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REPORT

on the request for consultation on the immunity and privileges of Antonio Di
Pietro
(2008/2146(IMM))

Committee on Legal Affairs

Rapporteur: Aloyzas Sakalas

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for consultation on the immunity and privileges of Antonio Di Pietro (2008/2146(IMM))

The European Parliament,

- having regard to the request for consultation on the parliamentary immunity of Antonio Di Pietro, forwarded by the competent authority of the Italian Republic on 15 May 2008, and announced in plenary sitting on 5 June 2008,
 - having heard Antonio Di Pietro 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, 10 July 1986 and 21 October 2008¹ of the Court of Justice of the European Communities,
 - having regard to Article 68(1) of the Italian Constitution,
 - having regard to Rules 6(1) and 7(13) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0197/2009),
1. Decides not to waive the immunity of Antonio Di Pietro;
 2. Instructs its President to forward this decision, and the report of the committee responsible, immediately to the competent authorities of the Italian Republic.

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.

EXPLANATORY STATEMENT

I. FACTS

By letter of 15 May 2008, the Permanent Representation of the Italian Republic forwarded to the European Parliament the order of the Civil Court of Rome of 10 April 2007 in civil case No 85124/2003 between Filippo Verde (claimant) and Antonio Di Pietro (defendant).

In its order, the Italian Court, in considering the defence raised by Mr Di Pietro by way of objection of inadmissibility, asks the European Parliament to rule on the immunity of Mr Di Pietro, given that he was a member of the European Parliament at the material time.

On 12 February 2003, the official website of the political party "Lista Di Pietro" published an article by Mr Di Pietro which had already been published in the daily newspaper "Rinascita" on 26 October 2002.

In that article commenting on the proceedings pending before the Court of Milan in the case of *IMI-SIR v. Lodo Mondadori*, Mr. Di Pietro stated that Mr Filippo Verde was charged - along with other judges - with corruption on the ground that he had taken a bribe for "fixing" a judgment (the offending sentence was: "... The trial "Lodo Mondadori" would regard a sentence given by the Court of Rome - always under the direct or indirect influence of the judges Metta, Verde, Squillante - that cancelled the arbitral award...").

In the initiating summons, Mr Filippo Verde states that he was never included in the list of accused in the *Lodo Mondadori* case, and accuses Mr Di Pietro of having disseminated objectively false information, which amounts to the criminal offence of defamation (former Art. 595 of the Criminal Code). In his summons, he claims compensation (former Art. 185 of the Criminal Code) and an indemnification (former Art. 12 of Law No 47 of 8 February 1948) in a total amount of EUR 210 000.

Mr Di Pietro admits that his article contained a "astounding error" caused by a commonplace file copy problem. In fact, Mr Verde was never involved in the trial of the *Lodo Mondadori* case; rather he had been involved in the *IMI-SIR* case, where he had been absolved from any liability.

In his defence, Mr Di Pietro claims that this technical/clerical error arose because the mass media commonly dealt with the two cases together under the heading "IMI-SIR/Lodo Mondadori".

Mr Di Pietro further argues that the erroneous inclusion of Mr Verde's name in the article in issue was in any case marginal, since the article was concerned principally with the political implications of the legal proceedings in question.

The defendant also stresses that the article was drafted in such a way as to underscore that the

charges laid by prosecutor still had to be made out.

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.

(...)

2. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived 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.

4. Where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other measure which prevents him from performing the duties proper to his mandate.

(...)

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.

(...)

13. Any inquiry as to the scope of Members' privileges or immunities made by a competent authority shall be dealt with according to the above rules."

III. JUSTIFICATION OF THE PROPOSED DECISION

Mr Di Pietro argues that there is the nexus between his political activity and the article at issue and calls for the application of Article 68(1) of the Italian Constitution, which provides that: "Members of Parliament cannot be held accountable for the opinions expressed or votes cast in the performance of their function".

This request should be construed as a request for the application of Article 9 of the Protocol given that Mr Di Pietro is a (former) member of the European Parliament and the article in question was published when he was still a member.

As a matter of fact, in his statements reported by the writ of summons filed by the claimant, Mr Di Pietro merely commented on facts in the public domain.

In describing and criticising one of the most important judicial affairs of recent Italian political life, he was carrying out his duty as a Member of Parliament in expressing his opinion on a matter of public interest to his constituents.

In short, Mr Di Pietro was carrying out his duty 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 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 Antonio Di Pietro be defended.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	31.3.2009
Result of final vote	+: 9 -: 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