

- 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;

- Annul debit note No 2017-22 of 11 January 2017, informing the appellant that a debt had been established against her pursuant to the decision of the Secretary General of 6 January 2017, recovery of sums unduly paid for parliamentary assistance, application of Article 68 of the Implementing Measures for the Statute for Members of the European Parliament and Articles 78, 79 and 80 of the Financial Regulation;
- Order the Parliament to pay all of the costs.

Grounds of appeal and main arguments

- A — Ground involving an issue of public policy: Infringement of EU Law — Errors of law — Infringement of substantive requirements — Infringement of the rights of the defence

It is submitted that the Secretary General failed to conduct a personal hearing of the appellant and also failed to forward the file, particularly the European Anti-Fraud Office (OLAF) report.

The appellant's rights of defence have been infringed by the General Court, particularly in the light of the Charter of Fundamental Rights of the European Union and Article 6 of the ECHR.

- B — Infringement of EU law — Errors of law — Breach of the principles of the protection of legitimate expectations and of legal certainty — Error in the characterisation of the legal nature of the facts, distortion of the facts and of the evidence

The General Court distorted the meaning of the evidence produced as an annex by the appellant in her letter of 14 March 2016 addressed to OLAF.

It cannot be argued that the sums paid on the basis of the 'artificial' contract were not used in a manner compliant with the Implementing Measures for the Statute for Members of the European Parliament. There is therefore neither distortion of the purpose or nature of those funds, and no harm has been caused to the European Parliament.

- C — Misuse of powers — *Fumus persecutionis*

The discrimination and unfairness against, and the withholding of evidence from, the appellant, as well as the infringement of her rights of defence, attributable to the Secretary General of the European Parliament, constitute, and ought to have constituted in the view taken by the General Court, '*objective, relevant and consistent factors and actions taken with the exclusive purpose, or at any rate the main purpose, of achieving ends other than those pleaded or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case*'; furthermore, they reveal, and are vitiated by, a *fumus persecutionis* to the detriment of the appellant.
