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on the request for defence of the immunity and privileges of Aldo Patriciello
(2008/2323(IMM))

Committee on Legal Affairs

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for defence of the immunity and privileges of Aldo Patriciello (2008/2323(IMM))

The European Parliament,

- having regard to the request by Aldo Patriciello for defence of his immunity in connection with criminal proceedings brought against him before the District Court of Campobasso, of 11 November 2008, announced in plenary sitting on 20 November 2008,
 - having heard Aldo Patriciello 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 ("the Protocol"), 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, 10 July 1986 and 21 October 2008¹ 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 (A6-0196/2009),
- A. whereas Aldo Patriciello is a Member of the European Parliament whose credentials were verified by Parliament on 15 June 2006,
- B. whereas, according to the Court of Justice, the European Parliament and the national judicial authorities must cooperate in order to avoid any conflict in the interpretation and application of the provisions of the Protocol; whereas, consequently, where an action has been brought against a Member of the European Parliament before a national court and that court is informed that a procedure for defence of the privileges and immunities of that Member, as provided for in Article 6(3) of the Rules of Procedure, has been initiated, that court must stay the judicial proceedings and request Parliament to issue its opinion as soon as possible²,
- C. whereas, according to Article 10 of the Protocol, during the sessions of the European Parliament, its Members enjoy in the territory of their own State the immunities accorded to members of their parliament and whereas immunity cannot be claimed where a Member is caught in the act of committing an offence; whereas this does not prevent Parliament from exercising its right to waive the immunity of one of its Members³,

¹ Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2391 and Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente*, not yet reported in the European Court Reports.

² Judgment in Joined Cases C-200/07 and C-201/07 *Marra*, at paragraphs 42 and 43.

³ Article 10 of the Protocol.

- D. whereas, therefore, the provision applicable to the case in question is Article 68(2) of the Italian Constitution, which allows criminal proceedings to be brought against Members of Parliament without any special formalities, given its provision that, without the leave of the Chamber to which the Member belongs, a search may not be carried out on either the person or the domicile of a Member of Parliament and a Member may not be arrested or otherwise deprived of his or her personal freedom or kept in detention, except to enforce a final conviction or where the Member is caught in the act of committing a crime for which arrest is mandatory in the case of *flagrante delicto*,
- E. whereas, as it stands, the Protocol does not afford the European Parliament the means of taking binding action in order to protect Aldo Patriciello,
1. Decides not to defend the immunity and privileges of Aldo Patriciello;
 2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the competent authorities of the Italian Republic.

EXPLANATORY STATEMENT

I. FACTS

At the sitting of 20 November 2008, the President of Parliament announced that he had received a request for the defence of the parliamentary immunity of Aldo Patriciello by letter of 11 November 2008, which was forwarded to the Committee on Legal Affairs, pursuant to Rule 6(3) of the Rules of Procedure.

The request relates to the criminal proceedings brought by the Public Prosecutor's Office against Mr Patriciello and currently pending before the District Court of Campobasso (Case No 106/2004 r.g.n.r.).

Mr Patriciello was charged with offences under Articles 81(2), 323(1) and (2), 640(a), 56, 640 second paragraph No 1, 56, 316(a) of the Criminal Code, and offences under Articles 31, 32(1) and (3), 44(c) of the Consolidated Act on the Construction Sector (*Testo Unico sull'Edilizia*).

The charges brought by the local public prosecutor alleged that Mr Patriciello, who *'at the time of the facts was Vice-President and Councillor of the Molise Region'* and *'an influential, powerful point of reference and political "backer", as well as the true 'proprietor' and creator of Neuromed – a moral and financial point of reference'*, played a part in the aforementioned offences together with the then chair and the then managing director of Neuromed - Mediterranean Neurological Institute, the then legal representative of the 'Paola Pavone' Foundation, the then Director-General of the Department of Health and Social Security Policies of the Molise Region and the then Director-General of the Campobasso Health Authority.

More specifically, Mr Patriciello was charged with having played a role in directing, controlling and supporting the actions of the chair of Neuromed and the legal representative of the 'Paola Pavone' Foundation who, on 11 September 2000, drew up a contract for the free use of the 'offending' institute located in the municipality of Salcito, between the 'Paola Pavone' Foundation (owner and builder of the building in question) and the Neuromed, in order to allow the latter welfare and research institution to run the facility in question *'for its own profit (...) as an "advanced rehabilitation centre" under (temporary) accreditation arrangements with the Region, excluding any form of social or welfare provision'*; the institute in question, moreover, had allegedly *'already been built thanks also to disbursement by the Region of a substantial sum (ITL 1 400 000 000) tied to the operation of the institute (also) as a social and health care institute'* and was run *'as if it were a private enterprise under political patronage, also seeking, through the "satellite sectors" that are inevitably linked to such an operation (recruitment, business for local shops, various companies, businesses, etc.) to acquire and/or consolidate political consensus, especially locally, and to embezzle the financing already obtained – using that funding for very different purposes that were totally incompatible with those for which it had been granted.*

It also sought to make further substantial profit from the services provided, which were handsomely reimbursed by the Molise Region, to the detriment of both the authority and the

entire community'.

Mr Patriciello was also charged with the aforementioned town-planning offences because, in cooperation with other defendants, he allegedly '*altered the official purpose of the facility*' in the municipality of Salcito '*from a care home for the elderly to an advanced rehabilitation centre*' without the necessary administrative clearance, using a facility that '*no longer had a licence given that it had been granted free of charge for its original social objective, which had become obsolete*'.

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

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.

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.*
(...)"

As for the applicability of Article 9, it should be noted that the charges brought against Mr Patriciello do not refer to the opinions expressed or votes cast in the performance of his duties as a member of the European Parliament, for the clear reason that embezzlement of public funds or town planning offences cannot be equated with an "opinion" or a "vote".

As for Article 10, given that the charges brought against Mr Patriciello refer to facts committed in Italy, whose citizenship he enjoyed at the material time, the only applicable part is the one pursuant to which "*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*".

The scope of the parliamentary immunity in Italy is very similar to the one that serves the functioning of the European Parliament, based on the Protocol.

Article 68(2) of the Italian Constitution reads as follows:

Article 68(2)

Without authorisation from the House to which they belong, no member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested

or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory.

In other words, under the Italian Constitution, criminal proceedings may be initiated against Members of Parliament without any special formalities, an authorisation being necessary only in some specific cases.

III. JUSTIFICATION OF THE PROPOSED DECISION

On the basis of the foregoing and the available documents, it has to be concluded that, from a legal point of view, Mr Patriciello's case cannot be regarded as a case of immunity to be defended by the European Parliament. In the final analysis, Mr Patriciello's case falls entirely under Italian legislation.

At the present stage of the criminal proceedings brought against Mr Patriciello, the above-mentioned Article 68(2) of Italian Constitution does not endanger his prerogatives as a parliamentarian: in the same way as Members of the Italian Parliament, he does not enjoy immunity from criminal prosecution as such.

As a consequence, it is unquestionable that, as it stands, Article 10(a), of the Protocol on the privileges and immunities, by letting Members' protection depend on their own national legislation, does not afford the European Parliament with the means of taking binding action in order to protect Mr Patriciello in the case in point.

IV. CONCLUSIONS

On the basis of the above considerations, the Committee on Legal Affairs, having heard Mr Patriciello and having examined the reasons for and against defending his immunity, considers that, as it stands, the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 does not afford the European Parliament with the means of taking binding action in order to protect Aldo Patriciello.

ANNEX: Article 68(2) of the Italian Constitution

Article 68(2) of the Italian Constitution reads as follows:

'Without authorization from the House to which they belong, no member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory *flagrante delicto*'.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	31.3.2009
Result of final vote	+: 8 -: 0 0: 0
Members present for the final vote	Carlo Casini, Monica Frassoni, Giuseppe Gargani, Klaus-Heiner Lehne, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis