

### 3. The second and third pleas in law examined by the General Court

It is on account of a manifest error of assessment that the General Court fails to give normative value to the *European Parliament Directorate General for Research Working Paper on 'Parliamentary Immunity in the Member States of the European Community and in the European Parliament, Legal Affairs Series*, and fails to take into account the principles recalled therein, which leads to an erroneous assessment of Article 9 of Protocol No 7 in the light of the facts of the case.

### 4. The fourth plea in law examined by the General Court

#### — Existing legal practice

Contrary to the General Court's declaration, an established legal practice of the European Parliament 'consisting in refusing requests for waiver of parliamentary immunity based on facts relating to the political activities of Members of Parliament' did exist, which ought to have led the General Court to make a different finding on the waiver of parliamentary immunity.

#### — *Fumus persecutionis*

There is no review on the part of the judicial authorities as to whether an association is partisan, which the General Court ought to have taken into account on a simple reading of the Law of 29 July 1881.

The General Court was able, by examining the terms of the invitation to the conference organised by the Fédération des Maisons des Potes, to verify the partisan nature of that association, which is a political opponent of the Front National and Jean-François Jalkh.

This is a clear case of *fumus persecutionis*.

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**Appeal brought on 21 December 2018 by the European Commission against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 24 October 2018 in Case T-29/17, RQ v Commission**

**(Case C-831/18 P)**

(2019/C 65/38)

*Language of the case: French*

### **Parties**

*Appellant:* European Commission (represented by: J.-P. Keppenne, J. Baquero Cruz, acting as Agents)

*Other party to the proceedings:* RQ

### **Form of order sought**

The appellant claims that the Court of Justice should:

- set aside the judgment of the General Court of the European Union (Seventh Chamber, Extended Composition) of 24 October 2018 in Case T-29/17, in so far as it annuls Commission Decision C(2016) 1449 final of 2 March 2016 concerning a request to waive RQ's immunity from legal proceedings;
- dismiss the application for annulment brought by the respondent to the appeal before the General Court of the European Union and give a final ruling on the questions which form the subject-matter of the present appeal or, if the state of the proceedings does not permit judgment to be given by the Court, refer the case back to the General Court for judgment;
- order the applicant at first instance to pay the costs incurred by the Commission both at first instance and in the present appeal.

**Pleas in law and main arguments**

In support of its appeal, the Commission relies on three grounds of appeal:

1. First, unlike the General Court, the Commission considers that the decision to waive immunity does not constitute an act adversely affecting the applicant and cannot therefore be the subject of an action for annulment. The judgment under appeal is therefore vitiated by an error in law in so far as it holds the application admissible.
  2. Secondly, the Commission considers that the judgment under appeal incorrectly interprets the right to be heard, enshrined in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, in that it is based on a misinterpretation and misapplication of Article 4(3) TEU (principle of cooperation in good faith) and the general principle of mutual confidence and trust between EU bodies and the authorities of the Member States.
  3. Thirdly, the Commission considers that the General Court erred in law in the characterisation of the Commission's conduct in the present case by considering that the Commission did not adequately respect the applicant's right to be heard.
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