

JUDGMENT OF THE COURT (Grand Chamber)

21 October 2008^{*}

In Joined Cases C-200/07 and C-201/07,

REFERENCES for preliminary rulings under Article 234 EC from the Corte suprema di cassazione (Italy), made by decisions of 20 February 2007, received at the Court on 12 and 13 April 2007, in the proceedings

Alfonso Luigi Marra

v

Eduardo De Gregorio (C-200/07),

Antonio Clemente (C-201/07),

^{*} Language of the case: Italian.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts, J.-C. Bonichot and T. von Danwitz, Presidents of Chambers, J. Makarczyk, P. Küris, E. Juhász, L. Bay Larsen, P. Lindh and C. Toader (Rapporteur), Judges,

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 April 2008,

after considering the observations submitted on behalf of:

— Mr Marra, by himself and L.A. Cucinella, avvocato,

— Mr De Gregorio, by G. Siporso, avvocato,

— Mr Clemente, by R. Capocasale and E. Chiusolo, avvocati,

- the Italian Government, by R. Adam, acting as Agent, and P. Gentili, avvocato dello Stato,
- the European Parliament, by H. Krück, C. Karamarcos and A. Caiola, acting as Agents,
- the Commission of the European Communities, by I. Martínez del Peral, F. Amato and C. Zadra, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 June 2008,

gives the following

Judgment

¹ These references for preliminary rulings concern the interpretation of the Community rules on the immunity of Members of the European Parliament, in particular Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European

Communities of 8 April 1965 (OJ 2006 C 231 E, p. 318; ‘the Protocol’) and Rule 6(2) and (3) of the Rules of Procedure of the European Parliament (OJ 2005 L 44, p. 1; ‘the Rules of Procedure’).

- ² The references were made in the course of two sets of proceedings between Mr Marra, a former Member of the European Parliament, and Mr De Gregorio and Mr Clemente, who brought actions for damages against Mr Marra for the injury which he allegedly caused them by distributing a leaflet containing insulting remarks about them.

Legal context

Community law

The Protocol

- ³ Article 9 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 10 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;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of the 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.’

5 Article 19 of the Protocol provides:

‘The institutions of the Communities shall, for the purpose of applying this Protocol, co-operate with the responsible authorities of the Member States concerned.’

The Rules of Procedure

6 Rule 5(1) of the Rules of Procedure, entitled ‘Privileges and Immunities’, provides:

‘Members shall enjoy privileges and immunities in accordance with the Protocol on the Privileges and Immunities of the European Communities.’

7 Rule 6 of the Rules of Procedure, entitled ‘Waiver of Immunity’, states:

‘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.

2. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived shall be announced in Parliament and referred to the committee responsible.

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.

The Member or former Member may be represented by another Member. The request may not be made by another Member without the agreement of the Member concerned.

...'

- 8 Rule 7 of the Rules of Procedure, which contains the rules governing procedures on immunity of Members of the European Parliament, states in paragraphs 6 and 7:

'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 law

- 9 Article 68 of the Italian Constitution provides:

‘Members of Parliament shall not be called to answer for opinions expressed or votes cast in the exercise of their office.

No members of Parliament may, without the authorisation of the Chamber to which they belong, be subjected to searches of their persons or their homes, nor arrested or otherwise deprived of personal liberty, or kept in custody, except in execution of a definitive judgment of conviction, or if they are caught in the act of committing an offence for which arrest is mandatory.

A similar authorisation shall be required in order to subject Members of [the Italian] Parliament to any form of interception of their conversations or communications, and in order to seize their correspondence.’

The main proceedings and the questions referred for a preliminary ruling

- 10 It is apparent from the two orders for reference that Mr Marra, a former Member of the European Parliament, was ordered by the Tribunale di Napoli (District Court, Naples) to pay damages for the injury he had caused to Mr De Gregorio and Mr Clemente by distributing a leaflet containing insulting remarks about them, while he was a Member of the European Parliament.
- 11 By two judgments delivered on 23 January 2001 and 25 January 2002 the Corte d'appello di Napoli (Court of Appeal, Naples) upheld, in essence, the two judgments of the Tribunale di Napoli finding against Mr Marra. In those judgments, the Corte d'appello di Napoli did not accept that Mr Marra's actions with regard to Mr De Gregorio and Mr Clemente constituted opinions expressed in the performance of his duties as a Member of the European Parliament, and also did not accept Mr Marra's argument that it was necessary, in order to bring civil proceedings against him, to request prior authorisation from the European Parliament in accordance with Rule 6 of the Rules of Procedure.
- 12 By letter of 26 March 2001, addressed to the President of the Parliament, Mr Marra stated that proceedings were being brought against him in a number of Italian courts, referring, *inter alia*, to the proceedings brought by Mr De Gregorio and Mr Clemente. He complained of an infringement by the Italian judicial authorities of Article 6 of the Rules of Procedure, inasmuch as they had not sought 'authorisation' before initiating proceedings against him.
- 13 Following that request, the Parliament adopted, on 11 June 2002, a Resolution on the immunity of Italian Members in Italy and the Italian authorities' practices on the subject (OJ 2003 C 261 E, p. 102), which concludes as follows:

'1. [The Parliament] decides that the cases of ... Alfonso Marra raise a *prima facie* case of absolute immunity and that the competent courts should be put on notice to

transmit to Parliament the documentation necessary to establish whether the cases in question involve absolute immunity under Article 9 of the Protocol in respect of opinions expressed or votes cast by the members in question in the performance of their duties and that the competent courts should be invited to stay proceedings pending a final determination by Parliament;

2. Instructs its President to forward this decision and the report of its committee to the Italian Permanent Representative marked for the attention of the appropriate authority of the Italian Republic.'

¹⁴ It is apparent from the orders for reference that that resolution did not reach either the courts at first instance or the Corte suprema di cassazione (Supreme Court of Cassation).

¹⁵ Before the Corte suprema di cassazione, Mr Marra asserted his immunity and claimed that, under Rule 6 of the Rules of Procedure, the courts at first instance and the appeal court, to be able to give judgment against him, should have first requested the European Parliament to waive his immunity.

¹⁶ The referring court indicates that Article 68 of the Italian Constitution exonerates the Members of the Italian Parliament from all civil, criminal and administrative liability in respect of an opinion expressed or a vote cast in the exercise of their office, in order to secure their freedom of decision-making and judgment in the exercise of their mandate.

- 17 It points out, furthermore, that the enjoyment of that immunity is not subject, in principle, to a ‘preliminary decision of [the Italian] Parliament’. Nevertheless, according to the case-law of the Corte costituzionale (Constitutional Court), if the Parliament gives a ruling on that immunity, that decision is binding on the court before which the action against the Member of Parliament concerned has been brought. If the Parliament and that court take different views, the system allows for the possibility of the dispute being brought before the Corte costituzionale.
- 18 The referring court points out, lastly, that in the system devised by the Community legislature, which is different from that provided for under Italian law, Rule 6 of the Rules of Procedure provides that a request to defend privileges and immunity may be addressed to the President of the Parliament either by a competent authority of a Member State, or directly by a Member of the European Parliament.
- 19 Having regard to those considerations, the Corte suprema di cassazione decided to stay the proceedings and to refer the following questions, which are drafted in the same terms in both the main proceedings, to the Court for a preliminary ruling:
- ‘(1) In the event that a Member of the European Parliament does not act by exercising the right granted to him under Rule [6(3)] of the Rules of Procedure of the European Parliament directly to request the President to defend privileges and immunities, is the court before which a civil action is pending in any event required to request the President to waive immunity for the purposes of pursuing proceedings and adopting a decision?

or

- (2) In the absence of a communication by the European Parliament that it intends to defend the immunities and privileges of the Member concerned, may the court before which that civil action is pending rule as to the existence or otherwise of that privilege, regard being had to the specific circumstances of the case?’

20 By order of the President of the Court of 18 June 2007, Cases C-200/07 and C-201/07 were joined for the purposes of the written and oral procedure and of the judgment.

Admissibility of the observations submitted by the Parliament

21 The first two paragraphs of Article 23 of the Statute of the Court of Justice afford the European Parliament the right to submit its observations on references for preliminary rulings concerning acts adopted ‘jointly’ by the European Parliament and the Council of the European Union. That provision does not explicitly afford the Parliament the right to submit observations in cases, such as those in the main proceedings, which concern the Protocol and the Rules of Procedure.

22 Nevertheless, since Article 23 affords the Parliament the right to submit written observations in cases concerning the validity or interpretation of an act for which it is a co-legislator, such a right must, a fortiori, be afforded to it where a reference for a preliminary ruling concerns the interpretation of an act adopted by that institution of which it is the sole author, such as the Rules of Procedure.

23 It follows that the Parliament must be afforded the right to submit its observations in the present proceedings.

The questions referred

24 It should be noted, at the outset, that the parliamentary immunity of Members of the European Parliament, as provided for in Articles 9 and 10 of the Protocol, comprises the two forms of protection normally 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.

25 Article 10 of the Protocol provides that, during the sessions of the European Parliament, its Members enjoy, in the territory of their own State, the immunities accorded to members of the parliament of that State and, in the territory of any other Member State, immunity from any measure of detention and from legal proceedings. The last paragraph of that article also provides that the Parliament can decide to waive the immunity of one of its members.

26 Article 9 of the Protocol sets out the principle of immunity of Members of the European Parliament in respect of opinions expressed or votes cast by them in the performance of their duties. As that article makes no reference to national rights, the scope of that immunity must be established on the basis of Community law alone (see, by analogy, Case 149/85 *Wybot* [1986] ECR 2391, paragraph 12).

27 Such immunity, which is that relied upon by Mr Marra in the disputes in the main proceedings, must, to the extent that it seeks to protect the freedom of expression and independence of Members of the European Parliament, be considered as an absolute immunity barring any judicial proceedings in respect of an opinion expressed or a vote cast in the exercise of parliamentary duties.

28 It should be observed that, by the present references for preliminary rulings, the Court is not asked whether an act such as that at issue in the main proceedings constitutes an opinion expressed in the exercise of parliamentary duties within the meaning of Article 9 of the Protocol, but is asked only to clarify the rules under which the national courts and the Parliament implement that article.

29 By its two questions the referring court asks, in essence, whether, where a Member of the European Parliament does not make a request to the Parliament for defence of his immunity, or where a decision from the Parliament on that immunity is not communicated to the national judicial authorities before which actions such as those in the main proceedings are brought, those authorities are required to request the Parliament to waive the immunity of the member in question, and to await the decision of that institution before ruling on whether such immunity exists.

30 The referring court proceeds on the basis that, in the main proceedings, the applicant did not approach the Parliament to defend his immunity and that, as a result, that institution did not adopt any decision in that regard. However, as is apparent from the documents submitted by the Parliament, Mr Marra made a request for defence of his immunity and the Parliament adopted a resolution which was sent to the Permanent Representative of the Italian Republic. It is not in dispute that the courts of first instance and the Corte suprema di cassazione were not aware of Mr Marra's request or of that resolution.

- 31 Having regard to those factors, and in order to provide the referring court with a reply which may be of use to it in determining the outcome of the disputes in the main proceedings, the questions referred should be understood as asking, first, whether, where the national court which has to rule on an action for damages brought against a Member of the European Parliament in respect of opinions expressed by him has received no information regarding a request from that member to the Parliament seeking defence of his immunity, that court may itself rule on whether the immunity provided for in Article 9 of the Protocol applies with regard to the factors in the particular case; second, whether, where the national court is informed of the fact that that member has made such a request to Parliament, that court must await the decision of the Parliament before continuing with the proceedings against that member; and, third, whether, where the national court finds that that immunity does apply, it must request the waiver of that immunity for the purposes of continuing with the legal proceedings. As the answers to those questions are based on the same considerations, it is appropriate to deal with them together.
- 32 In order to establish whether the conditions for the absolute immunity provided for in Article 9 of the Protocol are met, the national court is not obliged to refer that question to the Parliament. The Protocol does not confer on the Parliament the power to determine, in cases of legal proceedings against one of its Members in respect of opinions expressed or votes cast by him, whether the conditions for applying that immunity are met.
- 33 Therefore, such an assessment is within the exclusive jurisdiction of the national courts which are called on to apply such a provision, and which have no choice but to give due effect to that immunity if they find that the opinions or votes at issue were expressed or cast in the exercise of parliamentary duties.
- 34 If, in applying Article 9 of the Protocol, those courts have doubts concerning the interpretation of that article, they may refer a question to the Court under Article 234 EC on the interpretation of that article of the Protocol, courts of final instance being, in such circumstances, obliged to make such a reference to the Court.

35 Furthermore, it cannot be inferred, even implicitly, from Rules 6 and 7 of the Rules of Procedure — which contain the internal rules concerning the procedure for waiving parliamentary immunity — that the national courts are obliged to refer to the Parliament the decision on whether the conditions for recognising that immunity are met, before ruling on the opinions and votes of Members of the Parliament.

36 Rule 6(2) of the Rules of Procedure is limited to establishing the procedure for the waiver of parliamentary immunity provided for in Article 10 of the Protocol.

37 Rule 6(3) of the Rules of Procedure sets down a procedure for defence of immunity and privileges which can be triggered by the Member of the European Parliament. That procedure also concerns immunity for opinions expressed and votes cast in the exercise of parliamentary duties. Rule 7(6) of those rules provides that the Parliament is to ‘state’ whether legal proceedings brought against a Member of the European Parliament constitute a restriction on the expression of an opinion or the casting of a vote, and to ‘make a proposal to invite the authority concerned to draw the necessary conclusions’.

38 As has been emphasised out by the Parliament and the Commission of the European Communities, the Rules of Procedure are rules of internal organisation and cannot grant powers to the Parliament which are not expressly acknowledged by a legislative measure, in this case by the Protocol.

39 It follows that, even if the Parliament, pursuant to a request from the Member concerned, adopts, on the basis of those rules, a decision to defend immunity, that constitutes an opinion which does not have binding effect with regard to national judicial authorities.

- 40 In addition, the fact that the law of a Member State provides for a procedure in defence of members of the national parliament — enabling that parliament to intervene where 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 coming from that Member State, since, as has been held in paragraph 32 above, Article 9 of the Protocol does not expressly grant the Parliament such power and does not refer to the rules of national law.
- 41 However, according to settled case-law, the duty of sincere cooperation between the European institutions and the national authorities, enshrined in Article 10 EC and reiterated in Article 19 of the Protocol, which applies both to the national judicial authorities of Member States acting within their jurisdictions and to the Community institutions, is of particular importance where that cooperation involves the judicial authorities of a Member State who are responsible for ensuring that Community law is applied and respected in the national legal system (see, in particular, order in Case C-2/88 *IMM Zwartveld and Others v Commission* [1990] ECR I-3365, paragraph 17, and Case C-94/00 *Roquette Frères* [2002] ECR I-9011, paragraph 93).
- 42 It must be held that that duty of cooperation applies in the context of disputes such as those in the main proceedings. The European Parliament and the national judicial authorities must therefore cooperate in order to avoid any conflict in the interpretation and application of the provisions of the Protocol.
- 43 Therefore, where an action has been brought against a Member of the European Parliament before a national court and that court is informed that a procedure for defence of the privileges and immunities of that Member, as provided for in Article 6(3) of the Rules of Procedure, has been initiated, that court must stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible.

44 Once the national court has established that the conditions for the absolute immunity, provided for in Article 9 of the Protocol are met, the court is bound to respect that immunity, as is the Parliament. It follows that such immunity cannot be waived by the Parliament and that, as a result, that court is bound to dismiss the action brought against the Member concerned.

45 First, Article 9 of the Protocol does not grant such a power to the Parliament. Second, as that article 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, that immunity cannot be waived by the application of the third paragraph of Article 10 of the Protocol, which concerns immunity in legal proceedings relating to acts other than those referred to in Article 9. It follows that only the immunity covered by Article 10 may be waived for the purposes of continuing legal proceedings against a Member of the European Parliament.

46 Having regard to all of the foregoing, the reply to the questions referred must be that the Community rules relating to the immunity of Members of the European Parliament must be interpreted as meaning that, in an action for damages brought against a Member of Parliament in respect of opinions he has expressed,

- where the national court which has to rule on such an action has received no information regarding a request by that Member to the Parliament seeking defence of the immunity provided for in Article 9 of the Protocol, it is not obliged to request the Parliament to give a decision on whether the conditions for that immunity are met;

- where the national court is informed of the fact that that Member has made a request to the Parliament for defence of that immunity, within the meaning of Rule 6(3) of the Rules of Procedure, it must stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible;

- where the national court considers that that Member enjoys the immunity provided for in Article 9 of the Protocol, it is obliged to dismiss the action brought against the Member concerned.

Costs

⁴⁷ 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:

The Community rules relating to the immunity of Members of the European Parliament must be interpreted as meaning, in an action for damages brought

against a Member of the European Parliament in respect of opinions he has expressed,

- where the national court which has to rule on such an action has received no information regarding a request by that Member to the European Parliament seeking defence of the immunity provided for in Article 9 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, it is not obliged to request the European Parliament to give a decision on whether the conditions for that immunity are met;**

- where the national court is informed of the fact that that Member has made a request to the European Parliament for defence of that immunity, within the meaning of Rule 6(3) of the Rules of Procedure of the European Parliament, it must stay the judicial proceedings and request the European Parliament to issue its opinion as soon as possible;**

- where the national court considers that that Member enjoys the immunity provided for in Article 9 of the Protocol on the Privileges and Immunities of the European Communities, it is obliged to dismiss the action brought against the Member concerned.**

[Signatures]