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18 March 2004

## **REPORT**

on the request for defence of parliamentary immunity and privileges submitted  
by Klaus-Heiner Lehne  
(2004/2015(IMM))

Committee on Legal Affairs and the Internal Market

Rapporteur: Sir Neil MacCormick

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## **PROCEDURAL PAGE**

At the sitting of 26 February 2004 the President of Parliament announced that he had received from Mr Klaus-Heiner Lehne a request for defence of his parliamentary immunity in connection with legal proceedings before the Hamburg District Court. Pursuant to Rule 6a(1) of the Rules of Procedure, the request was referred to the Committee on Legal Affairs and the Internal Market.

The committee appointed Sir Neil MacCormick rapporteur at its meeting of 26 February 2004.

At its meeting of 8 March 2004 it heard Klaus-Heiner Lehne pursuant to Rule 6a(3) and held an exchange of views on the reasons for and against the defence of immunity or privileges.

It considered the draft report at its meeting of 17 March 2004 and adopted the proposal for a decision unanimously.

The following were present for the vote Giuseppe Gargani, chairman; Ioannis Koukiadis, vice-chairman; Sir Neil MacCormick, rapporteur; Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Malcolm Harbour, Manuel Medina Ortega, Francesco Enrico Speroni (for Ward Beysen), Marianne L.P. Thyssen and Diana Wallis.

The report was tabled on 18 March 2004.

## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on the request for defence of parliamentary immunity and privileges submitted by Martin Schulz (2004/2015(IMM))**

*The European Parliament,*

- having regard to a request for defence of his immunity and privileges submitted by Klaus-Heiner Lehne and announced in plenary session on 26 February 2004 in connection with civil legal proceedings (application for interim relief and main proceedings) pending before the Hamburg District Court,
  - having regard to Article 9 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 judgements of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986<sup>1</sup>,
  - having regard to Rules 6 and 6a of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0185/2004),
- A. whereas Klaus-Heiner Lehne was elected to the European Parliament in the fifth elections held from 10 to 13 June 1999, and whereas his credentials were verified by Parliament on 15 December 1999<sup>2</sup>,
- B. whereas 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<sup>3</sup>,
- C. whereas the civil proceedings engaged against Klaus-Heiner Lehne before the Hamburg District Court refer to opinions expressed in a press statement directly linked to a matter at that time under discussion in Parliament,
- D. whereas the immunity from legal proceedings enjoyed by Members of the European Parliament also covers immunity from civil proceedings,
- E. whereas, in order to be effective, this protection must cover both the application for interim relief and the main proceedings,
- F. whereas Members of the European Parliament have a responsibility to participate in

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<sup>1</sup> See Case 101/63: Wagner v Fohrmann and Krier [1964] ECR 399 and Case 149/85: Wybot v Faure [1986] ECR 2403.

<sup>2</sup> European Parliament Decision on the verification of credentials of Members following the fifth direct elections to the European Parliament on 10 to 13 June 1999, (OJ C 296, 18.10.2000, p. 93.).

<sup>3</sup> Article 9 of the Protocol on the privileges and immunities of the European Communities.

political affairs or make press statements, and accordingly when they publish such statements on controversial topics they are properly deemed to be engaged in the performance of their duties as MEPs,

1. Decides to defend the immunity and privileges of Klaus-Heiner Lehne;
2. Proposes, on the grounds of Article 9 of the aforementioned protocol and with due respect for the procedures in the Member State concerned, to hold that in the case in question proceedings may not be pursued and invites the Court to draw the necessary conclusions;
3. Requests the Commission to verify whether § 5, second sentence, of the *Europaabgeordnetengesetz* [Members of the European Parliament Act] of the Federal Republic of Germany is compatible with Community law, in particular Article 9 of the Protocol on the privileges and immunities of the European Communities;
4. Instructs its President immediately to forward this decision and the report of its committee to the German authorities and the Hamburg District Court.

## **EXPLANATORY STATEMENT**

### **I. Facts of the case**

On 23 February 2004, without oral proceedings and without hearing the party concerned the Hamburg District Court issued an order, in the form of a temporary injunction, prohibiting Mr Klaus-Heiner Lehne MEP from making certain statements, described in greater detail below, about 'BILD-Zeitung', on pain of a fine for contempt of court and, in the event that payment thereof cannot be enforced, on pain of imprisonment for contempt of court of up to six months (fine for each instance of contempt of court of up to EUR 250 000.00; imprisonment for contempt of court of up to two years in total).

The statements that the Hamburg District Court has prohibited the Member making are as follows:

- I. in connection with the debate concerning what is known as the 'Statute for Members' and the associated implications for the financial benefits of Members of the European Parliament including, in particular, their entitlements to allowances, to claim or to publish the following about 'BILD-Zeitung', or to arrange for it to be claimed or published:
  1. 'For five days an unparalleled campaign, verging on a smear campaign, has been conducted against the European Statute for Members in "BILD-Zeitung";
  2. that it has 'deliberately misreported';
- II. and also with regard to the implications of the Statute for Members, as originally planned, for the pension entitlements of Members of the European Parliament, to claim or to publish, or to arrange for it to be claimed or published, with reference to reports by 'BILD-Zeitung':

that it is 'a complete fabrication' that Members of the European Parliament will receive an increase of up to 68% in their pensions under the new arrangements.

The background to this temporary injunction on the Member is a statement made by him, as coordinator and shadow rapporteur of the PPE-DE Group on the Committee on Legal Affairs and the Internal Market, in a press release issued by that Group on 15 January 2004, concerning reporting in Germany about the Statute for Members. The press release is the subject of Notice to members No 9/2004<sup>1</sup>.

### **II. Article 9 of the Protocol on the privileges and immunities of the European Communities (PPI)**

Article 9 of the PPI reads as follows:

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<sup>1</sup> PE 343.480.

*'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.'*

This provision of Community law is directly applicable in the Member States of the European Union and, in accordance with the principles developed by the European Court of Justice, may not be restricted by national law. It protects Members, in particular, against civil proceedings in connection with press publications concerning controversial political topics<sup>1</sup>. There are therefore serious doubts as to whether § 5, second sentence of the German *Europaabgeordnetengesetz*<sup>2</sup>, cited by the applicant in the proceedings to secure the temporary injunction, is compatible with Community law.

Parliament has consistently taken it as a fundamental principle that immunity may on no account be waived in cases in which the acts 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.

Although the case in point relates to the defence of parliamentary immunity, the same principles must apply.

In accordance with those principles, your rapporteur notes that when the statements at issue were made by Mr Lehne in the press release of 15 January, he was exercising his freedom of speech in connection with the performance of his duties as a Member of Parliament. The question of whether the constitutional task laid down in Article 190(5) of the Treaty establishing the European Community, which requires the adoption of regulations and general conditions governing the performance of the duties of Members of the European Parliament ('Statute for Members'), is being fulfilled is one of public interest. The publisher of Mr Lehne's press release of 15 January 2004 was the press department of the 'Group of the European People's Party (Christian Democrats) and European Democrats' (PPE-DE). This press release was published on 15 January 2004 during a plenary session of the European Parliament in Strasbourg. Pursuant to the 'Protocol annexed to the Treaty of Amsterdam on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol' the European Parliament has its seat in Strasbourg.

Since it is one of the primary duties of Members elected directly by the people to express their opinions on political issues orally or in writing, and since the press releases in question are directly linked to a matter under discussion in Parliament, it is undoubtedly the case that the statements in question were made in performance of the Member's duties (Article 9 of the Protocol on the privileges and immunities of the European Communities of 8 April 1965).

Your rapporteur further considers that the order by the Hamburg District Court constitutes inadmissible legal proceedings against a Member within the meaning of Article 9 of the Protocol on the privileges and immunities of the European Communities.

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<sup>1</sup> See, most recently, European Parliament Decisions of 1 July 2003 (A5-0243/2003), 23 September 2003 (A5-0309/2003) and 16 December 2003 (A5-0421/2003)

<sup>2</sup> § 5 of the *Europaabgeordnetengesetz* reads as follows: '**Indemnity and immunity**

The indemnity and immunity of Members of the European Parliament shall be determined pursuant to Articles 9 and 10 of the Protocol on the privileges and immunities of the European Communities, annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965 (BGBl. 1965 II, pp. 1453, 1482). The scope of indemnity shall be in accordance with the provisions of the Basic Law.'

The size of the threatened fine for contempt of court in the order of 23 February 2004 (a maximum of EUR 250 000 in each instance) is intended to act as a deterrent against a repetition of the statement, and to prevent potential imitators from making similar statements. In the event of contravention of the order, the Member is even threatened with imprisonment for contempt of court of up to two years. It can therefore be assumed that the threat of a fine and imprisonment for contempt of court is akin to a punitive measure, since both individual prevention and general prevention are significant characteristics of criminal prosecution.

The documents forwarded to the European Parliament show that the Hamburg District Court interpreted the scope of the immunity of Members of the European Parliament exclusively in accordance with German law. The objection to this is that the legal situation of Members is governed primarily by the Protocol on privileges and immunities of 8 April 1965, which is primary Community law and is thus directly applicable by each Member State. Provisions of German law may be applied only to supplement such law, and then only if they are not at variance with provisions of Community law. Article 9 makes no reference to national law (unlike Article 10 of the Protocol), so that it cannot be assumed that Article 9 is limited to the scope of the protection afforded by § 5, second sentence, of the *Europaabgeordnetengesetz*.

Since 23 February 2004 the legal proceedings threatened in the event of contravention of the order have impaired the independence and freedom of speech of a Member of the European Parliament, which is incompatible with Article 9 of the PPI.

Your rapporteur has been informed that it is intended to initiate civil proceedings before the Hamburg District Court in respect of the main issue, on account of the same actions. In order to ensure its effectiveness, the protection afforded by Article 9 of the PPI must likewise apply in the case of civil legal proceedings taking the form of an action in respect of the main issue.

### **III. Conclusions**

Your rapporteur therefore recommends that Parliament should defend Mr Klaus-Heiner Lehne's immunity and privileges.