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JUDGMENT OF THE COURT (Grand Chamber)

6 September 2011 (\*)

(Member of the European Parliament – Protocol on Privileges and Immunities – Article 8 – Criminal proceedings for the offence of making false accusations – Statements made outside the precincts of the Parliament – Definition of opinion expressed in the performance of parliamentary duties – Immunity – Conditions)

In Case C-163/10,

REFERENCE for a preliminary ruling pursuant to Article 267 TFEU, from the Tribunale di Isernia (Italy), made by decision of 9 March 2010, received at the Court on 2 April 2010, in the criminal proceedings against

**Aldo Patriciello,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot and J.-J. Kasel, Presidents of Chambers, G. Artestis, A. Borg Barthet, M. Ilešić, J. Malenovský, A. Ó Caoimh (Rapporteur), C. Toader and M. Safjan, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 15 February 2011,

after considering the observations submitted on behalf of:

- Aldo Patriciello, by G. Ranaldi and G. Scalese, avvocati, and by S. Fortunato, assistente,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by M. Russo, avvocato dello Stato,
- the Greek Government, by K. Georgiadis and by M. Germani and G. Papagianni, acting as Agents,
- the European Parliament, by H. Krück, A. Caiola and N. Lorenz, acting as Agents,
- the European Commission, by I. Martínez del Peral and C. Zadra, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 June 2011,

gives the following

## **Judgment**

- 1 The reference for a preliminary ruling relates to the interpretation of Article 8 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties ('the Protocol').
- 2 The reference was made in criminal proceedings brought against Mr Patriciello, a Member of the European Parliament, for the offence of making false accusations.

### **Legal context**

#### *European Union ('EU') legislation*

- 3 Article 8 of the Protocol provides:

'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.'

- 4 Article 9 of the Protocol provides:

'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;

...'

- 5 Article 18 of the Protocol provides:

'The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.'

- 6 Rule 6 of the Rules of Procedure of the European Parliament (OJ 2005 L 44, p. 1, 'the Rules'), entitled 'Waiver of immunity', is worded as follows:

'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.

...'

- 7 Rule 7 of the Rules, containing the rules on procedures on the immunity of Members of the Parliament, provides at subparagraphs (2), (6) and (7):

'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.

...

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.'

*National legislation*

8 In accordance with the first paragraph of Article 68 of the Italian Constitution:

'Members of Parliament may not be called to answer for opinions expressed or votes cast in the performance of their duties.'

9 Article 3(1) of Law No 140 laying down provisions to give effect to Article 68 of the Constitution and concerning the prosecution of persons in high State office (legge n. 140, disposizioni per l'attuazione dell'articolo 68 della Costituzione nonché in materia di processi penali nei confronti delle alte cariche dello Stato), of 20 June 2003 (GURI No 142, of 21 June 2003), provides as follows:

'The first paragraph of Article 68 of the Constitution shall apply in all circumstances with regard to the presentation of draft laws or of proposals for a law, amendments, agenda, motions and resolutions, to [interpellations and] questions and interventions in the Assemblies and other bodies of the Chambers, to all votes cast, however formulated, to all other parliamentary acts, and to all other activities of examination, disclosure, criticism and political statements connected with the duties of a Member of Parliament, even when performed outside the Parliament.'

**The dispute in the main proceedings and the question referred for a preliminary ruling**

10 In criminal proceedings before the Tribunale di Isernia (District Court, Isernia) Mr Patriciello is charged with wrongfully accusing of illegal conduct an officer of the municipal police of Pozzilli (Italy), in the course of an altercation which took place on 1 August 2007 in a public car-park not far from a neurological institute and close to his home.

11 It is apparent from the order for reference that Mr Patriciello is charged with the offence of making false accusations under Article 368 of the Italian Penal Code, with the aggravating circumstance that the person he accused was a public official acting in the performance of her duties for the purpose of Article 61(10) of that Code. It is alleged that he claimed that the municipal police officer had falsified the times concerned when booking several drivers whose vehicles were parked in contravention of road traffic laws and so accused the officer in question of the offence of forgery under Article 477 of the Penal Code. Mr Patriciello is further alleged to have repeated his accusations before police officers [carabinieri] who came to establish whether the offences of which Mr Patriciello accused the officer of the municipal police had in fact been committed.

12 By decision of 5 May 2009, the European Parliament, acting in response to Mr Patriciello's request under Article 6(3) of its Rules of Procedure, decided, in accordance with the report of its Committee on Legal Affairs, to defend his immunities and privileges ('the decision to defend immunity'). The following reasons are given in the report:

'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 [sic] easy access to a Hospital and to the healthcares [sic], which had an important impact on the daily life of his constituents.

Mr ... Patriciello did not act for [sic] his own interest, he did not want insult [sic] the public official but he act [sic] 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.

...

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 ... Patriciello be defended.'

- 13 In its decision for reference, the Tribunale di Isernia notes, none the less, that under subparagraph (a) of the first paragraph of Article 9 of the Protocol, members enjoy, with regard to acts committed in national territory, immunities and privileges on the same substantive and formal conditions as those laid down by domestic law. According to Article 68 of the Italian Constitution, however, the privilege of parliamentary immunity does not cover extraparliamentary activities unless they are closely linked to the performance of duties typical of the parliamentary mandate, and carried out strictly for the purposes of that mandate.
- 14 In those circumstances, that court considers that, without prejudice to any appraisal of the substance of the accusation, it is unable, on the basis of domestic law, to support the reasoning that prompted the European Parliament to adopt the decision to defend immunity. The circumstances giving rise to the prosecution in the main proceedings were not, in fact, connected to any expression of an opinion in the performance of the duties of a Member of the European Parliament.
- 15 In this regard, that court notes that, according to the public prosecutor, the argument that Mr Patriciello did no more than comment on matters of common knowledge, namely, the right of a citizen to have easy access to hospitals and healthcare, with no intention of insulting a public official, would appear groundless. In point of fact, it is alleged, although it remains to be established, that Mr Patriciello explicitly accused a public official of forgery before members of the police force. At first sight such conduct would seem to be unconnected to the general interest of his constituents and, as such, would seem incapable, even in the abstract, of falling within the rules on immunity.
- 16 Nevertheless, the Tribunale di Isernia remarks that the decision to defend immunity was adopted after reference had been made not only to subparagraph (a) of the first paragraph of Article 9 of the Protocol but also to Article 8 thereof. It notes that the Court has held that, that article making no reference to national rights, the scope of immunity for which it provides must be established on the basis of EU law alone. Furthermore, even if the decision to defend immunity constitutes an opinion without binding effect on national courts, the court making the reference is bound by the duty to cooperate in good faith with the European institutions in accordance with Articles 4(3) TEU and 18 of the Protocol (Joined Cases C-200/07 and C-201/07 *Marra* [2008] ECR I-7929, paragraphs 26 and 39 to 41).
- 17 In those circumstances, the Tribunale di Isernia decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the facts construed *in abstracto* as a criminal offence committed by [Mr] Patriciello, a Member of the European Parliament (described in the indictment and in favour of whom the European Parliament has adopted a decision ... to defend his immunity), categorised as making false accusations under Article 368 of the Penal Code,

correspond to the expression of an opinion in the performance of parliamentary duties for the purposes of Article [8] of the Protocol?’

#### **The question referred for a preliminary ruling**

- 18 As a preliminary point, it is to be borne in mind that, as the Court has previously held, the parliamentary immunity of Members of the European Parliament, as provided for in Articles 8 and 9 of the Protocol, comprises the two forms of protection usually afforded to members of national parliaments in the Member States, that is to say, immunity in respect of opinions expressed and votes cast in the exercise of their parliamentary duties, and parliamentary privilege, including, in principle, protection from judicial proceedings (*Marra*, paragraph 24).
- 19 As the actual wording of the question makes clear, it is the interpretation of Article 8 of the Protocol alone that is relevant to the dispute in the main proceedings.
- 20 In this respect, it must be stated, as the Italian Government has done, that by its question as it is worded the court making the reference asks the Court itself to apply Article 8 of the Protocol to the case before it, giving a ruling on the issue of whether the statements made by the Member of the European Parliament in question giving rise to the prosecution in the main proceedings constitute an opinion expressed in the performance of his parliamentary duties and are, therefore, covered by the immunity provided by that article.
- 21 In proceedings brought pursuant to Article 267 TFEU the Court of Justice has no jurisdiction to apply rules of EU law to a particular case. It may, however, provide the national court with all guidance on interpretation concerning EU law that could be useful for its decision (see, in particular, Case C-54/07 *Feryn* [2008] ECR I-5187, paragraph 19 and case-law cited).
- 22 Consequently, in a case such as that in the main proceedings, it is for the court making the reference to decide whether the statements at issue are covered by the immunity provided by Article 8 of the Protocol, by determining whether the substantive conditions laid down in that provision in order to give effect to that immunity have been satisfied (see *Marra*, paragraph 33).
- 23 On the other hand, it is for the Court of Justice to provide the national court with all necessary information with a view to offering guidance in that determination, recasting, if need be, the question referred to it (see, *inter alia*, Case C-420/06 *Jager* [2008] ECR I-1315, paragraph 46, and Case C-243/09 *Fuß* [2010] ECR I-0000, paragraph 39).
- 24 In that regard, it is clear from the documents before the Court that in actual fact the Tribunale di Isernia seeks by its question a definition of the tests relevant for determining whether a statement such as that in issue in the main proceedings, made by a Member of the European Parliament outside the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations, constitutes an opinion expressed in the performance of his parliamentary duties for the purpose of Article 8 of the Protocol.
- 25 On this point, it has to be emphasised that, unlike the parliamentary immunity provided by subparagraph (a) of the first paragraph of Article 9 of the Protocol, which depends on national law, the extent of the immunity provided by Article 8 of the Protocol must be established on the basis of EU law alone, for that article makes no reference to national laws (see, to that effect, *Marra*, paragraph 26).
- 26 As the Court has previously held, Article 8 of the Protocol, which constitutes a special provision applicable to all legal proceedings for which the Member benefits from immunity in respect of opinions expressed and votes cast in the exercise of parliamentary duties, is intended to protect the freedom of expression and

independence of Members of the European Parliament, with the result that it prevents any judicial proceedings in respect of those opinions or votes (see, to that effect, *Marra*, paragraphs 45 and 27).

- 27 It follows that, whatever the rules on immunity laid down in national law or the limits fixed therein may be, if the substantive conditions for recognition of immunity under Article 8 of the Protocol have been met, immunity may not be waived by the European Parliament and the national court with jurisdiction to apply it is bound to dismiss the action brought against the Member concerned (see, to that effect, *Marra*, paragraph 44).
- 28 As has been maintained by all the parties who have presented their observations in this case, statements made by a Member of the European Parliament are not to lose this immunity merely because they were made outside the precincts of the European Parliament.
- 29 It is true that Article 8 of the Protocol, in the light of its objective of protecting the freedom of speech and independence of Members of the European Parliament and in the light of its wording, which expressly refers to votes cast as well as to opinions expressed by the Members, is in essence intended to apply to statements made by those members within the very precincts of the European Parliament.
- 30 Nevertheless, it is not impossible that a statement made by those Members beyond those precincts may amount to an opinion expressed in the performance of their duties within the meaning of Article 8 of the Protocol, because whether or not it is such an opinion depends, not on the place where the statement was made, but rather on its character and content.
- 31 In referring to opinions expressed by the Members of the European Parliament, Article 8 of the Protocol is closely linked to freedom of expression. Freedom of expression, as an essential foundation of a pluralist, democratic society reflecting the values on which the Union, in accordance with Article 2 TEU, is based, constitutes a fundamental right guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union which, pursuant to Article 6(1) TEU, has the same legal value as the Treaties. This freedom is also affirmed in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950.
- 32 In consequence, it is to be considered that 'opinion' for the purpose of Article 8 of the Protocol must be understood in a wide sense to include remarks and statements that, by their content, correspond to assertions amounting to subjective appraisal.
- 33 It is clear too from the wording of Article 8 of the Protocol that, in order to enjoy immunity, an opinion must have been expressed by a Member of the European Parliament 'in the performance of [his] duties', thus entailing the requirement of a link between the opinion expressed and the parliamentary duties.
- 34 The issue being, as in the case in the main proceedings, statements made by a Member of the European Parliament prosecuted in his Member State of origin, it must be held that, as can be seen from paragraph 27 above, the immunity provided by Article 8 of the Protocol is capable of definitively preventing national courts and judicial authorities from exercising their respective jurisdictions in the field of prosecutions and penalties for criminal offences for the purpose of ensuring the observance of law and order in their territory and, as a corollary, capable of thus denying the persons damaged by those statements any judicial remedy whatsoever, including, as the case may be, claiming compensation before the civil courts for the damage suffered.
- 35 Having regard to those consequences, it has to be accepted that the connection between the opinion expressed and parliamentary duties must be direct and obvious.
- 36 Furthermore, having regard to the descriptions of the circumstances and the content of the allegations made by the Member of the European Parliament at issue in the

main proceedings, they appear to be rather far removed from the duties of a Member of the European Parliament and hardly capable, therefore, of presenting a direct link with a general interest of concern to citizens. Thus, even if such a link could be demonstrated, it would not be obvious.

- 37 It is in the light of this guidance that the court making the reference must determine whether the statement at issue in the main proceedings can be regarded as the expression of an opinion in the performance of parliamentary duties, with the result that the substantive conditions for recognition of immunity under Article 8 of the Protocol have been satisfied, which, as has been pointed out at paragraphs 21 and 22 above, falls within that court's exclusive jurisdiction.
- 38 If, on completing that determination, that court should find that such is the case, it would have no choice but to give due effect to that immunity by dismissing, as indicated in paragraph 27 above, the action brought against the Member of the European Parliament concerned (*Marra*, paragraphs 33 and 44). Contrariwise, if it should find that such is not the case, the substantive conditions for immunity not being satisfied, that court would have to continue hearing the action.
- 39 It is to be borne in mind that even if, as in the case in the main proceedings, the European Parliament, in response to the request of the Member concerned, has taken a decision to defend the latter's immunity, that decision, adopted in accordance with its Rules of Procedure, is no more than an opinion without any binding effect on national courts, for there is no provision in the Protocol obliging those courts to refer to the Parliament the decision whether the conditions laid down in Article 8 of the Protocol have been met. As the Court has previously held, the fact that the law of a Member State, like the law in question in the main proceedings, provides for a procedure to defend members of the national parliament, enabling the latter to intervene when the national court does not recognise that immunity, does not imply that the same powers are conferred on the European Parliament in relation to its Members from that Member State, for Article 8 of the Protocol does not expressly provide such a power and does not refer to rules of national law (see, to that effect, *Marra*, paragraphs 35 to 40).
- 40 In consequence, and contrary to what was argued at the hearing by the defendant in the main proceedings, although, by reason of the duty of the European institutions and national authorities to cooperate in good faith laid down in Articles 4(3) TEU and 18 of the Protocol, the European Parliament and the national courts must indeed cooperate in order to avoid any conflict in the interpretation and application of the provisions of the Protocol (*Marra*, paragraph 42), EU law does not place the national court making the reference under any particular obligation as regards the reasons given for its decisions if, having regard to the interpretation provided by this judgment given pursuant to Article 267 TFEU, it should decide not to follow the opinion of the European Parliament of which it had been informed, concerning the application of Article 8 of the Protocol to the facts in the main proceedings.
- 41 Having regard to the foregoing, the answer to be given to the question referred is that Article 8 of the Protocol must be interpreted to the effect that a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties. It is for the court making the reference to determine whether those conditions have been satisfied in the case in the main proceedings.

### **Costs**

- 42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that

court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 8 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, must be interpreted to the effect that a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties. It is for the court making the reference to determine whether those conditions have been satisfied in the case in the main proceedings.**

[Signatures]

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\* Language of the case: Italian.