



Press and Information

Court of Justice of the European Union
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Judgment in Case C-163/10
Aldo Patriciello

The Court has clarified the extent of the immunity afforded by EU law to MEPs for opinions expressed and votes cast in the performance of their duties

Immunity may not be granted unless there is an obvious, direct link between the opinion expressed by the MEP and the performance of his parliamentary duties

Members of the European Parliament enjoy protection under the Protocol on the Privileges and Immunities of the European Union. In particular, by reason of the immunity afforded them, 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.

When legal proceedings are brought against an MEP on account of opinions he has expressed or votes he has cast, it falls within the exclusive jurisdiction of the national court hearing the case to appraise the setting in motion of that immunity.

In criminal proceedings before the Tribunale di Isernia (District Court, Isernia) Mr Patriciello, an MEP, is charged with the offence of making false accusations against a public official in the performance of her duties. It is alleged that, in the course of an altercation in a public car-park, he wrongfully accused an officer of the municipal police of Pozzilli (Italy) of illegal conduct, by asserting that she had falsified the times concerned when booking several drivers whose vehicles were parked in contravention of road traffic laws.

In 2009, acting in response to Mr Patriciello's request, the European Parliament, taking the view that he had acted in the general interest of his constituents, decided to defend¹ that MEP's immunity.

The Italian court has asked the Court of Justice to define the tests relevant for determining whether a statement, made by an MEP outside the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations, constitutes an opinion expressed in the performance of his parliamentary duties and may, on that ground, enjoy immunity.

First, the Court has noted that **the extent of the immunity in respect of opinions expressed or votes cast by MEPs in the performance of their parliamentary duties must be established on the basis of EU law alone**. By so doing, in accordance with that law, the immunity granted to MEPs is intended to protect their freedom of expression and their independence. It is therefore a bar to the bringing of any judicial proceedings in respect of those opinions or votes. It follows that if the substantive conditions for recognition of immunity have been met, immunity may not be waived by the European Parliament and the national court called upon to apply it is bound to dismiss the action brought against the MEP concerned.

The Court has then made it clear that although parliamentary immunity essentially covers statements made within the precincts of the European Parliament, it is not impossible that a statement made beyond those precincts may also amount to an opinion expressed in the performance of parliamentary duties. **Whether or not it is such an opinion must therefore be determined having regard to its character and content**, not to the place where it was made.

¹ Article 6(3) of the Rules of Procedure of the European Parliament.

In so finding, the Court considers that parliamentary immunity is closely linked to **freedom of expression**, which is an essential foundation of a pluralist, democratic society reflecting the values on which the Union is based. Furthermore, this freedom constitutes a fundamental right guaranteed by the Charter of Fundamental Rights of the European Union which has the same legal value as the Treaties. It is also affirmed in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

On the basis of those findings, the Court considers that the concept of an 'opinion' capable of attracting immunity must be understood in a wide sense to include remarks that, by their content, correspond to assertions amounting to subjective appraisal. What is more, in order to enjoy immunity, an opinion must be connected with parliamentary duties.

Nevertheless, the Court holds that recognition of immunity is capable of definitively preventing prosecutions for criminal offences and so of denying the persons damaged by those offences any judicial remedy, even of preventing their obtaining compensation for the damage suffered. Having regard to those consequences, the Court considers that immunity may be granted only if **the connection between the opinion expressed and parliamentary duties is direct and obvious**.

So it is for the Italian court to determine whether such a link is obvious in the case of the statement made by the MEP and whether that statement can therefore be regarded as the expression of an opinion in the performance of parliamentary duties and as grounds for recognising immunity.

The Court states, however, that having regard to the descriptions of the circumstances and the content of the allegations made by Mr Patriciello, the latter's statements appear to be rather far removed from his duties as an MEP. In the circumstances they are hardly capable of presenting a direct link to a general interest of concern to citizens.

Moreover, the Court notes that the European Parliament's **decision to defend immunity is no more than an opinion without any binding effect on national courts**.

Lastly, if, having regard to the interpretation provided by this judgment, the national court should decide not to follow the opinion of the European Parliament, EU law does not place the national court under any particular obligation as regards the reasons given for its decision.

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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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