Milano linnakohtus, millest teatati täiskogu istungil 22. juulil 2004;
 - võttes arvesse 8. aprilli 1965. aasta Euroopa ühenduste privileegide ja immunitetide protokollis artikleid 9 ja 10 ning 20. septembri 1976. aasta otsustel ja üldistel valimistel Euroopa Parlamendi saadikute valimist käsitleva akti artikli 6 lõiget 2;
 - võttes arvesse Euroopa Kohtu 12. mai 1964. aasta ja 10. juuli 1986. aasta otsuseid¹;
 - võttes arvesse kodukorra artikli 6 lõiget 3 ja artiklit 7;
 - võttes arvesse õiguskomisjoni raportit (A6-0000/2005),
- A. arvestades, et Umberto Bossi oli Euroopa Parlamendi neljanda koosseisu (mandaadi algus 19. juuli 1994, mandaat kinnitatud 15. novembril 1994, mandaadi lõpp 19. juuli 1999) ja viienda koosseisu (mandaadi algus 20. juuli 1999, mandaat kinnitatud 15. detsembril 1999, mandaadi lõpp 10. juuni 2001) liige;
- B. arvestades, et Euroopa Parlamendi liikmetel on oma riigis samasugune immunitet nagu selle riigi parlamendi liikmetel²;
- C. arvestades, et Milano linnakohtu otsuses käsitletaval juhtumil kasutas Umberto Bossi vägivalda Itaalia politseiametnike vastu ning ähvardas Itaalia politseiametnikke, kes korraldasid Verona prokuröri nõudel Lega Nordi Milano peakorteri tööruumide läbiotsimise;
- D. arvestades, et Umberto Bossi oli Itaalia parlamendi liige ning et Itaalia konstitutsioonikohus otsustas 17. mail 2001, et Bossil ei ole parlamentaarset immuniteti, sest solvangud, vastupanu ja vägivaldne käitumine ei ole mingil juhul teod, mille suhtes võiks kohaldada parlamentaarseid privileege;
- E. arvestades, et sellisel puhul võib kohaldada vaid ülalnimetatud protokollis artikli 10 punkti a ning et Itaalia parlamendi liikmetel ei ole parlamentaarset immuniteti seoses kohtumenetlustega sellistel asjaoludel,

1. otsustab mitte kaitsta Umberto Bossi immuniteti ja privileege seoses Milano linnakohtus

¹ Kohtuasi 101/63: *Wagner vs Fohrmann ja Krier* [1964] EKL 195 ja kohtuasi 149/85: *Wybot vs Faure ja teised* [1986] EKL 2391.

² Euroopa ühenduste privileegide ja immunitetide protokollis artikli 10 punkt a.

poolelioleva kriminaalmenetlusega.

EXPLANATORY STATEMENT

I. Admissibility of requests

Umberto Bossi's first term of office as Member of the European Parliament lasted from 19 July 1994 to 19 July 1999. His second term lasted from 20 July 1999 to 10 June 2001, the day on which he was appointed minister (incompatibility, pursuant to Article 6(1), first indent, of the Act concerning the Election of the Representatives of the Assembly by direct universal suffrage¹). His third term started on 20 July 2004. The facts in connection with the legal proceedings pending before the Brescia District Court took place on 26 February 1996; the facts in connection with the legal proceedings pending before the Bergamo District Court took place on 4 August 1995; the facts in connection with the legal proceedings pending before the Magistrates' Court in Milan took place on 18 September 1996.

The requests are therefore admissible pursuant to Rule 6(3) of the European Parliament's Rules of Procedure, since Umberto Bossi was a Member of the European Parliament at the time in question.

II. Substance and merits of the requests

In accordance with Rule 6 of the European Parliament's Rules of Procedure, the President announced at the sitting of 22 July 2004 that he had received three requests from a barrister acting for Mr Umberto Bossi MEP for his parliamentary immunity to be defended in connection with the legal proceedings pending before the Brescia and Bergamo District Courts and the Magistrates' Court in Milan.

In implementation of Rule 6(3), the President referred all the requests to the Legal Affairs Committee, as the committee responsible.

II.1. DISTRICT COURT OF BRESCIA

II. 1. 1. Facts of the case

On the evening of 26 February 1996 Umberto BOSSI, leader of the *Lega Lombarda* [Lombard League] political organisation and Member of the Italian Chamber of Deputies, held a meeting in Tradate, during which he made a number of remarks about the judiciary or, more precisely, about a representative thereof, expressing himself as follows: '*There are magistrates who just love to put people in jail. In the province of Varese, too, there's one of them, who's a big bastard. I won't give his name, because everyone knows who he is.*'

Mr Bossi's remarks were reported in the press and, in particular, in the newspapers 'Il Giorno' and 'La Prealpina' on 6 March 1996.

On 28 March 1996 Mr Agostino Abate, Deputy Public Prosecutor at the Varese District

¹ OJ L 278, 8.10.1976, pp. 5-11.

Court, brought an action for defamation on the basis of the news reported in the newspapers referred to above.

On the basis of the above facts Mr Bossi was charged with the offence of defamation, aggravated by having been committed in the press and also against a public servant (Article 595 (I) and (III) and Article 61(10) of the Criminal Code).

The District Court of Brescia found Umberto Bossi guilty of the offence of defamation ascribed to him, and sentenced him to a period of imprisonment of one month and ten days and ordered him to pay the costs of the proceedings and the damages to the aggrieved party.

II. 1. 2. Applicable provisions

Article 9 of the PPI reads as follows:

'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'.

The key point is therefore to determine whether the statements, which are the subject of the legal proceedings, were made by Mr Bossi in the performance of his duties as Member of the European Parliament.

Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts or statements of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties. The right to make such statements is of key importance for the role of a Member of Parliament elected by the people.

In accordance with those principles, Committee on Legal Affairs notes that the statements at issue by Mr Umberto Bossi constitute an expression of opinions during a political exchange of views.

II. 1. 3. Conclusions

On the basis of the above considerations and pursuant to Article 7(2) of the Rules of Procedure, after consideration 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 Mr Umberto Bossi.

II. 2. DISTRICT COURT OF BERGAMO

II. 2. 1. Facts of the case

On the evening of 4 August 1995 Mr Bossi gave two speeches at public meetings, in the presence of several hundred onlookers, first in Brembate Sopra and then in Albano Sant'Alessandro, as part of the *Lega* Festivals in those two locations.

During the meeting in Brembate Mr Bossi, after expressing his own views about Italian political affairs in recent years and about the role played by the political force that he represented, directed criticism towards the '*fascists*', saying, '*Anyone who enters Parliament knows that this has always been a political force for sale, that it was and is a political force close to and fit for use by the wealthy, gluttonous Andreotti faction, which means the most mafia-like section of the Christian Democrats; that it's the same party as always, which gave its votes there, always in proximity, with close relations - I'm saying that because I'm a nice guy - but I really mean continuous relations with the mafia; fascist means mafioso, right?*' (Applause.) *We should ... we must ... take care to identify whoever's voted fascist, it doesn't interest the A.N., etcetera, we're dealing with fascists. Every one of them is an enemy of the North, remember that well and identify them one by one. I said so, I said so, so we'll do it if they grab the votes, house by house, because we booted out the fascists after the war. (Applause.) Enemies of the North, identify them one by one, house by house, they won't let that riff-raff escape*'. A little later in the speech, he said, '*And so we need to pay attention, remember them one by one, remember and tell each other, "I've heard that he votes fascist", let's go and get them, filthy trash. The times are right for that riff-raff. They say that they want to come to Mantua for the Youth Festival. Oh, poor lads, poor fascists; Lombardy's a place for respectable people, but don't tread on our toes, because we'll eat you alive, you fascists, rotten, stinking fascists. So, just to make it clear, this is what we saw: the regime fell and three days later ... they'd better be really quiet, those fascists, if they don't want serious problems ... if there are ... here ... the fascists should know that Naples and beyond is where they belong. They'd better not get it wrong, we're wild beasts when there are fascists around, we're wild beasts (applause) even if they're camouflaged, even if they're Fini's followers, or whatever you want to call them, we become beasts, right, because we know them well, those mafia forces, right?*'

Article 414 of the Italian Criminal Code provides for a prison sentence of between one and five years for anyone who publicly incites others to commit one or more crimes and for anyone who publicly justifies one or more crimes.

The criminal acts referred to above are included among crimes against public order, such as various forms of association to commit crimes, and the destruction and plundering of, and attacks on, installations of public utility.

On 1995 Mr Bossi was member of the Italian Parliament as well.

So, for the same facts, the Chamber of Deputies, at the sitting of 20 January 1998, approved the report by the Commission for the Authorisation of Judicial Proceedings, since it considered that the acts with which Mr Bossi is charged are not covered by parliamentary privilege, pursuant to Article 68 of the Constitution.

II. 2. 2. Applicable provisions

Article 9 of the PPI reads as follows:

'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'.

The key point is therefore to determine whether the statements, which are the subject of the legal proceedings, were made by Mr Bossi in the performance of his duties as Member of the European Parliament.

Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts or statements of which a Member stands accused were carried out in the performance of his or her political duties or were directly related to such duties. The right to make such statements is of key importance for the role of a Member of Parliament elected by the people.

In accordance with those principles, Committee on Legal Affairs notes that the statements at issue by Mr Umberto Bossi constitute an expression of opinions during a political exchange of views.

II. 2. 3. Conclusion

On the basis of the above considerations and pursuant to Article 7(2) of the Rules of Procedure, after consideration 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 Mr Umberto Bossi.

II. 3. MILAN MAGISTRATES' COURT

II. 3. 1. Facts of the case

Mr Bossi is charged with the offences set out in Articles 110, 337 and 339 of the Criminal Code, in that each of them, acting in complicity and with each other's moral support and material assistance and that of other, unidentified persons, thereby reinforcing each others' criminal intentions and engendering the material conditions for the offence to be committed, used violence against, and threatened, officers of the state police, namely the Verona and Milan general investigations and special operations division (DIGOS) and the Milan general crime prevention office, who were conducting a search of the premises of the Milan headquarters of the Lega Nord, ordered by the Verona Public Prosecutor, in Milan on 18 September 1996.

In the course of that police operation, inter alia, the officers were pushed, pulled, kicked and punched. Some of them were also injured.

In particular Mr Bossi violently tugged an Inspector's uniform, tearing off his jacket and tunic. He also insulted, with other people, the officers of the state police in the course of the search referred to above under (A), railing against them as 'fascists', 'mafiosi', 'Pinochet'.

At that time Mr Bossi was member of the Italian Parliament. After a first decision, taken by the Chamber of Deputies (on 16 March 1999), that the facts at issue in the criminal proceedings pending before the Magistrate's Court in Milan, were covered by Italian parliamentary privilege, the Constitutional Court, as the outcome of a conflict of powers, between the Parliament and the Court of Appeal of Milan, pursuant to Article 68(1) of the Constitution, annulled that decision finding that insults and acts of resistance and violence are in no way acts to which parliamentary privilege may apply¹.

II. 3. 2. Applicable provisions

Under the PPI, Members of Parliament are protected from any legal proceedings in respect of opinions expressed or cast in the performance of their duties (Article 9) and they enjoy immunity during the sessions of the European Parliament under the conditions laid down in Article 10.

In the present case only Article 10 a) can be applied:

'During the sessions of the European Parliament, its members shall enjoy:

(a) in the territory of their own Member State, the immunities accorded to members of their parliament.

Article 10 remits to national law and therefore to national immunity arrangements in Italy. Article 68, first paragraph, of the Italian Constitution provides for uncensurability of Members of Parliament, who may not be called to answer opinions expressed and votes cast in the performance of their duties. Inviolability is established in the second and third paragraphs of Article 68 of the Constitution.

In the case in point the second paragraph of article 68 shall be applied: *"Without authorization from the House to which they belong, no member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory "*.

The Committee on Legal Affairs considers that it appears that Members of the Italian Parliament do not enjoy Parliamentary immunity in respect of legal proceedings in such circumstances.

II. 3. 3. Conclusion

On the basis of the above considerations and pursuant to Article 7(2) of the Rules of Procedure, after consideration the reasons for and against defending the Member's immunity, the Committee on Legal Affairs recommends that the European Parliament should not defend

¹ See Constitutional Court, 9-17 May 2001, n. 137.

the Parliamentary immunity of Mr Umberto Bossi.

1. MENETLUS

Pealkiri	Umberto Bossi immuniteedi ja privileegide kaitse taotlus				
Menetluse number	2004/2101(IMM)				
Puutumatuse ja privileegide kaitse taotlus					
esitaja	Barrister Umberto Bossi nimel				
taotluse esitamise kuupäev	7.5.2004				
istungil teada andmise kuupäev	22.7.2004				
Vastutav komisjon	JURI				
istungil teada andmise kuupäev	22.7.2004				
Menetlusalus	art 6 lg 3 ja art 7				
Raportöör	Diana Wallis				
nimetamise kuupäev	14.9.2004				
Aseraportöör					
Arutamine komisjonis	21.9.2004	30.11.2004	20.1.2005	30.3.2005	21.6.2005
Vastuvõtmise kuupäev	21.6.2005				
Lõpphääletuse tulemused	poolt:	8			
	vastu:	3			
	erapooletuid:				
Lõpphääletuse ajal kohal olnud liikmed	Maria Berger, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Antonio Masip Hidalgo, Viktória Mohácsi, Francesco Enrico Speroni, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina				
Lõpphääletuse ajal kohal olnud asendusliikmed	Manuel Medina Ortega				
Lõpphääletuse ajal kohal olnud asendusliikmed (kodukorra art 178 lg 2)					
Esitamise kuupäev – A6	0.0.0000		A6-0000/2005		

2. MENETLUS

Pealkiri	Umberto Bossi immuniteedi ja privileegide kaitse taotlus				
Menetluse number	2004/2101(IMM)				
Puutumatuse ja privileegide kaitse taotlus					
esitaja	Barrister Umberto Bossi nimel				
taotluse esitamise kuupäev	7.5.2004				
istungil teada andmise kuupäev	22.7.2004				
Vastutav komisjon	JURI				
istungil teada andmise kuupäev	22.7.2004				
Menetlusalus	art 6 lg 3 ja art 7				
Raportöör	Diana Wallis				
nimetamise kuupäev	14.9.2004				
Aseraportöör					
Arutamine komisjonis	21.9.2004	30.11.2004	20.1.2005	30.3.2005	21.6.2005
Vastuvõtmise kuupäev	21.6.2005				
Lõpphääletuse tulemused	poolt: 8 vastu: 5 erapooletuid:				
Lõpphääletuse ajal kohal olnud liikmed	Maria Berger, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Antonio Masip Hidalgo, Viktória Mohácsi, Francesco Enrico Speroni, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina				
Lõpphääletuse ajal kohal olnud asendusliikmed	Manuel Medina Ortega				
Lõpphääletuse ajal kohal olnud asendusliikmed (kodukorra art 178 lg 2)					
Esitamise kuupäev – A6	0.0.0000		A6-0000/2005		

3. MENETLUS

Pealkiri	Umberto Bossi immuniteedi ja privileegide kaitse taotlus				
Menetluse number	2004/2101(IMM)				
Puutumatuse ja privileegide kaitse taotlus					
esitaja	Barrister Umberto Bossi nimel				
taotluse esitamise kuupäev	7.5.2004				
istungil teada andmise kuupäev	22.7.2004				
Vastutav komisjon	JURI				
istungil teada andmise kuupäev	22.7.2004				
Menetlusalus	art 6 lg 3 ja art 7				
Raportöör	Diana Wallis				
nimetamise kuupäev	14.9.2004				
Aseraportöör					
Arutamine komisjonis	21.9.2004	30.11.2004	20.1.2005	30.3.2005	21.6.2005
Vastuvõtmise kuupäev	21.6.2005				
Lõpphääletuse tulemused	poolt: 12 vastu: 1 erapooletuid:				
Lõpphääletuse ajal kohal olnud liikmed	Maria Berger, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Antonio Masip Hidalgo, Viktória Mohácsi, Francesco Enrico Speroni, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina				
Lõpphääletuse ajal kohal olnud asendusliikmed	Manuel Medina Ortega				
Lõpphääletuse ajal kohal olnud asendusliikmed (kodukorra art 178 lg 2)					
Esitamise kuupäev – A6	22.6.2005	A6-0210/2005			