

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0269/2009

22.4.2009

REPORT

on the request for defence of the immunity and privileges of Umberto Bossi
(2009/2020(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 Umberto Bossi (2009/2020(IMM))

The European Parliament,

- having regard to the request by Umberto Bossi for defence of his immunity in connection with an investigation which is currently being carried out by the Public Prosecutor's Office attached to the Verbania District Court, of 19 February 2009, announced in plenary sitting of 9 March 2009,
 - 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 Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0269/2009),
1. Decides to defend the immunity and privileges of Umberto Bossi;
 2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the appropriate 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

At the sitting of 9 March, the President of Parliament announced that he had received a request for the defence of the parliamentary immunity of Umberto Bossi (a former MEP) by letter of 24 February 2009, which was forwarded to the Committee on Legal affairs, pursuant to Rule 6(3) of the Rules of Procedure.

The request relates the investigation concerning Mr. Umberto Bossi in connection with an indictable offence pursuant to Article 61(10) and 612, paragraphs I and II, of the Italian Criminal Code, which is pending before the the District Court's Public Prosecutor's Office of Verbania.

During an electoral meeting held in Verbania on 6 April 2008, Umberto Bossi referred to the Minister of Internal Affairs, Giuliano Amato, in the following terms:

'It's impossible to vote here, you can't vote for just one party as you are supposed to in law, they have put two electoral symbols together ... we're waiting ... you can see that these elections could end up with people having to take a gun and go after these swine, these Roman centralisers ... to take out this riff raff who are trying to stop the elections ... what they've done ... they've stamped the ballot papers with these two combined symbols, so that if you vote for one you automatically vote for the other one too ... so apart from rigging the election, even the ballot papers have been fixed ... it's a set-up job ... we don't even know if the ballot papers will be printed in time ... they're all scum, the Left is nothing but riff raff and criminals ... but watch out, you criminals, Padania ... Padanians, Lombards, Venetians, Piemontese aren't afraid of you ... we can get you if we want'.

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.

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.
(...)"*

Relevant national law

Constitution of the Italian Republic, as amended by Constitutional Law No 3 of 29 October 1993, Article 68 [Indemnity, Immunity]:

(1) Members of Parliament shall not be called to answer for opinions expressed or votes cast in the exercise of their functions.

(2) No members of Parliament shall, without the authorisation of the Chamber to which they belong, be subjected to search warrants on their persons or in their homes, nor arrested or otherwise deprived of personal freedom, nor kept in state of detention, save in the case of execution of an irrevocable sentence of conviction, unless they be caught in the act of committing an offence for which an order of arrest is mandatory.

(3) A similar authorisation shall be required in order to subject Members of Parliament to any form of interception of their conversations or communications, and in order to seize their mail or correspondence.

III. JUSTIFICATION OF THE PROPOSED DECISION

Mr Bossi calls for the application of the first paragraph 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 Bossi is a (former) member of the European Parliament.

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"*.

As a matter of fact, in his statements, during an electoral meeting, Mr Bossi merely commented on facts in the public domain which had an Italian and European political dimension as they were directly linked to the voters' right to a fair electoral competition and their interest in having all parties and candidates duly admitted to it. The widest exercise of such a right concerned every European citizen as it was a particular expression of the general and fundamental freedoms as guaranteed by Article 6 of the TEU.

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 statements was the behaviour of a politician and the holder of a public office brings them within the realm of legitimate political debate.

On the other hand, 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 considers that parliamentary immunity within the meaning of Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities fully covers the statements made by Mr Umberto Bossi and therefore decides to defend his immunity.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	21.4.2009
Result of final vote	+: 10 -: 0 0: 0
Members present for the final vote	Carlo Casini, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Manuel Medina Ortega, Aloyzas Sakalas, Eva-Riitta Siitonen, Francesco Enrico Speroni, Tadeusz Zwiefka