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REPORT

on the request for defence of the immunity and privileges of Viktor Uspaskich
(2011/2162(IMM))

Committee on Legal Affairs

Rapporteur: Bernhard Rapkay

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for defence of the immunity and privileges of Viktor Uspaskich (2011/2162(IMM))

The European Parliament,

- having regard to the request by Viktor Uspaskich for defence of his immunity of 5 April 2011, announced in plenary sitting on 9 May 2011, and to his request of 11 April 2011, announced in plenary sitting on 4 July 2011, for a review of Parliament's decision of 7 September 2010 to waive his immunity¹,
 - having heard Viktor Uspaskich on 10 October 2011, in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Articles 7 and 9 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Union, and Article 6(2) of the Act of 20 September 1976 concerning the election of the Members of the European Parliament by direct universal suffrage,
 - having regard to the judgments of the Court of Justice of the European Union of 12 May 1964, 10 July 1986, 15 and 21 October 2008 and 19 March 2010²,
 - having regard to the provisions of Article 62 of the Constitution of the Republic of Lithuania,
 - having regard to Parliament's decision of 7 September 2010 to waive Viktor Uspaskich's immunity³,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0411/2011),
- A. whereas it is appropriate to deal with the requests made by Viktor Uspaskich on 5 and 11 April 2011 together since they relate to the same legal proceedings;
- B. whereas criminal proceedings have been brought against Viktor Uspaskich, Member of the European Parliament, who is accused in the proceedings pending in the Vilnius Regional Court of criminal offences under Article 24(4) in conjunction with Article 222(1), Article 220(1), Article 24(4) in conjunction with Article 220(1), Article 205(1) and Article 24(4) in conjunction with Article 205(1) of the Lithuanian Criminal Code;

¹ Texts adopted , P7_TA(2010)0296.

² Case 101/63 *Wagner v. Fohrmann and Krier* [1964] ECR 195; Case 149/85 *Wybot v. Faure and Others* [1986] ECR 2391; Case T- 345/05, *Mote v. Parliament* [2008] ECR II-2849; Joined Cases C-200/07 and C-201/07 *Marra v. De Gregorio and Clemente* [2008] ECR I-7929; Case T-42/06. *Gollnisch v. Parliament*.

³ Texts adopted , P7_TA(2010)0296.

- C. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, during the sessions of the European Parliament its Members ‘enjoy in the territory of their own State, the immunities accorded to members of their Parliament’, whereas ‘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’;
- D. whereas, according to Article 62 of the Constitution of the Republic of Lithuania, a Member of the national Parliament (the Seimas) may not be held criminally liable or arrested, nor may his freedom be otherwise restricted, without the consent of the Parliament;
- E. whereas Article 62 goes on to provide that a Member of the Seimas may not be persecuted for his voting or his speeches at the Seimas, although he may be held liable under the general procedure for personal insult or slander;
- F. whereas Viktor Uspaskich is charged essentially with offences of false accounting in relation to the financing of a political party during a period prior to his election to the European Parliament;
- G. whereas on 7 September 2010 Parliament waived Viktor Uspaskich's immunity, considering that no cogent evidence had been adduced as to the existence of any *fumus persecutionis* and that the offences with which Viktor Uspaskich is charged had nothing to do with his activities as a Member of the European Parliament;
- H. whereas on 28 October 2010 Viktor Uspaskich brought an action for the annulment of Parliament’s decision of 7 September 2010 in the General Court, only to withdraw it in July 2011;
- I. whereas in his letter of 5 April 2011 requesting the defence of his immunity Viktor Uspaskich claims that the criminal proceedings initiated by the Lithuanian authorities prevent him from performing, or make it difficult for him to perform, his parliamentary duties by restraining his freedom of movement contrary to Article 7 of the Protocol on the Privileges and Immunities;
- J. whereas Article 7 of the Protocol has the function of protecting Members against restrictions on their freedom of movement, other than judicial restrictions, and consequently contains not an immunity but a privilege, and does not protect against judicial restrictions on Members’ freedom of movement⁴;
- K. whereas, consequently, it is impossible for Parliament to accede to Viktor Uspaskich’s request of 5 April 2011 to defend his immunity on the basis of Article 7 of the Protocol;
- L. whereas in his letter of 11 April 2011 Viktor Uspaskich requests the revision of Parliament’s decision of 7 September 2010 on the grounds of alleged new facts raised by WikiLeaks, which he maintains show he was the victim of *fumus persecutionis*;

⁴ Case T-345/05 *Mote v. Parliament* [2008] ECR II-2849, Paragraphs 48-52.

- M. whereas this claim should be rejected on the grounds that no sufficient nexus has been established between the alleged new facts and the bringing of proceedings against Viktor Uspaskich for false accounting;
- N. whereas in addition – and this applies also to Viktor Uspaskich’s claim that his fundamental right of defence and the European Charter of Fundamental Rights were violated in taking the decision of 7 September 2010 –, the application for a review of Parliament’s decision of 7 September 2010 does not constitute a request for the defence of his immunity and privileges within the meaning of Rules 6 and 7;
1. Decides not to defend the immunity and privileges of Viktor Uspaskich;
 2. Instructs its President to forward this decision and the report of its competent committee immediately to the appropriate authority of the Republic of Lithuania.

EXPLANATORY STATEMENT

Facts

On 14 July 2009 the Chief Public Prosecutor of the Republic of Lithuania requested the waiver of the parliamentary immunity of Viktor Uspaskich.

At the sitting of 7 October 2009 the President announced, under Rule 6(2) of the Rules of Procedure, that he had received a letter sent by the Lithuanian judicial authorities on 14 July 2009 requesting the waiver of the parliamentary immunity of Mr Uspaskich.

The President referred the request to the Committee on Legal Affairs under Rule 6(2).

The Chief Public Prosecutor of the Republic of Lithuania was instructed, by decision of the Regional Court of Vilnius of 29 June 2009, to ask the European Parliament to waive the immunity of its Member Viktor Uspaskich, against whom criminal proceedings have been brought in Case No 1-38/2009, in order that the criminal proceedings initiated against him may go ahead and the bail order made against him by the court as a precautionary measure may be enforced.

Viktor Uspaskich is accused in proceedings pending in the Vilnius Regional Court of criminal offences under Article 24(4) in conjunction with Article 222(1), Article 220(1), Article 24(4) in conjunction with Article 220(1), Article 205(1) and Article 24(4) in conjunction with Article 205(1) of the Lithuanian Criminal Code.

The case against Viktor Uspaskich is that, in Vilnius between 13 July 2004 and 17 May 2006, as chair of the Labour Party, acting in concert with others for the purposes of (a) attempting to finance a political party – namely the Labour Party – illegally and (b) evading proper supervision of the financing of the party and its political campaigns, he directed an organised group created by them in order to perpetrate a number of criminal offences. To that end, from 2004 to 2006, in Vilnius, he directed staff to keep unlawful bogus accounts for the Labour Party, with the result that it is not possible to establish in full the extent of the party's assets and liabilities or the party structure during the years 2004, 2005 and 2006.

Viktor Uspaskich - who was responsible, under Article 21 of the Accounting Act of the Republic of Lithuania, for organising the keeping of the party's accounts and was acting for the benefit and in the interests of the Labour Party as a legal person - is accused by the Lithuanian authorities of having instructed a person to undertake "double" bookkeeping for the Labour Party in Spring 2004. In addition, it is alleged that transactions and business activities which it was compulsory to record in the accounts, as well as the unofficial receipt and disbursement of monies and assets in connection with Labour Party activities, should be recorded in unofficial ledgers. He is also accused of having issued specific instructions that certain commercial and financial operations should be carried out without their being recorded in the party's accounts,

On 9 December 2008, the Lithuanian Parliament (Seimas) agreed to waive the immunity of Mr Uspaskich in respect of the same proceedings. It should be noted in addition that Mr

Uspaskich was not Member of the European Parliament at the time when the offences of which he stands accused were allegedly committed.

On 27 January 2010 Mr Uspaskich was heard in accordance with Article 7 of Parliament's Rules of Procedure.

As a result of that hearing, the Chairman of the Committee on Legal Affairs wrote to the President of Parliament on 2 February 2010 asking him to clarify the following questions with the Lithuanian authorities:

- It seems that the decision of the Vilnius Regional Court of 29 June 2009 that instructed the Chief Public Prosecutor of the Lithuania to request the waiver of the immunity, was adopted by a single judge. Is this compatible with Lithuanian law?
- On 29 April 2008, the Vilnius Regional Court ordered Viktor Uspaskich to pay bail amounting to LTL 1.500.000 (approximately EUR 436.000) as a precautionary measure. Viktor Uspaskich claimed before the Committee that the sanction which could be imposed on him should he lose the case is a fine of only 14.000 Euro. He argued that bail was disproportionate and illegal under Lithuanian law.

The Lithuanian authorities replied in detail on 27 April 2010.

On 2 September 2009, the Committee on Legal Affairs heard Mr Uspaskich for a second time.

On 7 September 2010, the European Parliament decided to waive the immunity of Viktor Uspaskich (P7-TA (2010)0296) on the following grounds:

- "A. whereas criminal proceedings have been brought against Viktor Uspaskich, Member of the European Parliament, who is accused in the proceedings pending in the Vilnius Regional Court of criminal offences under Article 24(4) in conjunction with Article 222(1), Article 220(1), Article 24(4) in conjunction with Article 220(1), Article 205(1) and Article 24(4) in conjunction with Article 205(1) of the Lithuanian Criminal Code,*
- B. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, during the sessions of the European Parliament, its Members enjoy in the territory of their own State the immunities accorded to members of their parliament, whereas immunity cannot be claimed when a Member is found in the act of committing an offence and whereas this does not prevent the European Parliament from exercising its right to waive the immunity of one of its Members,*
- C. whereas the charges brought against Mr Uspaskich do not relate to opinions expressed or votes cast in the performance of his duties as a Member of the European Parliament,*
- D. whereas, according to Article 62 of the Constitution of the Republic of Lithuania, a Member of the national Parliament (the Seimas) may not be held criminally liable, arrested, nor may his freedom be otherwise restricted without the consent of the*

Parliament,

- E. *whereas Article 62 goes on to provide that a Member of the Seimas may not be persecuted for his voting or his speeches at the Seimas, although he may be held liable according to the general procedure for personal insult or slander,*
- F. *whereas Mr Uspaskich is essentially charged with offences of false accounting in relation to the financing of a political party during a period prior to his election to the European Parliament,*
- G. *whereas no cogent evidence has been adduced as to the existence of any *fumus persecutionis* and the offences with which Mr Uspaskich is charged have nothing to do with his activities as a Member of the European Parliament".*

Subsequently, at the plenary session of 9 September 2010, Parliament declared that a request made by Mr Uspaskich for the defence of his immunity was to no purpose on the ground that the request related to the same criminal proceedings for which immunity had been waived. Mr Uspaskich was informed by letter of 20 September 2010.

On 28 October 2010, Mr Uspaskich brought an action in the General Court for the annulment of Parliament's decision of 7 September 2010 and for damages of EUR 10 000 for non-material damage, which was placed on the cause list as Case T-507/10⁵. In the course of the proceedings, on 17 December 2010, the President of the General Court dismissed an application for interim measures (*i.e.* for the suspension of the application of Parliament's decision of 7 September 2010)⁶. Mr Uspaskich appealed against the order of the President (Case C-66/11 P (R)).

At the sitting of 9 May 2011 the President of the Parliament announced, under Rule 6(3) of the Rules of Procedure, that he had received a request from Mr Viktor Uspaskich on 5 April 2011 calling for his immunity and privileges to be defended in relation to Article 7 of the Protocol on Privileges and Immunities (hereinafter "the request of 5 April 2011").

The President referred the request to the Committee on Legal Affairs under Rule 6(3), by letter of 27 May 2011.

Subsequently, on 1 June 2011, the President of the Parliament transmitted to the Committee on Legal Affairs a second letter of Mr Uspaskich of 11 April concerning the revision of Parliament's decision of 7 September 2010 No (P7_TA 2010/0296) which waived his immunity. The President asked the committee "*to take this item into consideration at the earliest convenience and subsequently inform me about the outcome of discussions in the Committee on Legal Affairs*".

At the coordinators' meeting of 20 June 2011, Mr Rapkay made it known that he had received a message from Mr Uspaskich informing him that he had decided to withdraw his claim against the European Parliament in the General Court for the following reason: He had "*asked the European Parliament, i.e. JURI coordinators to reconsider the decision on*

⁵ OJ C 13, 15. 01.2011, p.28, *corrigendum* in OJ C 72, 05.03.2011, p.38.

⁶ OJ C 55, 19.02.2011, p. 24.

waiver of immunity in my case. On 9 April 2011 WikiLeaks disclosed a secret note of the USA Embassy in Vilnius, where it is stated that State Secretary of the Government of Lithuania had informed the American diplomats the Government of Lithuania 'engineered' expelling me from Lithuania on the ground of my ethnic origin (ethnic Russian means Russian spy).

*Starting from today, there is no more proceedings of mine versus the Parliament, and nothing stops the Parliament from considering the issue once again.
Please find 2 documents attached: my letter withdrawing the claim addressed to the President of the EU General Court, and the confirmation from the post that the letter has been indeed sent."*

Accordingly, the committee's coordinators decided to ask the President of Parliament to arrange for this matter to be announced in Parliament and referred to the committee pursuant to Rule 6(3) of the Rules of Procedure. The President of Parliament duly made the announcement on 4 July 2011 (hereinafter "the request of 11 April 2011").

On the same day, the Legal Service was notified by the Court of the withdrawal of Mr Uspaskich's application (this time done properly, in Lithuanian (the language of the case) and by his lawyer). The case was removed from the register by order of the General Court of 3 August 2011. The appeal against the order dismissing Mr Uspaskich's request for interim measures is consequently to no purpose.

Mr Uspaskich was heard in accordance with Rule 7(3) of the Rules of Procedure on 10 October 2011.

The requests for defence of immunity

(a) The request of 5 April 2011

In his request of 5 April 2011, Mr Uspaskich calls for his immunity to be defended pursuant to Rule 6(3) of Parliament's Rules of Procedure.

He accuses the Republic of Lithuania of conducting a coordinated attack on him and the Lithuanian Labour Party. He claims that this attack has resulted in a *"violation of an aspect of my immunity as a Member of the European Parliament: the privilege of freedom of movement, which is guaranteed by Article 7 of the Protocol on Privileges and Immunities"*.

More specifically, he contends that the timetable of hearings adopted by the Vilnius Regional Court prevents him from attending meetings at the European Parliament "for example on Monday morning" (in point of fact it is clear from Mr Uspaskich's further submissions that he is claiming that the hearings are scheduled to be held every Thursday, which causes him to lose Wednesday, Thursday and Friday as working days at the European Parliament. He would prefer the hearings to be scheduled for Monday morning each week).

Mr Uspaskich, citing the order of the President of the General Court of 16 March 2007 in

Case T-345/05 R *V. v Parliament*⁷, states that the Lithuanian court is in breach of Article 7 of the Protocol in setting its timetable of hearings.

Mr Uspaskich further maintains that he did not have the chance to put forward his point of view effectively before Parliament adopted the decision waiving his immunity. In his contention, this constitutes a violation of Article 41 of the European Charter of Fundamental Rights⁸ and a violation of his fundamental right of defence. He complains that the Legal Affairs Committee did not give him the opportunity to see or comment on the draft decision before it was adopted and that questions were sent to Lithuania's Chief Public Prosecutor without his knowledge.

At a more detailed level, Mr Uspaskich complains that Parliament waived his immunity under the erroneous impression that under Lithuanian law immunity had to be waived because the alleged offences were committed before he was elected to the European Parliament and are not linked to his activities as an MEP. He further complains that Parliament ignored his allegations of political persecution and did not apply *fumus persecutionis* in his case.

(b) The request of 11 April 2011

In his second letter of 11 April 2011, Mr Uspaskich states that on 9 April WikiLeaks made public a diplomatic note of the United States Embassy in Vilnius of October 2006 addressed to the US State Department, in which it is mentioned that the State Secretary at the Lithuanian Ministry of Foreign Affairs confirmed that the persecution of the Lithuanian Labour Party was organised by the Lithuanian Government, owing to the suspicion that Mr Uspaskich had relations with the Russian Foreign Intelligence Service. Mr Uspaskich contends that this note proves that he is the victim of political persecution and that, in waiving his immunity, the European Parliament erroneously failed to apply *fumus persecutionis*.

On those grounds, Viktor Uspaskich requests the revision of Parliament's decision of 7 September 2010 on the basis of Rule 6(2)⁹ or, in the alternative, on the basis of Rule 6(3)¹⁰.

Legal Analysis

(a) The request of 5 April 2011

As regards the claim made in his letter of 5 April 2011 for the defence of his immunity on the ground that the criminal proceedings initiated by the Lithuanian authorities prevent him from

⁷ [2007] ECR II-25, paras 87 and 88.

⁸ 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

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

¹⁰ 3. Any request addressed to the President by a Member or a former Member to defend privileges and immunities shall be announced in Parliament and referred to the committee responsible.

performing, or make it difficult for him to perform, his parliamentary duties, and restrain his freedom of movement, as guaranteed by Article 7 of the Protocol on the Privileges and Immunities of the European Union¹¹, reference should be made to the judgment of 15 October 2008 in Case T-345/05 *Mote v. Parliament*¹².

Paragraph 48 *et seq.* of that judgment are worth citing *in extenso*:

"the effect of the first paragraph of Article 8 [now Article 7] of the Protocol is to prohibit Member States from imposing, inter alia by their practices in matters of taxation, administrative restrictions on the free movement of Members (Case 208/80 Bruce of Donington [1981] ECR 2205, paragraph 14). As that provision states, the privilege is intended to ensure that Members may exercise their freedom to travel to or from the place of meeting of the Parliament.

49 However, those restrictions, although not listed comprehensively by the first paragraph of Article 8 of the Protocol, which refers to administrative 'or other' restrictions, do not include restrictions arising out of legal proceedings since such restrictions fall within the scope of Article 10 [now Article 9], which sets out the legal regime governing immunities, except in the specific area, provided for in Article 9 [now Article 8], of opinions expressed or votes cast by Members in the performance of their duties. Legal proceedings are expressly mentioned by subparagraph (b) of the first paragraph of Article 10 of the Protocol as being among the restrictions from which the Member is immune, in the territory of any Member State other than his own, during the sessions of the Parliament. Likewise, under subparagraph (a) of the first paragraph of Article 10 of the Protocol, Members enjoy, during the same period, in the territory of their own States, the immunities accorded to members of their parliaments, some of which protect members of national parliaments from legal proceedings to which they may be subject. Lastly, the second paragraph of Article 10 provides that immunity likewise applies to Members while they are travelling to and from the place of meeting of the Parliament. The existence of that provision, which, like the first paragraph of Article 8 of the Protocol, protects Members against interference with their freedom of movement, confirms that the restrictions mentioned by the first paragraph of Article 8 do not include all possible interference with the freedom of movement of Members and that, as shown by the provisions of Article 10 examined above, legal proceedings must be regarded as being covered by the legal regime established by Article 10.

50 The objective of Article 10 of the Protocol is thus to safeguard the independence of Members by ensuring that pressure, in the form of threats of arrest or legal proceedings, is not brought to bear on them during the sessions of the Parliament (order in Case T-17/00 R Rothley and Others v Parliament [2000] ECR II-2085, paragraph 90).

51 Article 8 of the Protocol has the function of protecting Members against restrictions on

¹¹ Article 7 provides that "No administrative or other restriction shall be imposed on the free movement of members of the European Parliament travelling to or from the place of meeting of the European Parliament. Members of the European Parliament shall, in respect of customs and exchange control, be accorded: (a) by their own governments, the same facilities as those accorded to senior officials travelling abroad on temporary official missions; (b) by the governments of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

¹² [2008] ECR II-2849.

their freedom of movement, other than judicial restrictions.

52 *As it has not been asserted that the risks of interference with the exercise by Mr Mote of his parliamentary functions were constituted by restrictions of a kind other than those stemming from the proceedings brought by the law enforcement authorities of his Member State of origin, it must be concluded that the Parliament did not err in law when it decided to waive Mr Mote's immunity without ruling on the privilege which was granted to him in his capacity as a Member or deciding that Article 8 of the Protocol had been infringed in the present case.*"¹³

It should be noted that the order of the President of the General Court of 16 March 2007 in Case T-345/05 R *V. v Parliament*¹⁴, cited by Mr Uspaskich, was given in the same proceedings. In the paragraphs cited, the General Court merely observed as a finding of fact that the trial as planned of Mr Mote would not interfere with Parliament's part session.

In *Mote v. Parliament*, the General Court clearly held that Article 7 of the Protocol does not contain an immunity but a privilege and does not protect against judicial restrictions on Members' freedom of movement.

Consequently, it is impossible for Parliament to accede to Mr Uspaskich's request of 5 April 2011 to defend his immunity on the basis of Article 7 of the Protocol.

In any event, the proximate cause of Mr Uspaskich's alleged inability to attend meetings at Parliament on Wednesdays, Thursdays and Fridays is not the fact that Parliament waived his immunity, but the decision of the Lithuanian Court. The proper place to attack that decision is in court in Lithuania or in Luxembourg. Notwithstanding this, the rapporteur proposes that the President of Parliament be asked to write to the Lithuanian authorities requesting them to ensure that the trial of Mr Uspaskich is organised as far as possible in such a way as not to interfere with his work as a Member of the European Parliament.

Mr Uspaskich further claims that, in adopting Decision No P7_TA(2010)0296, the Committee on Legal Affairs breached his "right of defence – the right to present his point of view before a decision is taken concerning him which may cause him damage". He then goes on to complain that he was given no opportunity to see or comment on the committee's draft decision and that questions were sent to Lithuania's Chief Public Prosecutor without his knowledge. Consequently, he was unable to comment on them. He contends that the refusal to allow him to see the draft decision not only violated his fundamental right of defence and Article 41(1) and (2)(a) and (b)¹⁵ of the European Charter of Fundamental Rights, but also

¹³ Emphasis supplied.

¹⁴ [2007] ECR II-25, paras 87 and 88.

¹⁵ 1. *Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.*

2. *This right includes:*

a) *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*

b) *the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*

resulted in Parliament's failing to comply with the substance of the Lithuanian Constitution.

These are all arguments turning on the legality of Parliament's decision to waive Mr Uspaskich's immunity and ultimately on the legality of Parliament's Rules of Procedure, which do not provide for him to inspect and comment on the draft report of the competent committee. The proper place to raise these questions is the Court of Justice, not the Legal Affairs Committee, which has no competence under the Rules of Procedure to review its own decisions.

The rapporteur observes that the hearing of Mr Uspaskich on 10 October 2011 did not raise any new facts in this connection.

(b) The request of 11 April 2011

By this request, Mr Uspaskich requests the revision of Parliament's decision of 7 September 2010 on the basis of Rule 6(2)¹⁶ or, in the alternative, on the basis of Rule 6(3)¹⁷ on the ground of alleged new facts raised by WikiLeaks, which he maintains show he was the victim of *fumus persecutionis*.

His ground for seeking a review is that on 9 April 2011 WikiLeaks made public a diplomatic note of the United States Embassy in Vilnius of October 2006 addressed to the US State Department, in which it is stated that Undersecretary Albinas Januska in the Lithuanian Ministry of Foreign Affairs "claimed that the [Government of Lithuania] (and, by extension, he himself) engineered the departure of Labour Party kingpin Viktor Uspaskich from Lithuania because of the latter's ties to the Russian SVR [Foreign Intelligence Service]."

First of all, there is no connection between the statement allegedly made by a former official in the Lithuanian Foreign Ministry after his resignation in 2006 and legal proceedings brought in 2009 such as to justify the claim that there is a *fumus persecutionis*. Even if there were proof that the Government of Lithuania and Albinas Januska had engineered Viktor Uspaskich's departure from Lithuania because of the latter's ties to the Russian SVR, which there is not, there would be no nexus between that fact and the bringing of proceedings against Mr Uspaskich for false accounting.

In the second place, apart from the fact that the Rules of Procedure do not provide for a review by the competent committee of decisions taken by Parliament - this, after all, is what the Court of Justice is for - once Parliament has waived a member's immunity in a given case, the member no longer has any immunity to waive in that case. Considerations of legal certainty mean that, except in absolutely exceptional circumstances, once a decision has been taken by the plenary, it should stand. Notwithstanding this, in this case, once the Committee on Legal Affairs had been apprised of Mr Uspaskich's decision to withdraw his application before the Court of Justice, it carried out a thorough legal and factual appraisal of the member's allegations and held a hearing of him in order to see whether they justified

c) the obligation of the administration to give reasons for its decisions. ...

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

¹⁷ 3. Any request addressed to the President by a Member or a former Member to defend privileges and immunities shall be announced in Parliament and referred to the committee responsible.

defending his immunity.

It is further noted that the Lithuanian authorities requested the waiver of Mr Uspaskich's immunity in July 2009 and that it has taken more than two years to deal with the request. Mr Uspaskich had the opportunity of contesting Parliament's decision before the Court of Justice. He withdrew his application. He now has the opportunity to fight the substantive proceedings before the Lithuanian courts, with all the possible avenues of appeal open to him - including references for preliminary rulings to Luxembourg and appeals to Strasbourg.

The rapporteur observes that the hearing of Mr Uspaskich on 10 October 2011 did not raise any new facts in this connection.

Conclusion

On the basis of the above considerations, pursuant to Rule 6(2) of the Rules of Procedure and having regard to the fact that nothing new was raised at the hearing of the Member on 10 October 2011, the Committee on Legal Affairs, having examined the reasons for and against defending the Member's immunity, recommends that the European Parliament should not defend the parliamentary immunity of Viktor Uspaskich.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	21.11.2011
Result of final vote	+: 9 -: 5 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Françoise Castex, Klaus-Heiner Lehne, Alajos Mészáros, Bernhard Rapkay, Alexandra Thein, Diana Wallis, Cecilia Wikström, Zbigniew Ziobro
Substitute(s) present for the final vote	Kurt Lechner, Eva Lichtenberger, Dagmar Roth-Behrendt
Substitute(s) under Rule 187(2) present for the final vote	Jaroslav Paška