

- In order to assess whether a shape is necessary to achieve a technical result, must account be taken of the following criteria:
 - The existence of other possible shapes which allow the same technical result to be achieved?
 - The effectiveness of the shape in achieving that result?
 - The intention of the alleged infringer to achieve that result?
 - The existence of an earlier, now expired, patent on the process for achieving the technical result sought?

(¹) OJ 2001 L 167, p. 10.

Appeal brought on 7 January 2019 by Mylène Troszczynski against the judgment of the General Court (Sixth Chamber) delivered on 8 November 2018 in Case T-550/17, *Troszczynski v Parliament*

(Case C-12/19 P)

(2019/C 82/22)

Language of the case: French

Parties

Appellant: Mylène Troszczynski (represented by: F. Wagner, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

- set aside the judgment delivered by the Sixth Chamber of the General Court of the European Union on 8 November 2018 in Case T-550/17;

and accordingly,

- annul the decision of the European Parliament of 14 June 2017 adopting Report No A8-0218/2017 of the Committee on Legal Affairs on the request for waiver of the immunity and privileges of Mylène Troszczynski, a Member of the European Parliament;
- make an appropriate order as to the amount to be awarded to the appellant in respect of the costs of the proceedings;
- order the European Parliament to pay all costs.

Pleas in law and main arguments

1. The General Court's analysis of the second plea in law

The General Court does not consider that the disputed tweet of Mylene Troszczynski constitutes the expression of an opinion in the performance of parliamentary duties on the ground that it relates to a specific event, deemed to have taken place in France, which cannot be regarded as constituting the taking of a general position on current topical issues or issues dealt with by the Parliament, which are conditions required in order for an opinion to be protected under the Protocol.

The General Court errs manifestly in its assessment, since:

- each Member of Parliament is an elected representative in his country, he represents his electors and must maintain a link with them during his mandate, *inter alia* by making reference to facts that interest or concern them,

- principle No 2 of Notice to Members 11/2003 does not make such a distinction,
- the wearing of full veils in public places concerns the electorate of France and of all European countries and such an external manifestation of adherence to Islam is a subject of general interest that relates to public life and the rights of women,
- the General Court ought to have applied the principles of the *Patriciello* judgment.

2. The General Court's analysis of the third plea in law

It has been established, and accepted by the General Court, that Mylène Troszczynski is not the author of the tweet at issue and that she erased it as soon as she had become aware of it. Nevertheless, the General Court considers that those two facts need not be taken into account in determining whether the conditions for the waiver of parliamentary immunity are fulfilled.

The General Court makes a manifest error of assessment:

- by asserting that it is not for the Parliament to know whether the allegations against the Member of Parliament in question are established, even though the Parliament does examine the facts by acknowledging in its decision that Mylène Troszczynski is not the author of the tweet,
- in so far as it fails to draw the legal consequences from certain of the documents annexed to the report of the Committee on Legal Affairs, namely the excerpts from the Law of 29 July 1881, and in particular Article 42 thereof,
- in so far as the order for reference before the Criminal Court of 26 April 2018 reflects the persecution of an elected representative by a member of the national legal service and thus an intention to harm that elected representative politically, a characteristic element of *fumus persecutionis*.

Appeal brought on 21 January 2019 by Marion Le Pen against the judgment of the General Court (Sixth Chamber) of 28 November 2018 in Case T-161/17, *Le Pen v Parliament*

(Case C-38/19 P)

(2019/C 82/23)

Language of the case: French

Parties

Appellant: Marion Anne Perrine, known as Marine, Le Pen (represented by: R. Bosselut, avocat)

Other party to the proceedings: European Parliament

Form of order sought

The appellant submits that the Court should:

- Set aside the judgment delivered on 28 November 2018 by the Sixth Chamber of the General Court of the European Union in Case T-161/17.

Accordingly:

- Annul the decision of the Secretary General of the Parliament of 6 January 2017, taken pursuant to Article 68 of Decision 2009/C 159/01 of the European Parliament Bureau of 19 May and 9 July 2008 'concerning implementing measures for the Statute of Members of the European Parliament', as amended, finding that there was a debt in the amount of EUR 41 554;