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REPORT

on the request for defence of the immunity and privileges of Giovanni Claudio Fava
(2005/2174(IMM))

Committee on Legal Affairs

Rapporteur: Klaus-Heiner Lehne

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for defence of the immunity and privileges of Giovanni Claudio Fava (2005/2174(IMM))

The European Parliament,

- having regard to the request by Giovanni Claudio Fava for defence of his immunity of 1 July 2005, announced in plenary sitting on 6 July 2005,
 - having heard Giovanni Claudio Fava in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities 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 12 May 1964 and 10 July 1986¹ of the Court of Justice of the European Communities,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0331/2005),
1. Decides to defend the immunity and privileges of Giovanni Claudio Fava;
 2. Instructs its President to forward this decision and the report of the committee responsible to the appropriate authorities of the Italian Republic.

¹ Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195 and Case 149/85 *Wybot v Faure and others* [1986] ECR 2391.

EXPLANATORY STATEMENT

I. FACTS

At the sitting of 6 July 2005, the President of Parliament announced that he had received a request for the defence of the Parliamentary immunity of Giovanni Claudio Fava MEP by letter of 1 July 2005, which was duly forwarded to the Committee for Legal Affairs.

The request relates to proceedings which have been brought in the *Tribunale Civile di Palermo* against Mr Fava, as manager of the review *Itaca*, where he is being sued for defamation by an elected office-holder of the Region of Sicily, Mr Cintola, a member of the political party, *Unione dei Democratici Cristiani e Democratici di Centro*, and *Assessore al Bilancio e alle Finanze* of the Region of Sicily. Mr Cintola is claiming damages of EUR 1,000,000.

In an article which he wrote for *Itaca*, entitled "Below the belt" (which is also a pun on Mr Cintola's name), Mr Fava reported that the police had filmed and bugged Mr Cintola receiving from a well-known tax adviser an envelope containing EUR 25,000. According to the article, the tax adviser had been under investigation for a case of money laundering some weeks before. When giving testimony as a witness in that case, Mr Cintola said that the money was a loan, but the other party testified that it had never been repaid.

On the basis of this, Mr Fava questions in an article published in his review *Itaca*, which is also accessible on the Internet, Mr Cintola's suitability to hold the post of *Assessore al bilancio* for the Region of Sicily. "...Would you give such a man your car keys? You wouldn't, would you? Well, in Sicily he has been given him the keys to the regional budget, a few billion euro or thereabouts".

The case against Mr Fava (and other owners of newspapers and periodicals) has been brought in a civil court, but the damages sought (EUR 1,000,000) are based, it would seem, at least in part on Article 12 of Law No 47 of 1948 on the press, which allows the defamed party to apply for damages on the basis of the Criminal Code.

II. LAW AND GENERAL CONSIDERATIONS ON THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT

1. Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, read as follows:

Article 9:

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.

Article 10:

During the sessions of the European Parliament, its Members shall enjoy:

- a. *in the territory of their own State, the immunities accorded to members of their parliament;*
- b. *in the territory of other Member States, immunity from any measure or detention and from legal proceedings.*

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members."

2. The procedure in the European Parliament is governed by Articles 6 and 7 of the Rules of Procedure. The relevant provisions read 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 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.

(...)"

Rule 7 Procedure 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 decision which simply 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 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; he may bring any documents or other written evidence he deems relevant. He 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 10 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 about the competence of the authority in question and about 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. (...)"

III. JUSTIFICATION OF THE PROPOSED DECISION

Article 9 of the Protocol on privileges and immunities provides that Members of the European Parliament have absolute immunity from legal proceedings "in respect of opinions expressed .. in the performance of their duties".

In his summons lodged with the *Tribunale Civile* of Palermo, the complainant seeks punitive damages of EUR 1,000,000 against a series of defendants, including Mr Fava, for allegedly libelling a public office-holder in his region. The complainant argues that the libel is particularly serious on account of the fact that he is a regional councillor and that the resultant serious damage to his image could cause genuine social alarm to be felt by citizens with regard to the public role of the department for which he is responsible.

It is clear, however, that in his article published in *Itaca*, Mr Fava merely reproduced facts which had been published in connection with separate court proceedings and hence in the public domain and then commented on them, drawing inferences with a regard to a politician's suitability to hold public office in his region.

In so doing he was carrying out his duty as a Member of Parliament in expressing his opinion on a matter of public interest to his constituents. Moreover, the fact that the subject of his article was the behaviour of a politician and the holder of a public office brings this article within the realm of legitimate political debate. In short, Mr Fava was simply doing his job as a Member of Parliament. To seek to gag Members of Parliament from expressing their opinions on matters of legitimate public interest and concern by bringing legal proceedings is unacceptable in a democratic society and manifestly in breach of Article 9 of the Protocol, which is intended to protect Members' freedom of expression in the performance of their duties in the interests of Parliament as an institution.

IV. CONCLUSIONS

On the basis of the above considerations, the Committee on Legal Affairs, having examined the reasons for and against defending immunity, recommends that the immunity of Mr Giovanni Claudio Fava be defended.

PROCEDURE

Title	Request for defence of the immunity and privileges of Giovanni Claudio Fava	
Procedure number	2005/2174(IMM)	
Request for defence of immunity	Giovanni Claudio Fava	
from	Giovanni Claudio Fava	
Date of request	1.7.2005	
Date announced in plenary	6.7.2005	
Committee responsible	JURI	
Date announced in plenary	6.7.2005	
Basis in Rules of Procedure	Rules 6(3) and 7	
Rapporteur	Klaus-Heiner Lehne	
Date appointed	13.7.2005	
Previous rapporteur		
Discussed in committee	5.10.2005	21.11.2005
Date adopted	21.11.2005	
Result of final vote	for:	13
	against:	0
	abstentions:	0
Members present for the final vote	Maria Berger, Bert Doorn, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Aloyzas Sakalas, Nicola Zingaretti, Tadeusz Zwiefka	
Substitutes present for the final vote	Jean-Paul Gauzès, Eva Lichtenberger, Manuel Medina Ortega, Marie Panayotopoulos-Cassiotou, Michel Rocard	
Substitutes under Rule 178(2) present for the final vote		
Date tabled – A6	23.11.2005	A6-0331/2005