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REPORT

on the request for defence of the immunity and privileges of Lara Comi
(2014/2014(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 Lara Comi (2014/2014(IMM))

The European Parliament,

- having regard to the request made by Lara Comi on 16 October 2013 for defence of her immunity in connection with legal proceedings pending before the Court of Ferrara,
 - having heard Lara Comi on 5 November 2013 pursuant to 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 2011,
 - having regard to its decision of 14 January 2014 on the request for defence of the immunity and privileges of Lara Comi,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0467/2014),
- A. whereas Lara Comi, MEP, has requested the defence of her parliamentary immunity in response to a summons to appear before the Court of Ferrara with which she was served on 1 October 2013 in respect of an action for damages brought in connection with statements allegedly made by her during a televised political debate;
- B. whereas Ms Comi had already asked, on 30 July 2013, for her parliamentary immunity to be upheld in connection with an action brought by the Public Prosecutions Department in Ferrara in response to a complaint alleging aggravated slander on the basis of the statements which are now the subject of this decision;
- C. whereas Article 8 of the Protocol on the Privileges and Immunities of the European Union, which Ms Comi expressly invokes in her request for defence, stipulates that 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 in the exercise of its powers in respect of privileges and immunities, Parliament seeks primarily to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in the performance of their duties;
- E. whereas Parliament has wide powers of discretion regarding the line of action to take in

response to a request for defence of the parliamentary immunity of one of its Members;

- F. whereas the Court of Justice has recognised that a statement made by a Member beyond the precincts of the European Parliament may constitute an opinion expressed in the performance of his or her duties as referred to in Article 8 of the Protocol, taking the view that it is not the place where a statement is made that matters, but the nature and content of the statement;
 - G. whereas the immunity from legal proceedings enjoyed by Members of the European Parliament includes immunity from civil proceedings;
 - H. whereas Ms Comi was invited to the television broadcast at issue in her capacity as a Member of the European Parliament and not as a national representative of a party, which was incidentally already represented by another guest, in accordance with the national provisions intended to ensure balanced attendance by political spokespersons in televised debates held during election campaigns, as in the case at issue;
 - I. whereas in modern democracies political debate takes place not only in Parliament but also through communications media ranging from press statements to the Internet;
 - J. whereas in the television broadcast in question Ms Comi spoke as a Member of the European Parliament to discuss political issues, including public procurement and organised crime, in which she had always taken an interest at European level;
 - L. whereas the next day Ms Comi sent her apologies to the complainant, and whereas those apologies were subsequently repeated in another national television broadcast;
 - M. whereas the statements at issue in this matter are the same as those in respect of which, by its decision of 14 January 2014, it upheld Ms Comi's immunity from criminal proceedings pending before the Court of Ferrara;
- 1. Decides to defend the immunity and privileges of Lara Comi;
 - 2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the appropriate authorities of the Italian Republic and to Lara Comi.

EXPLANATORY STATEMENT

1. Background

At the plenary sitting of 9 September 2013, the President announced, pursuant to Rule 6(3) of the Rules of Procedure of the European Parliament, that he had received a request from Lara Comi concerning the defence of her parliamentary immunity with reference to Article 8 of the Protocol on the Privileges and Immunities of the European Union. The President referred the request to the Committee on Legal Affairs under Rule 6(3).

That request, which related to criminal proceedings, was followed by a second request from Ms Comi, submitted on 16 October 2013 in response to a summons, served on her on 1 October 2013, to appear in civil proceedings for damages based on the same facts as those criminal proceedings. Ms Comi exercised her right to be heard on both matters by the Committee on Legal Affairs at its meeting of 5 November 2013.

During the television programme ‘Servizio pubblico’ of 24 January 2013, Lara Comi debated with Antonio Ingroia, the leader of a political party, matters relating to public procurement and organised crime in connection with the bankruptcy of Coopcostruzioni. In this context, a discussion arose concerning Roberto Soffritti, the former Mayor of Ferrara, who was standing as a candidate in the Italian national elections of February 2013 on the party list of Antonio Ingroia.

Mr Soffritti claims that the statements made by Lara Comi concerning him during the debate in question were damaging to his reputation, and he therefore filed a complaint on the grounds of aggravated slander as referred to in Article 595(2) and (3) of the Italian Criminal Code and Article 30 of Law No 223 of 6 August 1990. Mr Soffritti also served Ms Comi with a summons to appear before the Court of Ferrara in civil proceedings for damages in respect of the harm allegedly caused by those statements.

For her part, Ms Comi claims that she was speaking in her capacity as a Member of the European Parliament and that she spoke about public procurement, which is a matter of public interest and one which she has consistently addressed in her work at the European Parliament.

2. Law and procedure relating to the immunity of Members of the European Parliament

Article 8 of the Protocol (No 7) on the Privileges and Immunities of the European Union reads as follows:

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.

The procedure within the European Parliament is governed by Rules 6 and 7 of its Rules of

Procedure. The relevant provisions are as follows:

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 the 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 - Procedures 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 reasoned decision which 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 in order 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, may present any documents or other written evidence deemed by that Member to be relevant and 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 as to the competence of the authority in question and 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. Grounds for the proposed decision

Article 8 of the Protocol on the Privileges and Immunities of the European Union is expressly invoked by Lara Comi in her request.

As the Court of Justice has held, the scope of the absolute immunity referred to in Article 8 must be determined solely pursuant to Community law¹. The Court has also recently ruled that a statement made by a Member of the European Parliament beyond the precincts of that institution which has given rise to prosecution in his Member State of origin for offences of opinion constitutes an opinion expressed by him in the performance of his parliamentary duties which is covered by immunity if it amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties².

The principle on which the parliamentary immunity provided for by Article 8 of the Protocol is based is the freedom of Members to debate matters of public interest without being compelled to tailor their opinions so as to render them acceptable or inoffensive to hearers, and without otherwise having to fear prosecution³. Inevitably, in certain cases, someone may regard the opinions expressed by a Member of the European Parliament as excessive, annoying or offensive. Nonetheless, in a liberal and democratic context, the importance of uninhibited dialogue on topics of public interest is such that, as a matter of principle, even offensive or extreme opinions cannot be suppressed. This is particularly true in the case of Members of Parliament, who, by virtue of the very nature of their duties, play a central part in the system of representative democracy.

The reasoning behind this position may be found in the case-law of the European Court of Human Rights, which has extended protection of political discourse even to offensive or insulting statements, which often possess ‘a unique ability to focus attention, to dismantle preconceptions and to strike the audience by presenting to them unusual aspects of life’⁴.

Article 8 of the Protocol, therefore, should be interpreted so as to include not only statements of opinion and value judgments concerning issues of public interest and/or political importance but also statements which, by virtue of their content or mode of expression, may annoy or offend the public in general or individuals to whom they are directly or indirectly addressed if such statements are functionally linked to the performance of parliamentary duties.

In this context, the Committee on Legal Affairs considers that the facts of the case, as ascertained from the summons, the complaint based on the same facts and the hearing of Lara Comi, show that the statements made by the Member not only concerned matters of genuine public interest – public procurement and organised crime – but were also directly and

¹ Marra, judgment cited, paragraph 26.

² Patriciello, judgment cited, paragraph 41.

³ European Court of Human Rights in its judgment in the case of *A. v the United Kingdom*, No 35373/97, 75, *Reports of Judgments and Decisions* 2002-X.

⁴ R. Post, *Constitutional Domains: Democracy, Community, Management*, Harvard University Press, 1995, p. 139.

obviously connected with the performance of her duties as a Member of the European Parliament. Due account must also be taken of the personal apologies which Ms Comi promptly offered to the complainant and which were subsequently repeated in another national television broadcast.

Lastly, as the Committee on the Legal Affairs has found on several occasions in the past, where statements made by a Member are covered by the immunity afforded by Article 8 of the Protocol, that immunity applies not only in criminal proceedings but also in any civil proceedings brought for damages in connection with those statements. In this connection, the Committee on Legal Affairs finds the statements at issue in this matter to be the same as those in respect of which, by its decision of 14 January 2014, it upheld Ms Comi's immunity from criminal proceedings.

4. Conclusion

On the basis of the above considerations, in accordance with Rule 6(3) of the Rules of Procedure, after considering the reasons for and against defence of the Member's immunity, the Committee on Legal Affairs recommends that the European Parliament defend the immunity and privileges of Lara Comi.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	21.1.2014
Result of final vote	+ : 10 - : 0 0 : 1
Members present for the final vote	Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eva Lichtenberger
Substitute(s) under Rule187(2) present for the final vote	