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**A5-0213/2002**

30 may 2002

## REPORT

on the immunity of Italian Members and the Italian authorities' practices on the subject  
(2001/2099(REG))

Committee on Legal Affairs and the Internal Market

Rapporteur: Sir Neil MacCormick



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## PROCEDURAL PAGE

At the sitting of 14 June 2001 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market had been authorised to draw up a report, pursuant to Rule 7(4) of the Rules of Procedure applied by analogy, on the immunity of Italian Members and the Italian authorities' practices on the subject.

The Committee on Legal Affairs and the Internal Market had appointed Sir Neil MacCormick rapporteur at its meeting of 12 October 1999.

The committee considered the draft report at its meetings of 11 October 2001, 21 November 2001, 27 November 2001, 24 January 2002 and 19 February 2002.

At the meeting on 24 January 2002 it proceeded to the vote on the amendments.

The following were present for the vote: Giuseppe Gargani, chairman; Ioannis Koukiadis and Bill Miller, vice-chairmen; Neil MacCormick, rapporteur; Paolo Bartolozzi, Ward Beysen, Isabelle Caullery, Brian Crowley, Willy C.E.H. De Clercq, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Othmar Karas, Klaus-Heiner Lehne, Manuel Medina Ortega, Elena Ornella Paciotti, Imelda Mary Read, Astrid Thors, Marianne L.P. Thyssen, Rijk van Dam, Michiel van Hulten, Alexandre Varaut, Joachim Wuermeling and Stefano Zappalà, Bruno Gollnisch (for Gerhard Hager), Francesco Fiori (for Kurt Lechner), Michel J.M. Dary (for François Zimeray), Giacomo Santini (for Enrico Ferri) Amalia Sartori (for Kurt Lechner) and Jutta D. Haug (for Willi Rothley) pursuant to Rule 153(2).

The motion for a resolution as amended was adopted unanimously at the meeting of 19 February 2002.

The following were present for this vote: Giuseppe Gargani, chairman; Willi Rothley, Ioannis Koukiadis and Bill Miller, vice-chairmen; Paolo Bartolozzi, Isabelle Caullery, Brian Crowley, Giorgos Dimitrakopoulos, Bert Doorn, Nicole Fontaine, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado\*, Malcolm Harbour, Heidi Anneli Hautala, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Manuel Medina Ortega, Elena Ornella Paciotti, Marianne L.P. Thyssen, Rijk van Dam, Michiel van Hulten, Theresa Villiers and Stefano Zappalà, Francesco Fiori (for Mónica Ridruejo), Michel J.M. Dary (for François Zimeray) and Helmuth Markov (for Alain Krivine) pursuant to Rule 153(2).

\*Mr Gil-Robles Gil-Delgado declared that he had not taken part in the vote.

The report was tabled on 30 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## MOTION FOR A RESOLUTION

### **European Parliament resolution on the immunity of Italian Members and the Italian authorities' practices on the subject (2001/2099(REG))**

*The European Parliament,*

- having regard to Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 and to Article 4(2) of the Act concerning the election of representatives to the European Parliament by direct universal suffrage of 20 September 1976,
  - having regard to the case-law of the Court of Justice of the European Communities<sup>1</sup>,
  - having regard to Article 68 of the Constitution of the Italian Republic,
  - having regard to judgment No 1150/88 of the Italian Constitutional Court on the competence of the Chamber of a Senator or Deputy to give a ruling on absolute (or unqualified) immunity under Article 68(1) of the Italian Constitution,
  - having regard to Rule 7(4) and Rule 6 of the Rules of Procedure, the former provision being applied by analogy,
  - having regard to points 9 and 12 of Section VI of Annex VI to the Rules of Procedure,
  - having regard to the large number of letters received from counsel for Italian Members of this House against whom legal proceedings have been brought and in some cases concluded, which seek a ruling that conduct complained of in the court proceedings qualifies for the protection of the immunities enjoyed by Members of this House,
  - having regard to the files relating to certain Italian Members which were forwarded to the former Committee on the Rules of Procedure, the Verification of Credentials and Immunities and/or to the Committee of Legal Affairs and the Internal Market and of which the latter committee has been formally seised,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0213/2002),
- A. Whereas Articles 9 and 10 of the Protocol on Privileges and Immunities constitute primary Community law;
- B. Whereas parliamentary immunity is not a personal privilege of Members but exists to guarantee the independence of Parliament and its Members in relation to other authorities and the dignity and proper functioning of Parliament as an institution;
- C. Whereas Italian parliamentarians enjoy absolute immunity (insindicabilità) in respect of opinions expressed and votes cast in the exercise of their functions (Italian Constitution,

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<sup>1</sup> Judgments in Case 101/63 Wagner v. Fohrmann and Krier [1974] ECR 399 and in Case 149/85 Wybot v. Faure [1986] ECR 2403.

Article 68(1)) which is identical to that conferred on Members of the European Parliament by Article 9 of the Protocol on Privileges and Immunities ("the Protocol"); whereas they also enjoy qualified immunity, in the sense of not being subject to legal provisions without special authorisation, which applies solely in respect of search, arrest and interception or seizure of correspondence (*ibid.*, Article 68(2) and (3));

- D. Whereas in Italy there is a practice enshrined in judgment No 1150/88 of the Constitutional Court under which, in cases of absolute immunity (Italian Constitution; Article 68(1)), it falls to the national court alone, after it has decided whether the facts are covered by absolute immunity, to decide whether to close the case definitively or to examine its substance; whereas, in the latter event, the Senator or Deputy concerned may bring the case before his Chamber; whereas the Chamber then makes a declaration that proceedings may or may not be pursued and the court must comply with that declaration, unless it decides to challenge it in the Constitutional Court;
- E. Whereas Members of this House should be able to apply to the European Parliament in order that it may uphold the right to absolute immunity in respect of opinions expressed or votes cast by Members in the performance of their duties under Article 9 of the Protocol, which should be the same for all Members;
- F. Whereas, where such an application is received, the competent committee should decide whether or not the facts adduced constitute a case of absolute immunity within the meaning of Article 9 of the Protocol;
- 1. Decides that Parliament should take the following action:
  - (a) on receipt of a communication from a Member or a Member's lawyer seeking a ruling that conduct complained of in court proceedings qualifies for the protection of the absolute immunity enjoyed by Members of this House under Article 9 of the Protocol, the matter should be referred to the competent committee for its consideration;
  - (b) the competent committee should give a ruling on whether the evidence submitted to it appears to raise a *prima facie* case of absolute immunity covered by Article 9 of the Protocol and draw up a draft report for the plenary;
  - (c) the President should be instructed to forward the decision of the Assembly and the report of its committee to the appropriate national authority or, until such time as that authority is notified to it, to the Permanent Representative of the Italian Republic marked for the attention of the authority competent for questions of parliamentary immunity;
  - (d) in the event that the competent committee is unable to decide whether a *prima facie* case of absolute immunity is involved on the basis of the documentation and other evidence available to it, the decision of the plenary session may call on the appropriate authority to provide Parliament with the necessary evidence (case files); in the event that it determines that a *prima facie* case of immunity is involved, the decision of the plenary session should state that the national court should take formal note (*donner acte*) of Parliament's determination;
  - (e) the decision of the plenary session must be communicated to the competent national court;

2. Decides (a) that the cases of Francesco Enrico Speroni, Alfonso Marra and Marcello dell'Utri raise a prima facie case of absolute immunity and that the competent courts should be put on notice to transmit to Parliament the documentation necessary to establish whether the cases in question involve absolute immunity under Article 9 of the Protocol in respect of opinions expressed or votes cast by the members in question in the performance of their duties and (b) that the competent courts should be invited to stay proceedings pending a final determination by Parliament;
3. Instructs its President to forward this decision and the report of its committee to the Italian Permanent Representative marked for the attention of the appropriate authority of the Italian Republic.