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REPORT

on the request for defence of parliamentary immunity and privileges submitted
by Umberto Bossi
(2003/2172(IMM))

Committee on Legal Affairs and the Internal Market

Rapporteur: Kurt Lechner

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PROCEDURAL PAGE

At the sitting of 1 September 2003 the President of Parliament announced that he had received from Mr Umberto Bossi a request for defence of his parliamentary immunity in connection with legal proceedings before an Italian 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 Klaus-Heiner Lehne rapporteur at its meeting of 1 October 2003.

At its meetings of 27 January 2004, 24 February 2004 and 17 March 2004 it held an exchange of views on the reasons for and against the defence of immunity or privileges. At the last meeting it heard a representative of Umberto Bossi on this request, pursuant to Rule 6(3) of the Rules of Procedure.

At the meeting of 6 April 2004 Klaus-Heiner Lehne resigned as rapporteur, and the committee appointed Kurt Lechner rapporteur.

The committee considered the rapporteur's proposal for a decision at its meeting of 20 April 2004 and adopted the proposal for a decision by 11 votes to 1, with 1 abstention.

The following were present for the vote: Giuseppe Gargani, chairman; Ioannis Koukiadis, vice-chairman; Kurt Lechner, rapporteur; Uma Aaltonen, Paolo Bartolozzi, Ward Beysen, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Gian Paolo Gobbo, Lord Inglewood, Klaus-Heiner Lehne, Manuel Medina Ortega, Roy Perry, and Francesco Enrico Speroni (for Alexandre Varaut).

The report was tabled on 21 April 2004.

PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on the request for defence of parliamentary immunity and privileges submitted by
Umberto Bossi
(2003/2172(IMM))**

The European Parliament,

- having regard to a request for defence of his immunity submitted by Umberto Bossi, and announced in plenary session on 1 September 2003 in connection with legal proceedings pending before the Court of Brescia,
 - 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 judgments of the Court of Justice of the European Communities of 12 May 1964 and 10 July 1986¹,
 - 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 (A5-0282/2003),
- A. whereas Umberto Bossi was elected to the European Parliament in the fifth direct elections held on 13 June 1999, and whereas his credentials were verified by Parliament on 15 December 1999² and his term of office expired on 10 June 2001,
- 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 duties³,
- C. whereas the immunity from legal proceedings enjoyed by Members of the European Parliament also covers immunity from civil proceedings,
- D. whereas Members of the European Parliament have a responsibility to participate in political affairs, and accordingly when they publish such newspaper articles on controversial topics they are properly deemed to be engaged in the performance of their duties as MEPs,

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

² European Parliament decision of 15 December 1999 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).

³ Article 9 of the Protocol on the Privileges and Immunities of the European Communities.

1. Decides to defend the immunity and privileges of its former Member Umberto Bossi;
2. Proposes, pursuant to Article 9 of the above Protocol and having regard to the proceedings of the relevant Member State to declare that the proceedings in question should not be continued; therefore calls on the Court to draw the appropriate conclusions;
3. Instructs its President immediately to forward this decision and the report of its committee to the Court of Brescia.

EXPLANATORY STATEMENT

I. Admissibility of request

Umberto Bossi's first term of office as Member of the European Parliament ran from 19 July 1994 to 19 July 1999. His second term ran 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). The newspaper articles in question appeared on 24 May 2001 and 25 May 2001 in the 'Padania' newspaper.

The request is 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 request

The lawyer Matteo Brigandi sent a letter dated 9 November 2003 to Mr Pat Cox, President of the European Parliament, outlining the circumstances which have led the former MEP Umberto Bossi to request the defence of his immunities and privileges².

The background to these proceedings is a civil action suit brought before the Court of Brescia, by Ms Paola Braggion, the petitioner, resident in Como with the following objectives:

- to establish that the statements by the accused, Umberto Bossi, in the newspaper articles of 24 May 2001 and 25 May 2001 in the 'Padania' newspaper, have damaged the honour, reputation and personal integrity, as well as the general personal rights, of the petitioner;
- to sentence the accused to pay damages owing to these statements, as the court sees fit.

1. Facts of the case

On 24 and 25 May 2001 the newspaper 'Padania' printed two newspaper articles quoting Umberto Bossi's remarks about his having been given the previous day a suspended prison sentence of a year and four months with probation for insulting the national flag. These articles referred to the petitioner by name.

The petitioner, Dr Paola Braggion, who had presided over the Court of Como, Cantù sub-chamber, which had for the above reason sentenced the former MEP, Umberto Bossi, on 23 May 2001 to one year and four months in prison, feels insulted by these remarks both personally and in her capacity as judge, since they insinuate that she exploited her office to attack the new government, took advantage of a case involving a public personality to thrust herself into the limelight in pursuit of her own interests, and used 'fascist standards' and 'judicial relics' in performing her official duties.

¹ OJ L 278, 8.10.1976, pp. 5-11.

² Notice to Members No 29/2003, PE 338.479.

The petitioner argues that she had merely done her duty in performing the tasks enjoined upon her by law. The statements by the accused offer a distorted picture of the petitioner and give the impression that she had bent the law for her own purposes.

2. Article 9 of the Protocol on the Privileges and Immunities of the European Communities (PPI)

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, and whether the prosecution is punitive in nature.

A civil action may also constitute prosecution by the state of a Member of Parliament within the meaning of Article 9 of the PPI¹.

Two separate criteria must be borne in mind:

- the manner and the political context in which the contentious statements were made by a Member of the European Parliament;
- the amount of civil damages sought by the petitioner.

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.² The right to make such statements is of key importance for the role of an MEP elected by the people.

In applying these principles, your rapporteur notes that the statements by the former MEP Umberto Bossi are expressions of opinion that are appropriate in a political argument. The statements must be seen in the political context of the clash of political opinions at that time between some sections of the judiciary and a section of the political establishment, and they refer to a matter of genuine public importance and interest. The right to express such opinions is of key importance for the role of an MEP elected by the people. The former Member Umberto Bossi placed the substantial suspended prison sentence handed down to him in a general political context by accusing the Italian judiciary as a whole of being too swayed by political considerations.

In this case the petitioner is indeed referred to by name. But this should not affect assessment of the case. The main issue is the general political expression of opinion by the former

¹ Request for defence of parliamentary immunity of Jannis Sakellariou, A5-0309/2003 and Guiseppe Gargani, decision of 16 December 2003, (2003/2182(IMM)).

² See, most recently, Decision of 1 July 2003, (2003/2249 (IMM)) request for waiver of immunity of Mogens N.J. Camre.

Member Umberto Bossi and not the naming of the petitioner. This naming is only a consequence of the well-known political argument in Italy about the over-politicisation of justice and the specific judgment pronounced when the petitioner was presiding over the Court, which gave rise to the general statements.

III. Conclusions

In the light of the above remarks, the Committee on Legal Affairs and the Internal Market, acting pursuant to Rule 6a(2) of its Rules of Procedure, recommends that the European Parliament should defend the immunity and privileges of its former Member, Umberto Bossi.