E. whereas, in accordance with Article 8 of the Protocol on the Privileges and Immunities of the European Union, Members of the European Parliament 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,

F. whereas, in accordance with Parliament's established practice, the fact that the legal proceedings have been brought under civil or administrative law, or contain certain aspects falling under civil or administrative law, does not *per se* preclude the application of the immunity afforded by that article,

G. whereas, in giving the interview in question, Luigi de Magistris was acting in performance of his duties as Member of the European Parliament and carrying out political activities by expressing his opinion on a matter of public interest to his constituents,

H. whereas attempts to prevent Members of Parliament from expressing their opinions on matters of legitimate public interest and concern, and from criticising their political opponents, by bringing legal proceedings are unacceptable in a democratic society and represent a breach of Article 8 of the Protocol on the Privileges and Immunities of the European Union, which is intended to protect Members' freedom of expression when performing their duties in the interests of Parliament as an institution of the European Union,

1. Decides to defend the immunity and privileges of Luigi de Magistris;

2. Instructs its President to forward this decision immediately to the competent authority of the Italian Republic and to Luigi de Magistris.

Defence of the immunity and privileges of Bruno Gollnisch

P7_TA(2011)0189

European Parliament decision of 10 May 2011 on the request for defence of the immunity and privileges of Bruno Gollnisch (2010/2097(IMM))

(2012/C 377 E/26)

The European Parliament,

— having regard to the request by Bruno Gollnisch for defence of his immunity in connection with criminal proceedings pending before a French court, as submitted on 10 June 2010 and announced in plenary sitting on 14 June 2010,

— having heard Bruno Gollnisch on 26 January 2011, in accordance with Rule 7(3) of its Rules of Procedure,

— having regard to Article 9 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965, and to Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to the judgments of the Court of Justice of the European Union of 12 May 1964, 10 July 1986, 15 and 21 October 2008 and 19 March 2010 [1],

— having regard to Article 26 of the Constitution of the French Republic,

— having regard to Rules 6(3) and 7 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A7-0154/2011),

[1] Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot* v *Faure and Others* [1986] ECR 2391, Case T-345/05 *Mote* v *Parliament* [2008] ECR II-2849, Joined Cases C-200/07 and C-201/07 *Marra* v *De Gregorio and Clemente* [2008] ECR I-7929, and Case T-42/06 *Gollnisch* v *Parliament*.

Tuesday 10 May 2011

A. whereas Bruno Gollnisch, a Member of the European Parliament, has requested the defence of his parliamentary immunity in connection with measures which he claims restrict his freedom applied by the French authorities as part of the judicial investigation of an action and claim for compensation (*plainte avec constitution de partie civile*) brought by the International League Against Racism and Anti-Semitism on 26 January 2009 against an unnamed person for incitement to racial hatred,

B. whereas Article 8 of the Protocol on the Privileges and Immunities of the European Union was not invoked in the request for defence of immunity and therefore does not apply,

C. whereas, in accordance with Article 9 of the Protocol on the Privileges and Immunities of the European Union, which was expressly invoked by Bruno Gollnisch in his letter to the President of 10 June 2010 and which is applicable in the present case, during the sessions of the European Parliament its Members enjoy in the territory of their own State the immunities accorded to members of their parliament; and whereas this does not prevent the European Parliament from exercising its right to waive the immunity of one of its Members,

D. whereas, in accordance with the second paragraph of Article 26 of the Constitution of the French Republic, 'no Member of Parliament may be arrested or subject to any other measure depriving him or her of freedom or restricting that freedom as a result of criminal or minor offences without the authorisation of the Assembly to which he or she belongs, except if a serious crime has been committed, in the event of *flagrante delicto* or if a final judgment has been handed down', and whereas, in accordance with the third paragraph of Article 26, 'detention, measures depriving the Member of his or her freedom or restricting that freedom or the prosecution of the Member of Parliament shall be suspended during the session if the Assembly of which he or she is a Member so demands',

E. whereas Parliament has a broad measure of discretion to determine the direction it wishes to give to a decision following a request to defend the immunity of one of its Members [1],

F. whereas in the present case Parliament has found no evidence of *fumus persecutionis*, i.e. a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member,

G. whereas the case does not fall within the scope of Bruno Gollnisch's political activities as a Member of the European Parliament; whereas it concerns instead activities of a purely regional and local nature as a Rhône-Alpes regional councillor, a mandate to which Bruno Gollnisch was elected by direct universal suffrage and which is distinct from that of Member of the European Parliament,

H. whereas Bruno Gollnisch has given an explanation as to why the press release which has prompted the request for defence of immunity was issued by his political group in the Rhône-Alpes Regional Council, stating that it had been written by the Front National team in that region, including its head of communications, who was 'empowered to speak on behalf of the Front National's elected officials'; whereas the application of parliamentary immunity to such a situation would constitute an undue extension of those rules, which are intended to prevent any interference with the functioning and independence of Parliament,

I. whereas it is a regrettable infringement of Parliament's prerogatives that the French authorities should have taken what appear to be certain measures restricting Bruno Gollnisch's freedom prior to requesting the waiver of his immunity; whereas, however, given that the French authorities have now formally requested the waiver of his immunity in order to take such measures in the future, it is no longer necessary to defend Bruno Gollnisch's immunity in that regard,

J. whereas it is not for Parliament but for the competent judicial authorities to decide, whilst respecting all democratic guarantees, to what extent French law on incitement to racial hatred has been broken and what the judicial consequences might be,

K. whereas Bruno Gollnisch's parliamentary immunity should therefore not be defended,

[1] Case T-42/06 *Gollnisch* v *Parliament*, at paragraph 101.

1. Decides in the light of the above not to defend the immunity and privileges of Bruno Gollnisch;

2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of the French Republic and to Bruno Gollnisch.

Waiver of the immunity of Bruno Gollnisch

P7_TA(2011)0190

European Parliament decision of 10 May 2011 on the request for waiver of the immunity of Bruno Gollnisch (2010/2284(IMM))

(2012/C 377 E/27)

The European Parliament,

— having regard to the request for waiver of the immunity of Bruno Gollnisch, forwarded by the French authorities on 3 November 2010 and announced in plenary sitting on 24 November 2010,

— having heard Bruno Gollnisch on 26 January 2011, in accordance with Rule 7(3) of its Rules of Procedure,

— having regard to Article 9 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965, and to Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to the judgments of the Court of Justice of the European Union of 12 May 1964, 10 July 1986, 15 and 21 October 2008 and 19 March 2010 [1],

— having regard to Article 26 of the Constitution of the French Republic,

— having regard to Rules 6(2) and 7 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A7-0155/2011),

A. whereas a French public prosecutor has requested the waiver of the parliamentary immunity of Bruno Gollnisch, a Member of the European Parliament, so that a complaint alleging incitement to racial hatred can be investigated and so that, if appropriate, Bruno Gollnisch can be tried before the French Court of First Instance, the Appeal Court and the Court of Cassation,

B. whereas the waiver of the immunity of Bruno Gollnisch relates to an alleged offence of incitement to racial hatred as a result of a press release issued on 3 October 2008 by the Rhône-Alpes Region 'Front National' Group, of which Bruno Gollnisch was President,

C. whereas, in accordance with Article 9 of the Protocol on the Privileges and Immunities of the European Union, during the sessions of the European Parliament its Members enjoy in the territory of their own State the immunities accorded to members of their parliament; and whereas this does not prevent the European Parliament from exercising its right to waive the immunity of one of its Members,

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[1] Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot* v *Faure and Others* [1986] ECR 2391, Case T-345/05 *Mote* v *Parliament* [2008] ECR II-2849, Joined Cases C-200/07 and C-201/07 *Marra* v *De Gregorio and Clemente* [2008] ECR I-7929, and Case T-42/06 *Gollnisch* v *Parliament*.