Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

17 January 2013*

(Privileges and immunities — Member of the European Parliament — Decision to waive immunity — Activity unconnected with the functions of a Member of the Parliament — Procedure for waiver of immunity — Decision not to defend privileges and immunities — No further interest in bringing an action — No need to adjudicate)

In Joined Cases T-346/11 and T-347/11,

Bruno Gollnisch, residing in Limonest (France), represented by G. Dubois, lawyer,

applicant,

v

European Parliament, represented by R. Passos, D. Moore and K. Zejdová, acting as Agents,

defendant,

APPLICATION, first, for annulment of a decision to waive the applicant's immunity, adopted by the Parliament on 10 May 2011, and a claim for damages for the harm sustained by the applicant on that occasion, and, second, for annulment of a decision not to defend the applicant's immunity, adopted by the Parliament on 10 May 2011, and a claim for damages for the harm sustained by the applicant on that occasion,

THE GENERAL COURT (First Chamber),

composed of J. Azizi, President, S. Frimodt Nielsen (Rapporteur) and M. Kancheva, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 10 July 2012,

gives the following

* Language of the case: French.

Judgment

Legal context

Protocol on privileges and immunities

1 Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union (OJ 2010 C 83, p. 266; '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.'

2 Article 9 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 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.'

Rules of Procedure of the Parliament

3 In the words of the second subparagraph of Rule 3(6) of the Rules of Procedure of the European Parliament ('the Rules of Procedure'), amended on a number of occasions, in the version of March 2011 (OJ 2011 L 116, p. 1), which is applicable *ratione temporis* to the proceedings:

'Should the competent authorities of the Member States initiate a procedure which might lead to the disqualification of a Member from holding office, the [p]resident shall ask them to keep him regularly informed of the stage reached in the procedure and shall refer the matter to the committee responsible [for the verification of powers]. On a proposal from that committee, Parliament may adopt a position on the matter.'

4 Rule 5(1) of the Rules of Procedure provides:

'Members shall enjoy privileges and immunities in accordance with the [Protocol].'

5 Rule 6 of the Rules of Procedure provides:

'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 the performance of their duties.

2. Any request addressed to the [p]resident 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 [p]resident by a Member or a former Member to defend privileges and immunities shall be announced in Parliament and referred to the committee responsible.

…

4. As a matter of urgency, in circumstances where Members are arrested or have their freedom of movement curtailed in apparent breach of their privileges and immunities, the [p]resident, after having consulted the chair and rapporteur of the committee responsible, may take an initiative to assert the privileges and immunities of the Member concerned. The [p]resident shall notify the committee of that initiative and inform Parliament.'

6 Rule 7 of the Rules of Procedure provides:

'1. The committee responsible shall consider without delay and in the order in which they have been submitted requests for the waiver of immunity or requests for the defence of immunity and privileges.

2. The committee shall make a proposal for a reasoned decision which recommends the adoption or rejection of the request for the waiver of immunity or for the defence of immunity and privileges.

3. The committee may ask the authority concerned to provide any information or explanation which the committee deems necessary in order for it to form an opinion on whether immunity should be waived or defended. The Member concerned shall be given an opportunity to be heard, may present any documents or other written evidence deemed by that Member to be relevant and may be represented by another Member.

…

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 as to the competence of the authority in question and 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.

8. The committee's report shall be placed at the head of the agenda of the first sitting following the day on which it was tabled. No amendments may be tabled to the proposal(s) for a decision.

Discussion shall be confined to the reasons for and against each proposal to waive or uphold immunity, or to defend immunity or a privilege.

Without prejudice to Rule 151, the Member whose privileges or immunities are under consideration shall not speak in the debate.

The proposal(s) for a decision contained in the report shall be put to the vote at the first voting time following the debate.

After Parliament has considered the matter, a separate vote shall be taken on each of the proposals contained in the report. If a proposal is rejected, the contrary decision shall be deemed adopted.

9. The [p]resident shall immediately communicate Parliament's decision to the Member concerned and to the competent authority of the Member State concerned, with a request that the [p]resident be informed of any developments in the relevant proceedings and of any judicial rulings made as a consequence. When the [p]resident receives this information, he shall transmit it to Parliament in the way he considers most appropriate, if necessary after consulting the committee responsible.

…

11. The committee shall treat these matters and handle any documents received with the utmost confidentiality.

…'

7 According to Rule 24 of the Rules of Procedure:

'1. The Conference of Presidents shall consist of the [p]resident of Parliament and the Chairs of the political groups. The Chair of a political group may arrange to be represented by a member of that group.

2. The [p]resident of Parliament shall invite one of the non-attached Members to attend meetings of the Conference of Presidents, without having the right to vote.

…'

8 In the words of Rule 103(4) of the Rules of Procedure:

'Consideration by the committee responsible of requests relating to procedures in immunity under Rule 7 shall always take place in camera.'

9 Furthermore, Rule 138 of the Rules of Procedure provides:

'1. Any proposal for a legislative act … adopted in committee with fewer than one tenth of the members of the committee voting against shall be placed on the draft agenda of Parliament for vote without amendment.

The item shall then be subject to a single vote unless, before the drawing up of the final draft agenda, political groups or individual Members who together constitute one tenth of the Members of Parliament have requested in writing that the item be open to amendment, in which case the [p]resident shall set a deadline for tabling amendments.

2. Items placed on the final draft agenda for vote without amendment shall also be without debate unless Parliament, when adopting its agenda at the start of a part-session, decides otherwise on a proposal from the Conference of Presidents or at the request of a political group or at least 40 Members.

3. When drawing up the final draft agenda for a part-session, the Conference of Presidents may propose that other items be taken without amendment or without debate. When adopting its agenda, Parliament may not accept any such proposal if a political group or at least 40 Members have tabled their opposition in writing at least 1 hour before the opening of the part-session.

…'

10 Rule 151(1) of the Rules of Procedure provides:

'1. Members who ask to make a personal statement shall be heard at the end of the discussion of the agenda item which is being dealt with or when the minutes of the sitting to which the request for leave to speak refers are considered for approval.

The Members concerned may not speak on substantive matters but shall confine their observations to rebutting any remarks that have been made about their person in the course of the debate of opinions that have been attributed to them, or to correcting observations that they themselves have made.'

Background to the dispute

11 The applicant, Mr Bruno Gollnisch, is a Member of the European Parliament and a conseiller régional de la Région Rhône-Alpes (Regional Councillor of the Rhône-Alps Region (France)). He is also chair of the Front National group in the Regional Council of the Rhône-Alpes Region.

12 On 3 October 2008 the Front National group of the Rhône-Alps Region issued a press release entitled '"Affaire des fiches" à la région: les Tartuffe s'insurgent' ('The region's own "Card-index affair": the *Tartuffes* are outraged').

13 That press release was worded as follows:

'The Rhône-Alps Region reacted violently when General Information was asked whether any non-Christian officials had requested that their working hours be adjusted on religious grounds. The Director General of the services describes that request as "contrary to all the Republican principles that govern the organisation and functioning of the civil service in our country". [Q. (the chair of the Regional Council of the Rhône-Alps Region] finds the very principle of that enquiry shocking. That is very convenient and very generous, but it ignores current realities and demonstrates a rather short memory. It ignores current realities, because the people who are "celebrating" the end of a period of "fasting" (by day, which they rapidly make up for at night) by destroying and setting fire to property and throwing stones do not appear to be Christians. It ignores current realities, because it was not Christians who set fire to the town of Romans. It demonstrates a short memory, because the indexation of the civil service, in 1902, was decided on with a "Republican" aim. It demonstrates a short memory, because it was the "Left block" that was in power, with "*petit père* Combes" and Waldeck-Rousseau. It demonstrates a short memory, because the Masonic lodges, which did the dirty work, cheerfully wrote on the forms "lives with an Arab woman as man and wife", in all good conscience. Admittedly, at the time the Left was opposed to religion! Yet its current objective is to support the invasion of our Country and the destruction of our culture and values by Islam, a religion whose tolerance and respect for human rights and freedom can clearly be seen wherever it is in power: in Saudi Arabia, Iran, Sudan, Afghanistan … our suburbs, and soon our entire country, with the blessing of the Masonic Lodges and the Left?'

14 At a press conference held in Lyon (France) on 10 October 2008, the applicant confirmed, inter alia, that that press release had been drafted by individuals authorised to speak on behalf of the elected members of the political group of which he is chair in the Regional Council.

15 Following a complaint from the International League against Racism and Anti-Semitism (LICRA), a judicial investigation was opened by the French authorities against an unnamed person for incitement to racial hatred.

16 By letter of 9 June 2010 to the president of the Parliament, the applicant requested the latter to 'lodge a strong protest with the French authorities'. He stated in that letter that a Lyons investigating judge had sought to have the applicant arrested by the police on 4 June 2010 in order to be brought before him.

The applicant explained that that 'measure of constraint [was] prohibited by the French Constitution (Article 26) and also by the 1965 Protocol on privileges and immunities (now Article 9 of Protocol No 7 annexed to the Treaty), in so far as that judge [had] not requested that [the applicant's] parliamentary immunity be waived'.

17 On 14 June 2010 the president of the Parliament announced in plenary session that he had received a request from the applicant for the defence of his immunity and, in accordance with Rule 6(2) of the Rules of Procedure, he had forwarded that request to the Committee on Legal Affairs.

18 By letter of 25 October 2010, received by the Parliament on 3 November 2010, the ministre d'État, garde des Sceaux, ministre de la Justice et des Libertés (Minister of State, Keeper of the Seals, Minister for Justice and Freedoms) of the French Republic, sent the president of the Parliament a request for waiver of the applicant's parliamentary immunity, pursuant to a request of 14 September 2010 from the public prosecutor attached to the Lyons Court of Appeal, in order to pursue the investigation of the complaint against the applicant and, if appropriate, to send the applicant before the competent courts.

19 On 24 November 2010 the president of the Parliament announced in plenary session that he had received a request from the applicant for the defence of his immunity and, in accordance with Rule 6(2) of the Rules of Procedure, he had forwarded that request to the Committee on Legal Affairs.

20 Mr B. Rapkay was appointed rapporteur for the two cases relating to the applicant, namely the waiver of the applicant's immunity and the defence of his immunity.

21 The applicant was heard by the Parliament's Committee on Legal Affairs on 26 January 2011 concerning both the request for the defence of his immunity and the request for waiver of his immunity.

22 On 11 April 2011 the Committee on Legal Affairs adopted a proposal for a decision of the Parliament recommending that the applicant's immunity be waived and also a proposal for a decision recommending that this immunity not be defended.

23 At the plenary session held on 10 May 2011 the Parliament decided to waive the applicant's immunity and, at the same time, not to defend his immunity.

24 The decision to waive the applicant's immunity was based on the following reasons:

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

B. … the request for waiver of the immunity of Bruno Gollnisch relates to an alleged offence of incitement to racial hatred following the publication, on 3 October 2008, of a press release of the Front National group of the Rhône-Alpes Region, of which Bruno Gollnisch was chair,

C. … under Article 9 of the Protocol on the privileges and immunities of the European Union, during the sessions of the European Parliament, its Members are to enjoy, in the territory of their own State, the immunities accorded to members of their Parliament; … that provision does not preclude the European Parliament from exercising its right to waive the immunity of one of its Members,

D. … under Article 26 of the Constitution of the French Republic, "no Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorisation of the Bureau of the House of which he is a Member. Such authorisation shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or when a conviction has become final",

E. … in the present case, the Parliament has found no evidence of *fumus persecutionis*, that is to say, a sufficiently serious and precise presumption that the proceedings were initiated with the intention of causing political damage to the Member,

F. … the request from the French authorities does not relate to Bruno Gollnisch's political activities in his capacity as a Member of the … Parliament but … it concerns his activities at purely regional and local level, in his capacity as a regional councillor of the Rhône-Alpes Region, a mandate conferred on [him] by direct universal suffrage and distinct from that of a Member of the … Parliament,

G. … Bruno Gollnisch justified the publication by his political group in the Rhône-Alpes Regional Council of the press release giving rise to the request for waiver of his immunity by explaining that it had been written by the Front National team of the region, including its press officer, who was "authorised to speak on behalf of the Front National's elected officials"; … the application of parliamentary immunity in such a case would constitute an unwarranted extension of the provisions intended to prevent any interference with the functioning and independence of the Parliament,

H. … it is not for the Parliament, but for the competent judicial authorities, to decide, observing all democratic safeguards, to what extent French law on incitement of racial hatred has been breached and what the judicial consequences may be,

I. … it is therefore appropriate to recommend that parliamentary immunity be waived in the present case,

1. [the Parliament] decides to waive Bruno Gollnisch's immunity …'.

25 Furthermore, the decision not to defend the applicant's immunity contains an identical statement of reasons to that in the decision to waive his immunity, apart, in particular, from recital I and the operative part of that decision, which are worded as follows:

'I. … as the French authorities had in the meantime formally requested that his immunity be waived in order to apply those measures subsequently, it is no longer necessary to defend Bruno Gollnisch's immunity in that regard

…

1. [the Parliament] decides, in the light of the foregoing considerations, not to defend the immunity and privileges of Bruno Gollnisch …'.

Procedure and forms of order sought by the parties

26 By applications lodged at the Court Registry on 7 July 2011, the applicant brought the present actions for annulment of the Parliament's decisions, respectively, to waive his immunity (Case T-346/11) and not to defend his immunity (T-347/11), and for damages for the non-pecuniary harm which he claims to have sustained.

27 Upon hearing the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure under Article 64 of the Rules of Procedure of the General Court, requested the parties to lodge certain documents and put a number of questions to them in writing. The parties complied with that request.

28 By order of the President of the First Chamber of the Court of 3 July 2012, Cases T-346/11 and T-347/11 were joined for the purposes of the written procedure, the oral procedure and the judgment, in accordance with Article 50 of the Rules of Procedure.

29 The parties presented oral argument and their answers to the oral questions put by the Court at the hearing on 10 July 2012.

30 In Case T-346/11 the applicant claims that the Court should:

— annul the decision of the Parliament to waive his immunity, taken on 10 May 2011 and adopting report A7-0155/2011 of Mr Rapkay;

— award the applicant the sum of EUR 8 000 by way of damages for the non-pecuniary harm sustained by him;

— award him the sum of EUR 4 000 by way of costs incurred in respect of his counsel and the preparation of his action.

31 The Parliament contends that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

32 In Case T-347/11 the applicant claims that the Court should:

— annul the decision of the Parliament not to defend his immunity, taken on 10 May 2011 and adopting report A7-0154/2011 of Mr Rapkay;

— award the applicant the sum of EUR 8 000 by way of damages for the non-pecuniary harm sustained by him;

— award him the sum of EUR 4 000 by way of costs incurred in respect of his counsel and the preparation of his action.

33 The Parliament contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss the action as unfounded;

— order the applicant to pay the costs.

Law

Preliminary observations

The parliamentary immunity system established by the Protocol

34 It should be borne in mind that the parliamentary immunity of Members of the Parliament, as provided for in Articles 8 and 9 of the Protocol, comprises the two forms of protection usually 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 (Joined Cases C-200/07 and C-201/07 *Marra* [2008] ECR I-7929, paragraph 24, and Case C-163/10 *Patriciello* [2011] ECR I-7565, paragraph 18).

35 Article 8 of the Protocol, which constitutes a special provision applicable to all judicial proceedings where the Member of the Parliament benefits from immunity in respect of opinions expressed and votes cast in the exercise of parliamentary duties, is intended to protect the freedom of expression and independence of Members of the Parliament, with the result that it prevents any judicial proceedings in respect of those opinions or votes (*Patriciello*, paragraph 34 above, paragraph 26).

36 The Court of Justice has observed that Article 8 of the Protocol, in the light of its objective of protecting the freedom of speech and independence of Members of the Parliament and in the light of its wording, which expressly refers to votes cast as well as to opinions expressed by the Members, is in essence intended to apply to statements made by those Members within the very precincts of the Parliament (*Patriciello*, paragraph 34 above, paragraph 29).

37 The Court of Justice has stated, however, that it was not impossible that a statement made by those Members beyond those precincts might amount to an opinion expressed in the performance of their duties within the meaning of Article 8 of the Protocol, because whether or not it is such an opinion depends, not on the place where the statement was made, but rather on its nature and its content (*Patriciello*, paragraph 34 above, paragraph 30).

38 In referring to opinions expressed by the Members of the Parliament, Article 8 of the Protocol is closely linked to freedom of expression. Freedom of expression, as an essential foundation of a pluralist, democratic society reflecting the values on which the European Union ('EU'), in accordance with Article 2 TEU, is based, constitutes a fundamental right guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389), which, pursuant to Article 6(1) TEU, has the same legal value as the Treaties. That freedom is also affirmed in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (*Patriciello*, paragraph 34 above, paragraph 31).

39 In consequence, it is to be considered that 'opinion' for the purpose of Article 8 of the Protocol must be understood in a wide sense to include remarks and statements that, by their content, correspond to assertions amounting to subjective appraisal (*Patriciello*, paragraph 34 above, paragraph 32).

40 It is clear too from the wording of Article 8 of the Protocol that, in order to enjoy immunity, an opinion must have been expressed by a Member of the Parliament 'in the performance of [his] duties', thus entailing the requirement of a link between the opinion expressed and the parliamentary duties (*Patriciello*, paragraph 34 above, paragraph 33).

41 The issue being statements made by a Member of the Parliament prosecuted in his Member State of origin, it must be held that the immunity provided in Article 8 of the Protocol is capable of definitively preventing national courts and judicial authorities from exercising their respective

jurisdictions in the field of prosecutions and penalties for criminal offences for the purpose of ensuring the observance of law and order in their territory and, as a corollary, capable of thus denying the persons injured by those statements any judicial remedy whatsoever, including, as the case may be, claiming compensation before the civil courts for the harm sustained (see, to that effect, *Patriciello*, paragraph 34 above, paragraph 34).

42 In the light of those consequences, the connection between the opinion expressed and parliamentary duties must be direct and obvious (*Patriciello*, paragraph 34 above, paragraph 35).

43 Furthermore, Article 9 of the Protocol provides that Members of the Parliament are to enjoy, in the territory of their own State, the immunities accorded to members of their Parliament.

44 The terms of the immunity provided for in Article 9 of the Protocol are to be analysed by reference to the relevant national provisions (*Marra*, paragraph 34 above, paragraph 25, and *Patriciello*, paragraph 34 above, paragraph 25) and may therefore vary according to the Member State of origin of the particular Member of the Parliament.

45 In addition, a Member's immunity under Article 9 of the Protocol may be waived by the Parliament, in accordance with the third paragraph of that article, whereas the immunity provided for in Article 8 cannot be waived (*Patriciello*, paragraph 34 above, paragraph 27).

46 Thus, where a request for waiver of immunity is submitted to it by a national authority, the Parliament must first of all ascertain whether the facts giving rise to the request for waiver can be covered by Article 8 of the Protocol, in which case immunity cannot be waived.

47 Should the Parliament reach the conclusion that Article 8 of the Protocol does not apply, it must then ascertain whether the Member of the Parliament benefits from the immunity provided for in Article 9 of the Protocol in respect of the facts complained of and, if that is so, it must decide whether or not to waive that immunity.

The distinction to be drawn between waiver of immunity and defence of immunity within the meaning of the Protocol

48 It should first of all be observed that while waiver of the immunity of a Member of the Parliament is expressly provided for in Article 9 of the Protocol, the same cannot be said of defence of the immunity of a Member of the Parliament, for which provision is made only in Rule 6(3) of the Rules of Procedure of the Parliament, which does not define that concept.

49 The Court of Justice has held, with respect to Article 8 of the Protocol, that 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, and that it follows that, even if the Parliament, pursuant to a request from the Member concerned, adopts, on the basis of the Rules of Procedure, a decision to defend immunity, that decision constitutes an opinion which does not have binding effect with regard to national judicial authorities (*Marra*, paragraph 34 above, paragraph 39).

50 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 Members of the Parliament coming from that Member State, since Article 8 of the Protocol does not expressly grant the Parliament such power and does not refer to the rules of national law (*Marra*, paragraph 34 above, paragraph 40).

51 It follows from that case-law that a distinction must be drawn between the concept of immunity where it is based on Article 8 of the Protocol, which establishes absolute immunity, the content of which is determined solely by European law and which cannot be waived by the Parliament, or on Article 9 of the Protocol, which, on the other hand, refers to the national rules of the Member State of origin of the Member of the Parliament as regards the terms and scope of the immunity established in favour of that Member, while, moreover, that immunity can, if necessary, be waived by the Parliament.

52 Since the immunity provided for in Article 9 of the Protocol is a matter of law and since the Member of the Parliament can be deprived of his immunity only if the Parliament has waived it, the defence of immunity, in the context of Article 9 of the Protocol, is conceivable only where, in the absence of a request for waiver of a Member's immunity, immunity, as resulting from the provisions of the national law of that Member's Member State of origin, is endangered, in particular, by the action of the police or judicial authorities of that Member's Member State of origin.

53 In such circumstances, the Member of the Parliament may request the Parliament to defend his immunity, as provided for in Rule 6(3) of the Rules of Procedure of the Parliament.

54 It follows that a decision of the Parliament in response to a request to defend the immunity of a Member of the Parliament is conceivable only where no request for waiver of that immunity has been submitted to the Parliament by the competent national authorities.

55 Defence of immunity is thus a means whereby the Parliament, at the request of a Member of the Parliament, may intervene where the national authorities violate or are about to violate the immunity of one of its Members.

56 Conversely, where a request for waiver of immunity is made by the national authorities, the Parliament must take a decision to waive or not to waive immunity. In such a case, defence of immunity no longer has any *raison d'être*, since either the Parliament waives immunity and the defence of immunity is not longer conceivable, or it refuses to waive immunity and defence of immunity is unnecessary, since the national authorities are advised that their request for waiver of immunity has been rejected by the Parliament and since immunity therefore precludes the measures which those authorities could or would take.

57 Defence of immunity is therefore devoid of purpose where a request for waiver of immunity is submitted by the national authorities. The Parliament is no longer required to take action on its own initiative because no formal request has been submitted by the competent authorities of a Member State, but must take a decision and thus respond to such a request.

The exercise of a remedy and the scope of the Court's review in such a context

58 While the privileges and immunities conferred on the European Union by the Protocol have a functional character, in that they are intended to avoid any interference with the functioning and independence of the European Union, the fact remains that they have been expressly accorded to Members of the Parliament and to officials and other staff of the EU institutions. The fact that the privileges and immunities have been provided in the public interest of the European Union justifies the power given to the institutions to waive the immunity where appropriate but does not mean that these privileges and immunities are granted to the European Union exclusively and not also to its officials, to other staff and to Members of the Parliament. Therefore the Protocol confers an individual right on the persons concerned, compliance with which is ensured by the system of remedies established by the Treaty (see Case T-42/06 *Gollnisch* v *Parliament* [2010] ECR II-1135, paragraph 94 and the case-law cited).

59 It must be accepted, however, that the Parliament has a broad discretion when deciding whether to grant or to refuse a request for waiver of immunity or defence of immunity, owing to the political nature of such a decision (see, to that effect, *Gollnisch* v *Parliament*, paragraph 58 above, paragraph 101).

60 The exercise of that discretion is not, however, excluded from review by the Court. It has consistently been held that in the context of such a review the EU Courts must verify whether the relevant procedural rules have been complied with, whether the facts admitted by the institution have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers (see, by analogy, Case 98/78 *Racke* [1979] ECR 69, paragraph 5, and Case C 16/90 *Nölle* [1991] ECR I-5163, paragraph 12).

61 It must be recalled that, for the purposes of that examination, the criticism of the statement of the grounds of the Committee on Legal Affairs' report must be regarded as being directed against the grounds of the decision on waiver of immunity (see, to that effect, Case T-345/05 *Mote* v *Parliament* [2008] ECR II-2849, paragraph 59, and *Gollnisch* v *Parliament*, paragraph 58 above, paragraph 98).

62 It is in the light of the foregoing considerations that the Court will examine the present action.

The action for annulment in Case T-346/11, relating to the waiver of the applicant's immunity

63 The applicant puts forward six pleas in law in support of his action for annulment.

64 He claims, first, that there has been a breach of Article 9 of the Protocol; second, a failure to follow the 'consistent case-law' of the Parliament's Committee on Legal Affairs; third, a breach of the principles of legal certainty and legitimate expectations; fourth, interference with the independence of a Member of the Parliament; fifth, a breach of the second subparagraph of Rule 3(4) of the Rules of Procedure, on the procedure that might lead to the disqualification of a Member from holding office; and, sixth, breach of the adversarial principle and of the applicant's rights of defence.

65 It is appropriate to begin by examining the first and fourth pleas together.

First plea, alleging breach of Article 9 of the Protocol, and fourth plea, alleging interference with the independence of a Member of the Parliament

66 The applicant claims, in support of his first plea, that the Parliament made an error of law in waiving his immunity on the ground that the statements and opinions set out in the press release were expressed outside the framework of his activity as a Member of the Parliament. He maintains that a Member's freedom of political debate and freedom of expression must be protected, whether or not they are exercised within the strict framework of the Parliament, and that his immunity therefore ought to have been defended, not waived. He maintains that Article 9 of the Protocol concerns all acts carried out outside the exercise of the parliamentary activity in the strict sense, which, for their part, are covered by the immunity established by Article 8 of the Protocol. The Parliament has therefore breached Article 9 of the Protocol.

67 The applicant further maintains, in support of his fourth plea, that the Parliament could not waive his immunity by deciding that the applicant had not made use of his freedom of expression in the exercise of his functions as a Member of the Parliament. In his submission, there is no precedent in the Parliament's previous practice in taking decisions that obliges a Member of the European Parliament to assert that he is acting in that capacity in order to be able to benefit from the privileges and immunities attached to his office when he expresses his views outside the Parliament's normal places of work.

68 Freedom of political debate was thus disregarded and it follows, in the applicant's submission, that there was a breach of Rule 6(1) of the Rules of Procedure.

69 The Parliament disputes those assertions.

70 It should be observed that the Parliament examined the request for waiver of the applicant's immunity solely by reference to Article 9 of the Protocol; that is apparent from both the statement of the reasons on which the Committee on Legal Affairs' report is based and the decision on the waiver of his immunity.

71 Furthermore, the applicant acknowledges in his written pleadings that the Parliament was correct to consider that the request for waiver of his immunity should by examined solely by reference to Article 9 of the Protocol.

72 The applicant confirmed at the hearing, moreover, that in his view Article 8 of the Protocol did not apply in the present case.

73 The parties are thus agreed that the request to waive the applicant's immunity fell to be examined by reference to Article 9 of the Protocol.

74 In that regard, it should be made clear that, in the present case, the statements in the press release giving rise to the complaint against the applicant concern the way in which the chair and the director-general of the services of the Regional Council of the Rhône-Alpes Region reacted to a request submitted to General Information and aimed at obtaining information relating to certain officials.

75 It is also common ground that those statements were drafted by the spokesman of the Front National group sitting on the Regional Council of the Rhône-Alpes Region, a political group chaired by the applicant, who is himself an elected member of that council.

76 It is also common ground that at a press conference held in Lyon on 10 October 2008 the applicant confirmed that that press release had been drafted by persons authorised to speak on behalf of the elected members of that political group on the Regional Council.

77 It must therefore be held that those facts were directly related to the duties carried out by the applicant in his capacity as regional councillor and as chair of the Front National group within the Regional Council of the Rhône-Alpes Region. It was, moreover, on account of that capacity, as is apparent from the documents in the case-file, in particular Annexes A6, A8 and A10 to the application and Annex B2 to the defence, that the applicant was the subject of proceedings brought by the French authorities.

78 Consequently, there is no link between the statements forming the basis of the complaint against the applicant and the latter's duties as a Member of the Parliament or, a fortiori, any direct and obvious link between the statements at issue and the duties of a Member of the Parliament that might have justified the application of Article 8 of the Protocol, as interpreted by the Court of Justice (see paragraph 42 above).

79 The Parliament was therefore correct to take the view that the request for waiver of the applicant's immunity fell to be examined solely by reference to Article 9 of the Protocol and not under Article 8.

80 Under Article 9 of the Protocol, the applicant enjoys, on French territory, the immunities accorded to members of the Parliament of that country, which are determined by Article 26 of the French Constitution.

81 In the present case, the applicant takes issue with the Parliament for having waived his immunity on the ground that the statements at issue, liability for which is imputed to him, were expressed outside the framework of his activity as a Member of the Parliament, whereas, in his submission, Article 9 of the Protocol concerns all acts carried out outside the exercise of the parliamentary activity in the strict sense and is intended to protect the freedom of political debate and the freedom of expression of the Member, whether or not they are exercised within the strict framework of the European Parliament.

82 It should be borne in mind that Article 26 of the French Constitution provides:

'No Member of Parliament shall be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the performance of his official duties.

No Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorisation of the Bureau of the House of which he is a member. Such authorisation shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or when a conviction has become final.

The detention, subjection to custodial or semi-custodial measures or prosecution of a Member of Parliament shall be suspended for the duration of the session if the House of which he is a member so requires.

…'

83 While the applicant does not make clear whether it is his intention that the immunity or inviolability provided for in those provisions be applied to him, the Court none the less considers that, by his arguments, he claims in reality the benefit of the immunity provided for in the first paragraph of Article 26 of the French Constitution, in so far as he maintains that he cannot be prosecuted or tried in respect of opinions expressed by him in the performance of his duties.

84 In order to be able to benefit from the provisions of the first paragraph of Article 26 of the French Constitution, it is therefore necessary, as in the case of Article 8 of the Protocol, that the opinions expressed by the Member of the Parliament were expressed in the exercise of his duties as a Member of the Parliament, since it is in that capacity that he benefits, through Article 9 of the Protocol, from the immunity recognised by the French Constitution.

85 That is not so in the present case (see paragraphs 74 to 78 above).

86 It follows that the Parliament did not err when it took the view that:

'… the request from the French authorities does not relate to Bruno Gollnisch's political activities in his capacity as a Member of Parliament …, but … it concerns his activities at purely regional and local level, in his capacity as a regional councillor of the Rhône-Alpes Region, a mandate conferred on [him] by direct universal suffrage and separate from that of a Member of Parliament …'.

87 It also follows that it is irrelevant whether the Member of the Parliament did or did not assert that he was acting in that capacity when he made the statements at issue, since that is not a material factor for the determination of whether those statements were made in the exercise of the applicant's duties.

88 Last, in so far as the applicant's argument consists in claiming that he was acting not in the exercise of his duties as a Member of the Parliament, but only in the context of the political activities that any Member of the Parliament is likely to have outside those duties and that, accordingly, it is not the first paragraph of Article 26 of the French Constitution that is applicable in the present case but, rather, the second or third paragraph of that article, it must be held that, under the third paragraph of Article 26

of the French Constitution, proceedings are possible unless the national Parliament objects, which means that they do not require the waiver of the immunity enjoyed by a Member of the national Parliament.

89 In addition, and in so far as may be necessary, it must be borne in mind that Article 9 of the Protocol expressly provides that the Parliament may waive the immunity enjoyed by the Member of the Parliament under that provision.

90 The Parliament cannot therefore be criticised for having considered it appropriate, in the light of the circumstances of the case and of the request submitted by the ministre d'État, Garde des Sceaux, Ministre de Justice et des Libertés of the French Republic to waive the applicant's immunity under the Protocol in order to enable the investigation by the French judicial authorities to continue.

91 In conclusion, in so far as the applicant claims that the Parliament was not entitled to waive his immunity in such a case, but that it normally does not do so in the light of its practice in previous decisions, that argument is confused in substance with the argument put forward in support of the second and third pleas and reference is made to the examination of those pleas.

92 Both the first and the fourth pleas must therefore be rejected.

Second and third pleas, alleging, respectively, breach of the 'consistent case-law' of the Parliament's Committee on Legal Affairs on freedom of expression and *fumus persecutionis*; and breach of the principles of legal certainty, protection of legitimate expectations and equal treatment

93 The applicant maintains, in support of his second plea, that the Parliament is empowered to establish its own principles, thus creating its own 'case-law', notably in relation to parliamentary immunity, which is binding on the other institutions.

94 The Parliament's deliberations on requests for waiver of immunity which have been submitted to it over time have enabled it to identify a number of general principles, which are enshrined in the Resolution adopted by the Parliament at its session of 10 March 1987 (OJ 1987 C 99, p. 44), on the basis of the report of Mr Donnez closing the procedure for the consultation of the Parliament on the draft Protocol revising the Protocol on the Privileges and Immunities of the European Communities in respect of Members of the Parliament (A2-121/86).

95 The Parliament has thus established certain principles designed to protect the rights of Members of the Parliament, refusing to a large extent to waive their immunity, in particular where it has been necessary to protect their freedom of expression and especially where proceedings are initiated by their political opponents or by the executive.

96 The principles identified in that 'consistent case-law' are summarised in a document of the Parliament's Committee on Legal Affairs and the Internal Market, entitled 'Notice to Members No 11/2003', of 6 June 2003 ('Notice No 11/2003').

97 The applicant maintains that the words in respect of which he is criticised clearly fall within the framework of his role as representative of the political party to which he belongs and as chair of the regional parliamentary group of that party, while he is also a Member for that party in the Parliament. It follows, in his submission, that he cannot be prevented from defining his words as being directly linked to his political activities. Accordingly, in his submission, the Committee on Legal Affairs acted in bad faith when it took the view that he had uttered those words outside the exercise of his duties as a Member of the Parliament.

98 It follows, in consequence, that there has been a breach not only of the abovementioned principles related to the freedom of expression of Members of the Parliament referred to above, but also of *fumus persecutionis*, since the criminal proceedings have their origin in the complaint, together with an application to join the proceedings as party claiming civil damages, lodged by LICRA, which was and continues to be run by the applicant's declared political opponents, both at local and regional level and within the Parliament.

99 In addition, the applicant claims, in essence, that the conduct of the French authorities, and in particular of the judicial authorities, also demonstrates the existence of *fumus persecutionis*.

100 In the applicant's submission, the principles identified by the Parliament are designed, in such a situation, to protect the Member of the Parliament from the waiver of immunity.

101 Last, the applicant claims, in essence, in support of his third plea, that the Parliament, first, in breach of the principles and the 'case-law' which it has defined in relation to freedom of expression and *fumus persecutionis*, has breached the principles of legal certainty and the protection of legitimate expectations and, second, in waiving the applicant's immunity and thus departing from its 'case-law', has also breached the principle of equal treatment which must be applied to Members of the Parliament.

102 The Parliament disputes those assertions.

103 As the applicant claims, in essence, in the context of his second plea, that there has been a breach of the 'consistent case-law' of the Parliament in relation to immunity as set out in Notice No 11/2003 and, in the context of his third plea, that owing to the breach of that 'consistent case-law' there has been a breach of the principles of legal certainty, legitimate expectations and equal treatment, it is appropriate first of all to examine the legal nature of Notice No 11/2003.

– The legal nature of Notice No 11/2003 and the Court's review

104 It is appropriate, first of all, to have regard to Notice No 11/2003, which is worded as follows:

'The secretariat [of the Committee on Legal Affairs and the Internal Market] has prepared the enclosed document at the committee's request. It has identified those instances in which Parliament has been seised of requests for waiver of immunity in cases relating to the expression of opinions since 1979, and has sought to extract common principles from the relevant reports, taking account of the final vote in the plenary session.

…

Although point (a) of the first paragraph of Article [9] of the Protocol … refers to the immunities accorded to members of the relevant national Parliament, the … Parliament may create its own principles, thereby creating what may be termed "case-law".

…

The abovementioned principles or case-law should have the effect of establishing a coherent concept of European parliamentary immunity which, in principle, should be independent of the various practices of the national parliaments. … [W]hereas regard is had to whether immunity exists under national law, the … Parliament applies its own consistent principles in deciding whether to waive it.

…

Principle 2: It is a fundamental principle that in cases in which the acts of which the Member stands accused form part of his or her political activity or are directly related to such activity, immunity will not be waived.

Expressions of opinion deemed to be covered by a Member's political activity have been made at demonstrations (even in the visitors' gallery of a national parliament), at public meetings, in political publications, in the press, in a book, on television, by signing a political tract and even in a court of law. … Parliament has even refused to waive immunity in respect of ancillary charges where the main charge related to the expression of a political opinion.

What is alleged to have been uttered or written is largely irrelevant, especially where the subject of the expression of opinion is another political or the subject of political debate. This may, however, be subject to certain caveats:

…

(3) it is often stated in the reports that the expression of opinion should not constitute an incitement to hatred, defamation or a violation of fundamental human rights or an attack on the honour or reputation of groups or individuals. Notwithstanding this, Parliament adopts a very liberal attitude to expressions of opinion made in the political arena, noting that in the political arena it is often difficult to distinguish between polemics and defamation.

…

Fumus persecutionis or namely the presumption that a criminal action has been brought to damage the Member's political interests, where, for instance, the inquiry is based on anonymous accusations or the request for waiver is made long after the alleged acts took place. For instance, where an action for damages for defamation was brought by a political adversary, it was considered that, in the absence of evidence to the contrary, it had to be regarded as intended to harm the Member concerned and not to obtain reparation for damage. *Fumus persecutionis* can be inferred in particular where proceedings are brought in respect of old facts, during an election campaign, to make an example of the accused, etc.

Principle 3: where proceedings are brought by a political adversary, in the absence of evidence to the contrary, immunity will not be waived in so far as the proceedings have to be regarded as intended to harm the Member concerned and not to obtain reparation for damage. Likewise, where proceedings are brought in circumstances such as to suggest that they have been initiated solely in order to harm the Member concerned.

…'

105 It must be acknowledged that the Parliament is correct to claim that that document, drawn up by the secretariat of the Committee on Legal Affairs and the Internal Market, is not an act of the Parliament and is merely a summary of that Committee's previous practice in taking decisions in the relevant field.

106 Furthermore, it should be borne in mind that, according to settled case-law, the right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it is clear that the Community authorities have, by giving him precise assurances, led him to entertain legitimate expectations (Joined Cases C-37/02 and C-38/02 *Di Lenardo Adriano and Dilexport* [2004] ECR I-6911, paragraph 70, and Case T-203/96 *Embassy Limousines & Services* v *Parliament* [1998] ECR II-4239, paragraph 74). Regardless of the form in which it is communicated, precise, unconditional and consistent information which comes from authorised and reliable sources constitutes such assurances (see, to that effect, Case C-82/98 P *Kögler* v *Court of Justice* [2000] ECR I-3855, paragraph 33, and Case T-439/09 *Purvis* v *Parliament* [2011] ECR II-7231, paragraph 69). However, a person may not plead infringement of that principle unless he has been given precise

assurances by the authorities (judgment of 24 November 2005 in Case C-506/03 *Germany* v *Commission*, not published in the ECR, paragraph 58, and judgment in Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, paragraph 147). Moreover, only assurances which comply with the applicable rules may give rise to legitimate expectations (Case T-347/03 *Branco* v *Commission* [2005] ECR II-2555, paragraph 102, and Case T-282/02 *Cementbouw Handel & Industrie* v *Commission* [2006] ECR II-319, paragraph 77).

107 Since Notice No 11/2003 is not an act of the Parliament, but is merely a summary of the Committee on Legal Affairs and the Internal Market's previous practice in taking decisions, drawn up by the General Secretariat of the Parliament with the aim of making Members of the Parliament aware of that practice in taking decisions, and since such a document cannot therefore bind the Parliament, it follows that it cannot contain precise, unconditional and consistent information coming from the Parliament capable of constituting precise assurances on its part on the basis of which Members of the Parliament could entertain legitimate expectations.

108 It follows that, in any event, the applicant cannot claim that the Parliament breached the principle of legitimate expectations by departing from a document which is not an act of the Parliament.

109 It must be borne in mind, however, that the institutions are under a duty to exercise their powers in accordance with the general principles of EU law, such as the principle of equal treatment and the principle of sound administration, and that, regard being had to those principles, they must take into account the decisions already taken in respect of similar applications and consider with especial care whether they should decide in the same way or not. That said, the way in which the principles of equal treatment and sound administration are applied must be consistent with respect for legality (see, by analogy, Case C-51/10 P *Agencja Wydawnicza Technopol* v *OHIM* [2011] ECR I-1541, paragraphs 73 to 75 and the case-law cited).

110 It must be borne in mind, in that regard, that the principle of equal treatment precludes, in particular, comparable situations being treated differently, unless such treatment is objectively justified (see Case C-127/07 *Arcelor Atlantique and Lorraine and Others* [2008] ECR I-9895, paragraph 23, and Case C-67/09 P *Nuova Agricast and Cofra* v *Commission* [2010] ECR I-9811, paragraph 78 and the case-law cited).

111 Furthermore, it has consistently been held that the principle of sound administration is included among the guarantees conferred by the European Union legal order in administrative proceedings, that principle entailing the duty of the competent institution to examine carefully and impartially all the relevant aspects of the particular case (Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14, and Case C-505/09 P *Commission* v *Estonia* [2012] ECR, paragraph 95).

112 It must therefore be considered that, by his plea alleging breach of the 'consistent case-law' of the Parliament on matters of immunity, the applicant means to claim that there has been a breach of the principles of sound administration and equal treatment.

113 Even on the assumption that Notice No 11/2003 contained sufficiently precise information as to the approach that Members of the Parliament might expect on the part of the Parliament when it is called upon to rule on the immunity of a Member, with regard to, in particular, freedom of expression and *fumus persecutionis*, it must be considered that the Parliament can depart from it only if it provides sufficient reasons for doing so.

114 It must be borne in mind in that regard that the statement of reasons required under Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Court to exercise its power of review. The requirement to state reasons must be evaluated

according to the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to the wording of the measure, but also to its context and to all the legal rules governing the matter in question (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; Case C-301/96 *Germany* v *Commission* [2003] ECR I-9919, paragraph 87; and Case C-42/01 *Portugal* v *Commission* [2004] ECR I-6079, paragraph 66).

115 Last, as regards the principle of legal certainty, it is clear from the case-law that that principle is a fundamental principle of EU law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly. However, where a degree of uncertainty regarding the meaning and scope of a legal rule is inherent in that rule, it is necessary to examine whether the legal rule at issue displays such ambiguity as to make it difficult for the persons concerned to resolve with sufficient certainty any doubts as to the scope or meaning of that rule (see, to that effect, Case C-110/03 *Belgium* v *Commission* [2005] ECR I-2801, paragraphs 30 and 31).

– The contested measure

116 The applicant claims, in support of his second plea, that the Parliament failed to follow its previous practice in taking decisions relating to the assessment of cases in which its Members' freedom of expression is at issue and in which there is a suspicion of *fumus persecutionis*.

117 As regards, first of all, freedom of expression, it follows from the Parliament's previous practice in taking decisions, according to Notice No 11/2003, that waiver of immunity may be envisaged in particular where the facts alleged against the applicant may be described as incitement to racial hatred.

118 It must be held in the present case that that characterisation of the facts by the competent authorities was mentioned at recitals A and B to the contested measure:

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

B. … the request for waiver of the immunity of Bruno Gollnisch relates to an alleged offence of incitement to racial hatred following the publication, on 3 October 2008, of a press release of the Front National group of the Rhône-Alpes Region, of which Bruno Gollnisch was chair'.

119 Furthermore, as regards *fumus persecutionis*, it must be stated that the judicial proceedings against the applicant were initiated not by a political opponent but by an association authorised by French law to bring proceedings before the courts in respect of racist or anti-Semitic oral or written statements, in application of the Law of 29 July 1881 on the freedom of the press (*Bulletin des Lois*, 1881, No 637, p. 125), that the inquiry was not based on anonymous accusations, that the proceedings did not relate either to old facts or to acts committed during an election campaign and that there is no evidence, in the light of the facts taken into consideration by the Parliament, which, moreover, are not disputed by the applicant, that the proceedings were manifestly designed to make an example of the applicant.

120 None of the criteria identified in the Parliament's previous practice in taking decisions and which led it in the past to oppose a request for waiver of immunity is therefore satisfied in the present case.

121 The Parliament was therefore well advised to state in the decision relating to waiver of the applicant's immunity:

'in the present case, the Parliament has found no evidence of *fumus persecutionis*, [that is to say,] a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member …'.

122 It follows that, as regards the assessment both of freedom of expression and of any *fumus persecutionis*, the Parliament's duty to examine carefully and impartially all the relevant evidence in the present case was satisfied and the applicant has failed to establish that there has been any breach of the principle of sound administration.

123 The same applies to the principle of equal treatment, as the applicant has failed to demonstrate, in the light of the Parliament's previous practice in taking decisions as described in Notice No 11/2003, that his treatment was different from the treatment normally afforded to Members of the Parliament in comparable situations.

124 In addition, given the legal nature of Notice No 11/2003, which is not a document of the Parliament (see paragraphs 107 and 108 above), the applicant cannot properly rely on the Parliament's breach of the principle of legal certainty on the ground that it departed from that notice in a way not expected by the applicant, since that notice, which was drawn up solely by the General Secretariat of the Parliament, cannot therefore be regarded as a rule within the meaning of the case-law referred to above (paragraph 115).

125 Last, it follows from all of the foregoing considerations that the contested measure contains a sufficient statement of reasons with respect to the two points referred to above.

126 The second and third pleas must therefore be rejected in their entirety.

Fifth plea, alleging breach of the provisions of the Rules of Procedure on the procedure liable to lead to disqualification of a Member of the Parliament from holding office

127 The applicant claims, in essence, that the acts in respect of which he was prosecuted are capable of being penalised, in French law, by an additional penalty of ineligibility, which entails disqualification from holding electoral office.

128 He maintains that the French Government did not comply with the procedure laid down in Rule 3(6) of the Rules of Procedure and failed to state in its correspondence that the proceedings brought against the applicant could have consequences for his disqualification from holding office as a Member of the Parliament.

129 Furthermore, in the applicant's submission, no body of the Parliament asked the French Government an explanation. The president of the Parliament ought to have informed the Committee on Legal Affairs of that essential element and that committee would have been able to take it into account, even if it was highly unlikely that such an additional penalty would be imposed on the applicant.

130 It follows, in the applicant's submission, that the failure to comply with that essential procedural requirement vitiates the report of the competent committee and, in consequence, the decision to waive the applicant's immunity.

131 The Parliament disputes those allegations.

132 It has consistently been held that the purpose of the rules of procedure of a Community institution is to organise the internal functioning of its services in the interests of good administration. It follows that natural or legal persons may not rely in support of an action for annulment on an alleged breach of those rules, since they are not intended to ensure protection for individuals (Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraphs 49 and 50; see, to that effect, Case C-443/05 P *Common Market Fertilizers* v *Commission* [2007] ECR I-7209, paragraphs 144 and 145).

133 Furthermore, it is settled case-law that a breach of an essential procedural requirement may lead to annulment of the decision at issue if it is established that the content of that decision could have differed if that irregularity had not occurred (see, to that effect, Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and Others* v *Commission* [1980] ECR 3125, paragraph 47, and Case T-279/02 *Degussa* v *Commission* [2006] ECR II-897, paragraph 416).

134 In the present case, the first complaint put forward by the applicant seeks, in essence, to secure a finding by the Court that the French authorities failed to fulfil their obligation under Rule 3(6) of the Rules of Procedure to inform the Parliament of the existence of a procedure that might lead to the applicant's disqualification from holding office.

135 Rule 3(6) of the Rules of Procedure places no such obligation to that effect on the Member States.

136 Rule 3(6) of the Rules of Procedure provides that where the competition authorities of the Member States initiate a procedure which might lead to the disqualification of a Member from holding office, the president of the Parliament is to ask them to keep him regularly informed of the stage reached in the procedure and is to refer the matter to the committee responsible for the verification of powers, on whose proposal the Parliament may adopt a position on the matter.

137 The provisions of that rule thus envisage the procedure to be followed by the president of the Parliament and not by the Member States. It is in any event precluded, moreover, that such an obligation could be placed on the Member States on the basis of the Rules of Procedure of the Parliament.

138 The first complaint must therefore be rejected.

139 The second complaint alleges that no body of the Parliament, beginning with its president, took issue with the French authorities for not having informed the Parliament that the applicant might be disqualified from holding office, when the president ought to have drawn the attention of the competent committee to that omission, which could have been taken into account by that committee when the decision relating to the waiver of the applicant's immunity was adopted.

140 Rule 3(6) of the Rules of Procedure, which contains no rules designed to safeguard the protection of individuals, is, as the Parliament claims, intended only to enable the Parliament to be informed of the action taken by the national authorities in proceedings that might lead to disqualification of a Member from holding office and to his being replaced.

141 It is therefore a provision the purpose of which is to ensure the internal smooth functioning of the Parliament and which therefore does not constitute an essential procedural requirement in the procedure for waiver of the immunity of a Member of the Parliament.

142 It follows that the second complaint too must be rejected.

143 The fifth plea must therefore be rejected in its entirety.

Sixth plea, alleging breach of the *inter partes* principle and of the rights of the defence

144 The applicant maintains that the fact that he was unable to defend himself when a vote was taken in plenary session on the decision relating to the waiver of his immunity and that a request to that effect which he presented to the president of the European Parliament was rejected constitutes a breach of the *inter partes* principle and of the rights of the defence.

145 The applicant acknowledges that the third subparagraph of Rule 7(8) of the Rules of Procedure does indeed provide that, without prejudice to Rule 151, the Member whose privileges or immunities are under consideration is not to speak in the debate.

146 None the less, he raises an objection of illegality against that provision, claiming that it is inconsistent with respect for the rights of the defence and, in particular, for the right to be heard.

147 In that regard, first, the applicant claims that his rights of defence cannot be considered to have been respected solely because he was heard, in camera, before the Committee on Legal Affairs, when the sense of the report prepared by the rapporteur was not known.

148 Second, the applicant observes that the minutes of the Committee meetings do not mention the names of the Members of the Parliament actually present at his hearing, but only the attendance list. In his submission, a number of the Members who signed that list were no longer present when he was heard.

149 Third, he claims that a number of Members of the Parliament who took part in the vote on the report were not present when he was heard. Yet it is commonly accepted, in the context of disciplinary, judicial or administrative, proceedings, that a decision can be taken only by those who heard the person concerned, which assumes that the same persons took part in the hearing of the person concerned and also in the adoption of the decision concerning him.

150 Fourth, that refusal to hear the applicant is also contrary to most parliamentary usages and, in particular, to Rule 80(7) of the Rules of Procedure of the French National Assembly, which provides that a Member of the National Assembly is to take part in the debate in the context of the examination of a request to waive his immunity.

151 Fifth, the applicant claims that the Parliament also precluded any possibility of a debate by having recourse to a simplified procedure, without any debate, for the adoption of the unamended texts, in accordance with Rule 138(2) of the Rules of Procedure. In his submission, that general provision cannot apply when the special provisions of Rule 7(8) of the Rules of Procedure, applicable in relation to immunity, provide that a debate is to be held.

152 Sixth, and last, the proposals for the adoption of a measure with or without a debate are examined by the conference of presidents of the political groups. In the applicant's submission, in the context of that conference, non-attached Members have no elected representative and have only an appointed representative, who has no vote in the deliberations, and cannot therefore require that a debate be held, which, in the applicant's submission, constitutes a fresh instance of discrimination of non-attached Members of the Parliament, as in Joined Cases T-222/99, T-327/99 and T-329/99 *Martínez and Others* v *Parliament* [2001] ECR II-2823.

153 It should be pointed out that at the hearing the applicant stated that his plea related solely to the absence of guarantees provided by the internal procedures of the Parliament when it examines a request for waiver of immunity, namely the *inter partes* debate and respect for the rights of the defence, but that he did not maintain that there had been any breach of those internal procedures in the present case.

154 The Parliament disputes those allegations.

155 The applicant's argument, as he made clear at the hearing, consists in essence in maintaining that he wished to speak in plenary session in order to defend himself and that he was denied the right to do so because Rule 7(8) in conjunction with Rule 138(2) of the Rules of Procedure prevented a debate from being held and the applicant from being able to speak.

156 The applicant maintains that recourse to Rule 138(2) of the Rules of Procedure prevented a debate from being held, although such a debate was none the less provided for in Rule 7(8) of those Rules, and that the application of Rule 7(8) of the Rules of Procedure also prevents the Member from expressing his views when such a debate takes place.

157 Although he recognises that the Parliament did indeed comply with the provisions of its Rules of Procedure, the applicant disputes the legality of such a mechanism, in so far as he maintains that it is contrary both to respect for the rights of the defence and to the *inter partes* principle.

158 It is necessary, therefore, to consider, first, whether a debate should have been held in plenary session; second, if so, whether the applicant could be denied the right to speak and, consequently, whether Rule 7(8) of the Rules of Procedure is illegal in that respect; and, third and last, whether the other complaints relating to the procedure followed by the Parliament undermine the legality of the way in which that procedure was carried out.

– The holding of a debate in plenary session

159 It should be observed, as a preliminary point, that the applicant does not call Rule 7(8) of the Rules of Procedure into question in that it provides that a debate is to be held, but does so solely in that it provides that during that debate the Member concerned is unable to speak.

160 First, the Court must therefore consider whether it is permissible to apply Rule 138(2) of the Rules of Procedure, which provides for a simplified procedure, without debate and without amendment in plenary session, where a decision on the immunity of a Member is adopted in plenary session.

161 Rule 138(2) of the Rules of Procedure provides that where a non-legislative motion for a resolution has been adopted in committee with fewer than one tenth of the committee voting against that motion that item is to be placed on the agenda for vote without amendment and without debate unless Parliament decides otherwise on a proposal from the Conference of Presidents or at the request of a political group or at least 40 Members.

162 In the first place, the Court is of the view that, as the Parliament claims, the concept of 'non-legislative motion for a resolution', unlike that of 'proposal for a legislative act' within the meaning of Rule 138(1) of the Rules of Procedure, includes the concept of 'proposal for a decision' within the meaning of Rule 7(2) of the Rules of Procedure; nor is that interpretation disputed by the applicant.

163 In the second place, it should be observed that it is only at the close of a debate in committee, and provided that a minority of fewer than one tenth of the members of the committee has voted against, that the Rules of Procedure provide that the procedure which will then automatically be followed is the procedure without debate and without amendment provided for in Rule 138 of the Rules of Procedure, for reasons of procedural economy.

164 In the third place, it must be emphasised that the Rules of Procedure have none the less made provision for safeguard mechanisms, which allow a debate in plenary session to be held in spite of the result of the vote in committee, on a proposal from the Conference of Presidents or at the request of a political group or at least 40 Members.

165 The possibility of holding a debate in plenary session is therefore not precluded, even though Rule 138(2) has the effect that an item is to be placed on the agenda of the plenary session for vote without debate and without amendment.

166 In the fourth place, Rule 7(8) of the Rules of Procedure does not require that a debate be held in plenary session, but merely sets out the conditions in which that debate will proceed if it does take place, in this instance in the form of a debate limited to reasons for and against the proposal to waive or uphold a Member's immunity and which, moreover, cannot lead to the tabling of any amendment.

167 It follows that those provisions do not preclude that, where the draft decision has been adopted in committee and a minority of fewer than one tenth of the members of the committee has voted against the measure, the item be automatically placed on the agenda of the plenary session for vote without debate and without amendment, in accordance with Rule 138(2) of the Rules of Procedure.

168 Rule 7(8) therefore does not constitute a *lex specialis* from which Rule 138(2) does not permit any derogation, but, on the contrary, those two provisions present a relationship of procedural complementarity designed to facilitate the work of the Parliament in plenary session where only a very small minority has expressed its opposition to the proposal adopted by the competent committee, or indeed where no minority has opposed that proposal.

169 Indeed, it should be noted that the Parliament stated, without being contradicted by the applicant, that the procedure without debate provided for in Rule 138(2) of the Rules of Procedure was that normally followed by the Parliament with respect to decisions relating to requests for waiver of immunity and that a debate in plenary session, as provided for in Rule 7(8), took place only exceptionally, since it was solely the result of the vote within the competent committee that determined whether Rule 138(2) applied.

170 Furthermore, it should be noted that in the present case the item was placed on the agenda of the plenary session for vote without amendment and without debate, in so far as the proposal for a decision had been adopted in committee even though a minority of fewer than one tenth of the members of the committee had voted against the measure in committee. In addition, it should be noted – and the applicant does not dispute – that neither the Conference of Presidents, nor a political group, nor even 40 Members of the Parliament expressed the view that a debate should be held concerning the decision to waive the applicant's immunity.

171 It must therefore be held that the Parliament was correct to apply the procedure without amendment and without debate provided for in Rule 138 of the Rules of Procedure.

172 Consequently, and in conclusion, in so far as the applicant still claims that there has been a misuse of procedure, notwithstanding the additional information submitted in respect of the formulation of his complaints at the hearing, it must be borne in mind that, according to settled case-law, there is a misuse of powers, of which misuse of procedure is merely one form, only if the contested measure appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than those stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (Case C-342/03 *Spain* v *Council* [2005] ECR I-1975, paragraph 64, and Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 69).

173 Since it was by operation of law, in application of Rule 138(2) of the Rules of Procedure, that the item at issue was in this case placed on the agenda for the plenary session for vote without amendment and without debate, since the proposal for a decision had been adopted in committee, when at most a minority of fewer than one tenth of the members of the committee had voted against the measure in

committee, there is in the present case no objective and relevant indication that the contested measure was adopted in a way that sought to evade a procedure specifically prescribed for that purpose.

174 Second, it is appropriate to consider whether, as the applicant maintains, in spite of the regularity of the procedure followed by the Parliament, the general principles relating to respect for the rights of the defence and the *inter partes* principle preclude a procedural mechanism for the adoption of a decision to waive the immunity of a Member of the Parliament such as that established by the Parliament's Rules of Procedure.

175 It is appropriate to bear in mind, in that regard, that, according to settled case-law, respect for the rights of the defence, especially the right to be heard, in all proceedings initiated against a person which may lead to a measure adversely affecting him, is a fundamental principle of EU law which must be guaranteed, even when there are no rules governing the procedure in question (Case C-344/05 P *Commission* v *De Bry* [2006] ECR I-10915, paragraph 37, and Case T-390/08 *Bank Melli Iran* v *Council* [2009] ECR II-3967, paragraph 91). That principle, moreover, has been enshrined in Article 41(2)(a) of the Charter of Fundamental Rights.

176 Under that principle, the person concerned must have had the opportunity, before the decision relating to him was adopted, to put forward his point of view on the correctness and relevance of the facts and circumstances on the basis of which the decision was adopted (see, to that effect, Case 44/69 *Buchler* v *Commission* [1970] ECR 733, paragraph 9, and Case C-458/98 P *Industrie des poudres sphériques* v *Council* [2000] ECR I-8147, paragraph 99).

177 It follows that, in accordance with those principles, a decision cannot be adopted on the basis of elements of fact and circumstances on which the person concerned was unable to put forward his point of view before the decision was adopted.

178 The right to be heard does not necessarily mean, however, that a public debate must be held in any proceedings initiated against a person which may lead to a measure adversely affecting him.

179 Respect for the rights of the defence and the *inter partes* principle therefore does not mean that the adoption by the Parliament of a decision relating to the waiver of the immunity of a Member of the Parliament necessarily be preceded by a debate in plenary session.

180 Nor has the applicant established that such a principle is widely observed in the laws of the Member States, or even in French law.

181 Indeed, the Parliament submitted at the hearing, without being contradicted by the applicant, that in France, since 1995, it is the responsibility of the bureau of the House to which the Member belongs, and no longer that of the House sitting in plenary formation, to take a decision relating to the waiver of his immunity.

182 It is appropriate, on the contrary, to have regard to Rule 7(3) of the Rules of Procedure, which provides that the Member concerned by a request for waiver of his immunity is to be given an opportunity to be heard and that he may present any documents or other written evidence which he deems relevant. He may also be represented by another Member.

183 Sufficient guarantees, by reference to the rights of the defence and the *inter partes* principle, are thus afforded to the person concerned in the procedure established by the Parliament for dealing with requests for waiver of the immunity of Members of the Parliament.

184 The applicant is therefore wrong to claim that the principle of respect for the rights of the defence and the *inter partes* principle preclude the procedural mechanism applicable before the Parliament in the context of the Rules of Procedure, under Rules 7 and 138, for dealing with requests for waiver of immunity.

185 In addition, it must be held in the present case that the applicant does not deny having been heard before the Committee on Legal Affairs before that committee adopted its draft decision.

186 Furthermore, the applicant has failed to establish what elements of fact or what circumstances were taken into account by the Committee on Legal Affairs or by the Parliament on which he was not given the opportunity to express his point of view before the decision relating to the waiver of his immunity was adopted.

187 It is apparent from the grounds of the decision relating to the waiver of the applicant's immunity, moreover, that the Parliament responded to the two main arguments which the applicant again raises before the Court, namely that he acted in the exercise of his duties and that there is a *fumus persecutionis* that justifies the non-waiver of his immunity.

188 It must therefore be held that the applicant has not established that there has been a breach of his rights of defence or of the *inter partes* principle in the present case.

– The Member's right to speak in the debate provided for in Rule 7(8) of the Rules of Procedure

189 In the light of the foregoing developments, the applicant's argument that the fact that he was not entitled to speak in the debate in plenary session when the decision on the waiver of his immunity was adopted is contrary to respect for the rights of the defence and the *inter partes* principle must be held to be ineffective.

190 If, in application of Rule 138(2) of the Rules of Procedure, it is permissible to place on the agenda of the plenary session for vote without debate and without amendment a draft decision on the waiver of a Member's immunity, the complaint that the fact that he is not allowed to speak in such a debate is illegal is ineffective.

191 It also follows that, in such circumstances, Ms A., who presided over the plenary session, is not to be criticised for not having allowed the applicant to speak for the purposes of a debate on the waiver of his immunity, since no debate was provided for.

– The other complaints put forward by the applicant concerning the conduct of the procedure

192 As regards the complaint relating to the fact that the debate within the competent committee took place in camera, it must be observed that it was in application of Rule 103(4) of the Rules of Procedure that that procedure was followed and that, under that rule, that procedure is always to be followed when requests for waiver of immunity are being considered, in order to protect both the Member concerned and the confidentiality of the debates, as stipulated in Rule 7(11) of the Rules of Procedure.

193 The applicant was therefore not given any different or special treatment by comparison with the treatment normally afforded to Members of the Parliament in comparable circumstances.

194 As regards the complaint relating to the fact that the debate before the competent committee took place before the applicant was made aware of the terms of the draft report, which meant that he was unable to defend himself properly, it should be observed that the applicant has failed to establish that

a draft report already existed when he was heard on 26 January 2011 and that that draft was previously brought to the attention of the members of the competent committee but not to the applicant's attention.

195 In any event, it should be borne in mind in that regard that the applicant has failed to establish what elements of fact or circumstances were taken into account by the Committee on Legal Affairs or by the Parliament on which he was not given the opportunity to express his viewpoint before the decision relating to the waiver of his immunity was adopted.

196 It follows that this complaint must be rejected.

197 As regards the complaint relating to the fact that the Members of the Parliament who attended the debate in committee were not the same as those who took part in the vote in that committee, first, it must be held that the Parliament was correct to claim – and was not contradicted on this point by the applicant – that there is no internal provision or rule that requires that the committee be composed in the same way for the debate and for the vote, provided that a quorum is present on each occasion, which is justified by the fact that the measures in question are not adopted by the Members individually but by the parliamentary committee.

198 Second, it should be borne in mind that, following the procedure established by the Parliament, after the request for waiver of a Member's immunity has been referred to the competent committee, the Member is heard by that committee. A report is then drawn up by the member of the committee who is designated as rapporteur and the draft decision is annexed to that report, which, together with the draft decision, is then voted on by the members of the committee.

199 The applicant has failed to establish that that procedure was not followed in the present case.

200 Furthermore, it must be observed that the draft decision on which the committee votes sets out the reasons why the Parliament considered that the applicant had not acted in the context of his duties as a Member of the Parliament and that a *fumus persecutionis* was not established.

201 In addition, it should once again be borne in mind that the applicant has failed to establish what elements of fact or circumstances were taken into account by the members of the Committee on Legal Affairs when it voted and on which the applicant was not given an opportunity to express his viewpoint.

202 Third, and last, as the measure in question was an act adopted by the Parliament which assumes a political nature (see paragraph 59 above), no parallel can be drawn with the rules governing disciplinary or judicial proceedings as regards the composition of the deliberative body responsible for adjudicating in such proceedings.

203 The complaint must therefore be rejected.

204 As regards the complaint relating to the existence of procedural differences from French law, even on the assumption that it were established (see paragraph 181 above), it must be held that it is ineffective, since it is not the procedure for the adoption of the decision provided for in French law that is applicable in the present case but the procedure provided for in the Rules of Procedure.

205 This complaint must therefore be rejected.

206 The sixth plea must therefore be rejected in its entirety, as must the objection of illegality referring to the third paragraph of Rule 7(8) of the Rules of Procedure.

207 In conclusion, the action for annulment in Case T-346/11, relating to the waiver of the applicant's immunity, must be dismissed.

The action for damages in Case T-346/11, relating to the waiver of immunity

208 The applicant merely formulates a claim for damages in his application.

209 The Parliament disputes that claim.

210 According to settled case-law, in order for the European Union to incur non-contractual liability, within the meaning of the second paragraph of Article 340 TFEU, on account of the unlawful conduct of its institutions, a number of requirements must be satisfied, namely that the alleged conduct of the institutions is unlawful, that the damage is real and that there is a causal link between the conduct alleged and the damage relied upon (see *Gollnisch* v *Parliament*, paragraph 58 above, paragraph 90 and the case-law cited).

211 Those three conditions for the Community's liability to be incurred are cumulative (Case C-257/98 P *Lucaccioni* v *Commission* [1999] ECR I-5251, paragraph 14, and Case T-43/98 *Emesa Sugar* v *Council* [2001] ECR II-3519, paragraph 59). Thus, failure to meet one of them is sufficient for an action for damages to be dismissed (Case T-146/01 *DLD Trading* v *Council* [2003] ECR II-6005, paragraph 74).

212 Since, in the present case, the condition that the Parliament's conduct be unlawful has not been met, its decision to waive the applicant's immunity is not vitiated by any illegality (see paragraph 207 above), the liability of that institution cannot be incurred on the basis of the second paragraph of Article 340 TFEU and the claim for damages must be dismissed.

The action for annulment and the action for damages in Case T-347/11, relating to the decision to refuse to defend the applicant's immunity

213 The applicant puts forward six pleas in law, similar to the pleas put forward in Case T-346/11, in support of his action for annulment of the Parliament's decision not to defend his immunity.

214 He claims that there has been, first, a breach of Article 9 of the Protocol; second, a breach of the 'consistent case-law' of the Parliament's Committee on Legal Affairs; third, a breach of the principles of legal certainty and legitimate expectations; fourth, a breach of the independence of a Member of the Parliament; fifth, a breach of the second subparagraph of Rule 3(4) of the Rules of Procedure on the procedure capable of leading to the disqualification of a Member of the Parliament from holding office; and, sixth, a breach of the *inter partes* principle and of the rights of the defence.

215 In addition, the applicant merely formulates a claim for damages in his application.

216 The Parliament contends, in essence, that the action is inadmissible, in so far as the decision relating to the defence of immunity is merely an opinion and is incapable of altering the applicant's legal situation, relying on the principle established in *Marra*, paragraph 34 above (paragraph 44), and at the same time that the applicant has no interest in bringing an action, in so far as the decision to waive his immunity was adopted concomitantly with the decision refusing to defend his immunity in the context of this action.

217 Furthermore, the Parliament disputes the applicant's argument and claims that the pleas which he puts forward in support of his action for annulment, and also his claim for damages, should be rejected for reasons similar to whose on which the Parliament relied in Case T-346/11.

218 As has been recognised in a consistent line of decisions, the object of the dispute, as determined in the application initiating the proceedings, must continue, like the interest in bringing proceedings, until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage to the party which brought it (Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 42, and Case T-45/06 *Reliance Industries* v *Council and Commission* [2008] ECR II-2399, paragraph 35).

219 In so far as the action against the decision to waive immunity has been dismissed (see paragraph 207 above), it must be held that the applicant cannot derive any advantage from a judgment adjudicating on the legality of the Parliament's decision not to defend his immunity.

220 Indeed, even if, by some remote chance, since the pleas raised are similar to those previously rejected with respect to the decision to waive immunity, the decision not to defend the applicant's immunity were to be annulled, that judgment of annulment would have no impact on the applicant's legal situation, since his immunity would in any event still be waived and could not at the same time be defended by the Parliament.

221 Consequently, there is no need to adjudicate on the action for annulment in Case T-347/11, relating to the Parliament's decision not to defend the applicant's immunity.

222 As for the action for damages, it must be borne in mind, in the context of the conditions governing the European Union's non-contractual liability referred to at paragraph 210 above, that, in accordance with consistent case-law, the requirement concerning the existence of a causal link is satisfied if there is a direct link of cause and effect between the misconduct of the institution concerned and the damage alleged, a link which it is for the applicant to prove. The European Union can be held liable only for damage which is a sufficiently direct consequence of the wrongful conduct of the institution concerned, that is to say, the conduct must be the determining cause of the harm. By contrast, it is not the responsibility of the European Union to compensate for every harmful consequence, even a remote one, of the conduct of its organs (see *Gollnisch* v *Parliament*, paragraph 58 above, paragraph 110 and the case-law cited).

223 In the present case, since the Parliament had no alternative other than to find that there was no longer any need to adjudicate on the request to defend the applicant's immunity, in so far as it was seised of a request to waive his immunity, it must be held that only the decision adjudicating on that request could have caused him any harm and that only that decision could render the Parliament liable, had it been illegal, which, however, it was not (see paragraph 212 above).

224 It follows that, in any event, no causal link can be established between the alleged non-pecuniary harm sustained by the applicant and the illegalities which in his submission vitiate the Parliament's decision not to defend his immunity.

225 It follows that the action for damages must be dismissed.

Costs

226 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

227 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment the costs are in the discretion of the Court.

228 As the applicant has been unsuccessful in Case T-346/11 and also in the action for damages in Case T-347/11, he must be ordered to pay the costs, including those relating to the interlocutory proceedings, in accordance with the form of order sought by the Parliament.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. Dismisses the action for annulment and the action for damages in Case T-346/11;

2. Declares that there is no longer any need to adjudicate on the action for annulment in Case T-347/11;

3. Dismisses the action for damages in Case T-347/11;

4. Orders Mr Bruno Gollnisch to pay the costs, including those relating to the interlocutory proceedings in Cases T-346/11 and T-347/11.

Azizi Frimodt Nielsen Kancheva

Delivered in open court in Luxembourg on 17 January 2013.

[Signatures]

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