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## **REPORT**

on the request for defence of the immunity and privileges of Aldo Patriciello  
(2009/2021(IMM))

Committee on Legal Affairs

Rapporteur: Aloyzas Sakalas

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## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for defence of the immunity and privileges of Aldo Patriciello (2009/2021(IMM))

*The European Parliament,*

- having regard to the request by Aldo Patriciello 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 Isernia District Court, 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 2008<sup>1</sup> 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 (A6-0286/2009),
1. Decides 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 appropriate authorities of the Italian Republic.

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<sup>1</sup> 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 MEP by letter., 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 Aldo Patriciello in connection with an indictable offence pursuant to Article 61 (10) and 368 of the Italian Criminal Code, which is pending before the Isernia District Court's Public Prosecutor's Office

For the Public Prosecutor of the Court of Isernia (Italy), Mr Aldo Patriciello during a discussion that took place in the presence of Mar. Gaetano Pirozzi, Vice Brig. Enzo Valente, App. Sc. Luigi Ponzetto and Car. Massimo Santantonio all serving with the company of Carabinieri stationed at Venafro HQ and all duty-bound to report criminal offences, who were responding to reports of a violation of the Highway Code issued by Stefania Di Clemente, a municipal police officer serving with the Municipality of Petrilli, concerning a number of motorists who had parked their vehicles near the 'Neuromed' (Istituto Neurologico Mediterraneo) facility, he stated that the latter [Stefania Di Clemente] had forged the times on the said report while in fact no forgery had legally occurred, thereby accusing her of the offence of forging public documents even though he knew she was innocent.

### 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 Patriciello 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”.

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, Mr Patriciello merely commented on facts in the public domain, the rights of the citizens to have an easy access to a Hospital and to the healthcares, which had an important impact on the daily life of his constituents.

Mr Aldo Patriciello did not act for his own interest, he did not want insult the public official but he act for general interest of his electorate in the framework of his political activity.

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.

### **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 Aldo Patriciello be defended.**

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	30.4.2009
<b>Result of final vote</b>	+: 7 -: 0 0: 0
<b>Members present for the final vote</b>	Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Jaroslav Zvěřina
<b>Substitute(s) present for the final vote</b>	Jean-Paul Gauzès, Jacques Toubon
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Herbert Reul