



Advocate General Jääskinen explains what is meant by 'opinion expressed ... in the performance of their duties'

The Advocate General proposes that the Court should consider that the conduct of an MEP unconnected to the activities of the Parliament is not covered by parliamentary immunity

The Protocol on the privileges and immunities of the European Union affords two main ways of ensuring the protection of Members of the European Parliament: first, by protecting freedom of speech in connection with an MEP's performance of his duties ('substantive immunity' or parliamentary immunity)¹ and, secondly, by guaranteeing immunity from prosecution for MEPs while carrying on their activities (procedural immunity or immunity from legal proceedings)². By reason of parliamentary immunity, which alone is involved in this case, MEPs may 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. The purpose of this immunity is to allow the Parliament itself to maintain its integrity and to ensure the independence of its members. It is not, therefore, envisaged as a personal privilege for MEPs but as a guarantee to safeguard the task of the institution. Lastly, it is absolute in nature (being unlimited in time and covering all kinds of legal liability, both criminal and civil) and unconditional (for neither the Parliament nor the MEP may waive it). When legal proceedings are brought against an MEP, in respect of opinions expressed or votes cast by him, assessment of the conditions for applying that absolute immunity is a matter for the exclusive jurisdiction of the national court which may, if it entertains doubts, refer a question to the Court of Justice for a preliminary ruling. So, even if the Parliament, in response to a request made by an MEP, adopts a decision to defend immunity, that decision is an opinion that is not binding on national judicial authorities.

Criminal proceedings have been brought against Mr Patriciello, an Italian MEP, before the Tribunale di Isernia (Italy); the offence for which he is prosecuted is that of making false accusations, in that in the course of an altercation he wrongly accused an officer of the municipal police of unlawful conduct (forgery of documents). In 2009, the Parliament, taking the view that Mr Patriciello had acted in the general interest of his constituents, decided to defend his immunity.

The Italian court has asked the Court of Justice whether a criminal act of this kind constitutes an opinion expressed in the performance of parliamentary duties that may be covered by parliamentary immunity.

So far as concerns the extent of parliamentary immunity, the Advocate General considers that the latter covers three aspects. The first, objective in nature, is intended to ensure that MEPs may freely enter into and conduct parliamentary political debate in order to influence the exercise of the powers of the Parliament. The second, also objective in nature, is intended to contribute to a separation, both horizontal and vertical, of powers within the Union. The third, subjective in nature, amounts to a fundamental right that restricts the fundamental rights of other citizens.

¹ Article 8 of the Protocol on the Privileges and Immunities of the European Union.

² 'Immunity from legal proceedings', also known as 'procedural immunity' (Article 9 of the Protocol on the Privileges and Immunities), applies to Members of the European Parliament in the case of legal proceedings for acts performed by them as ordinary citizens during the period of their mandate; it is limited to the period of the mandate, ceases to operate if a Member is found committing an offence and may be waived by the Parliament.

The Advocate General observes that parliamentary immunity extends to every possible form of parliamentary activity.

The Parliament's buildings are certainly the privileged seat of political debate, which it must be possible to conduct without restraint (spatial criterion). It is, however, plain that the ambit of parliamentary immunity may not be limited exclusively to those acts performed in the place where the Parliament has its seat. So, the thorniest question is to ascertain the proper criterion for bringing that immunity into play for activities and speeches outside the precinct of the Parliament. Here, the Advocate General suggests the application to the nature of an MEP's duties of a particular criterion, linking parliamentary immunity not to the content of an MEP's remarks but instead to the relation between the context in which those remarks were made and the work of the Parliament (organic criterion).

For the purpose of the application of the organic criterion, the Advocate General proposes distinguishing the hard core of parliamentary business, on the one hand, from activities surrounding it, on the other. The first category includes not only opinions expressed and votes cast within the Parliament, in committees, delegations, political bodies and political groups. The Advocate General suggests that taking part, as an MEP, in conferences, missions and political encounters outside the Parliament itself ought to be included too. In contrast, when there is no obvious link to a parliamentary activity, he suggests the application, as in the case-law of the European Court of Human Rights at Strasbourg, of the principle of proportionality. The further an act or speech of an MEP departs from the hard core of his duties, therefore, the more overriding the reasons that might justify the operation of parliamentary immunity must be.

So far as concerns acts performed by an MEP in his capacity as a national, or regional or local, politician, the Advocate General is of the view that parliamentary immunity, provided for in the Protocol and based on the Treaty³, relates to the performing of the tasks of the European Union. In consequence, acts forming part of political debate in general or of statements falling within a purely national or local context may not, in the light of the organic criterion, be covered by parliamentary immunity.

Accordingly, the Advocate General suggests that the Court should reply that the conduct of an MEP, when unconnected to the activity of the institution, does not amount to an opinion expressed in the performance of the MEP's duties that may be covered by parliamentary immunity.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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³ Article 343 TFEU.