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# REPORT

on the request for waiver of the immunity of Ivan Jakovčić  
(2014/2169(IMM))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

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## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for waiver of the immunity of Ivan Jakovčić (2014/2169(IMM))

*The European Parliament,*

- having regard to the request for waiver of the immunity of Ivan Jakovčić, forwarded on 5 September 2014 by the lawyer of the injured party as plaintiff in connection with criminal proceedings pending before the Municipal Court in Pazin (Croatia)(Ref. No K-143/14), and announced in plenary on 23 October 2014,
  - having regard to the letters of the Permanent Representative of the Republic of Croatia to the EU of 14 February 2014 and of 16 January 2015 confirming that, under the relevant provisions of Croatian law, an injured party as plaintiff is allowed to request the waiver of the immunity of a Croatian Member of the European Parliament,
  - having heard Ivan Jakovčić in accordance with Rule 9(5) of its Rules of Procedure,
  - having regard to Article 8 of Protocol No 7 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, 19 March 2010, 6 September 2011 and 17 January 2013<sup>1</sup>,
  - having regard to its resolution of 24 April 2009 on parliamentary immunity in Poland<sup>2</sup>,
  - having regard to Articles 23 and 28 of the Standing Orders of the Croatian Parliament,
  - having regard to Article 61(1) of the Croatian Criminal Procedure Code,
  - having regard to Rule 5(2), Rule 6(1) and Rule 9 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0059/2015),
- A. whereas the lawyer of a private plaintiff has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Ivan Jakovčić, in connection with legal proceedings concerning an alleged offence of defamation;
- B. whereas by letter of 14 February 2014 the Permanent Representative of the Republic of Croatia to the EU informed the President of Parliament that, failing specific procedural

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<sup>1</sup> Judgment in Case 101/63 *Wagner v Fohrmann and Krier*, EU:C:1964:28; judgment in Case 149/85 *Wybot v Faure and others*, EU:C:1986:310; judgment in Case T-345/05 *Mote v Parliament*, EU:T:2008:440; judgment in Joined Cases C-200/07 and C-201/07 *Marr v De Gregorio and Clemente*, EU:C:2008:579; judgment in Case T-42/06 *Gollnisch v Parliament*, EU:T:2010:102; judgment in Case C-163/10 *Patriciello*, EU:C:2011:543; judgment in Joined Cases T-346/11 and T-347/11 *Gollnisch v Parliament*, EU:T:2013:23.

<sup>2</sup> European Parliament resolution of 24 April 2009 on parliamentary immunity in Poland (P6\_TA(2009)0316).

rules with regard to the request for waiver of the immunity of Croatian Members of the European Parliament, the provisions governing the requests for waiver of immunity of Members of the national Parliament should apply and that, under those provisions, the request for approval of pre-trial detention (remand) or for initiation of criminal proceedings against a Member may be made by any authorised state body, the injured party as plaintiff or a private plaintiff;

- C. whereas by letter of 16 January 2015 the Permanent Representative of the Republic of Croatia to the EU confirmed that the legal proceedings in connection with which the waiver of Mr Jakovčić's immunity had been requested were actually pending before the competent court in Croatia;
- D. whereas, according to Article 8 of the Protocol on the Privileges and Immunities of the European Union, Members of the European Parliament may not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties;
- E. whereas the purpose of this provision is to ensure that Members of the European Parliament enjoy freedom of speech as a matter of principle, but whereas this entitlement to free speech does not authorise slander, libel, incitement to hatred or questioning the honour of others;
- F. whereas the request for waiver relates to criminal proceedings instituted against Mr Jakovčić under Article 147(1) and (2) of the Croatian Criminal Code in connection with defamatory statements that he is alleged to have made in an interview with HRT Croatian Radiotelevision on 22 July 2014;
- G. whereas under Article 61(1) of the Croatian Criminal Procedure Code (Zakon o kaznenom postupku), in the case of private prosecution the private charge must be submitted within three months of the day on which the authorised physical or legal person came to the knowledge of the offence and its perpetrator;
- H. whereas, according to Rule 9(2) of Parliament's Rules of Procedure, requests for the waiver of immunity must be considered without delay, but with regard to their relative complexity;
- I. whereas Mr Jakovčić was a Member of the European Parliament at the time of the interview; whereas, however, the statements alleged to have been made relate to a matter which dates back to a time when he did not yet hold such office;
- J. whereas, as a consequence, the statements in question do not have a direct and obvious connection with Mr Jakovčić's performance of his duties as a Member of the European Parliament nor do they constitute an opinion expressed or a vote cast in the performance of his duties as a Member of the European Parliament within the meaning of Article 8 of Protocol No 7;
- K. whereas Mr Jakovčić cannot, therefore, be deemed to have been acting in the performance of his duties as a Member of the European Parliament;

1. Considers that the request for the waiver of the immunity of Mr Jakovčić has been submitted by the competent authority within the meaning of Rule 9(1) of the Rules of Procedure and that, on this ground, it is to be deemed admissible; considers, furthermore, that, in the light of Rule 9(2) of its Rules of Procedure, no deadline can be imposed on Parliament for reaching a decision on a request for waiver of immunity;
2. Decides to waive the immunity of Ivan Jakovčić;
3. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of the Republic of Croatia and to Ivan Jakovčić.

## EXPLANATORY STATEMENT

### 1. Context

Georg List, an international businessman, has been trying to build a polo field in the area of Motovun (Croatia) since 2002. Despite large investments, the project has not yet been opened owing to the political and administrative obstacles that Mr List has allegedly been facing and that led him publicly to blame the local authorities, including by making allegations about a case of potential bribery.

On 22 July 2014, when asked by a journalist to comment on the allegations made by Mr List, Ivan Jakovčić, Member of the European Parliament since 1 July 2014 and former Governor of the Istria County, where the area in question is located, made the following statement, which was published on the HRT (Croatian Radiotelevision) website: “I do not comment on idiots”.

Mr List decided to lodge a complaint against Mr Jakovčić for the allegedly defamatory nature of the statement in question.

At the sitting of 23 October 2014 the President announced, under Rule 9(1) of the Rules of Procedure, that he had received a letter from Mr List’s counsel requesting that the immunity of Mr Jakovčić be waived in order to institute criminal proceedings against him. The President referred the request to the Committee on Legal Affairs under Rule 9(1).

On 9 March 2015 the Committee heard Mr Jakovčić in accordance with Rule 9(5).

### 2. Law and procedure on the immunity of Members of the European Parliament

Articles 8 of the Protocol (No 7) on the Privileges and Immunities of the European Union read as follows:

#### *Article 8*

*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.*

Rules 5, 6 and 9 of the Rules of Procedure of the European Parliament read as follows:

#### *Rule 5 - Privileges and immunities*

*1. Members shall enjoy privileges and immunities in accordance with the Protocol on the Privileges and Immunities of the European Union.*

*2. Parliamentary immunity is not a Member’s personal privilege but a guarantee of the independence of Parliament as a whole and of its Members. (...)*

#### *Rule 6 - Waiver of immunity:*

*1. In the exercise of its power in respect of privileges and immunities, Parliament acts to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in performance of their duties. Any request for waiver of immunity shall be evaluated in accordance with Articles 7, 8 and 9 of the Protocol on the Privileges and Immunities of the European Union and with the principles referred to in this Rule. (...)*

#### *Rule 9 - Procedures on immunity*

*1. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived, or by a Member or a former Member that privileges and immunities be defended, shall be announced in Parliament and referred to the committee responsible. (...)*

*2. The committee shall consider without delay, but having regard to their relative complexity, requests for the waiver of immunity or requests for the defence of privileges and immunities.*

*3. 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.*

*4. 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.*

*5. 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.*

*The Member shall not be present during debates on the request for waiver or defence of his or her immunity, except for the hearing itself.*

*The chair of the committee shall invite the Member to be heard, indicating a date and time. The Member may renounce the right to be heard.*

*If the Member fails to attend the hearing pursuant to that invitation, he or she shall be deemed to have renounced the right to be heard, unless he or she has asked to be excused from being heard on the date and at the time proposed, giving reasons. The chair of the committee shall rule on whether such a request to be excused is to be accepted in view of the reasons given, and no appeals shall be permitted on this point.*

*If the chair of the committee grants the request to be excused, he or she shall invite the Member to be heard at a new date and time. If the Member fails to comply with the second invitation to be heard, the procedure shall continue without the Member having been heard. No further requests to be excused, or to be heard, may then be accepted.*

*6. Where the request seeks the waiver of immunity on several accounts, each of these may be the subject of a separate decision. The committee's report may, exceptionally, propose that*

*the waiver of immunity should apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of retention or remand or any measure which prevents that Member from performing the duties proper to the mandate.*

*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. (...)*

### **3. Justification for the proposed decision**

#### *a) The admissibility of a request for waiver made by a private person*

Since the request for the waiver of Mr Jakovčić's immunity was submitted by the lawyer of the injured party and not by a public authority, the first issue to address is the admissibility of a request for waiver made by a private person.

Pursuant to Rule 9(7) of the Rules of Procedure the "*committee may offer a reasoned opinion as to the competence of the authority in question and the admissibility of the request*".

By letter of 14 February 2014 – i.e. before the current legislative term started and the request for the waiver of Mr Jakovčić's immunity was actually made –, in reply to an enquiry sent to all Member States, the Permanent Representative of the Republic of Croatia to the EU had informed the President of Parliament that, failing specific procedural rules with regard to the request for waiver of the immunity of the Croatian Members of the European Parliament, the provisions governing the requests for waiver of immunity of the Members of the national Parliament should apply.

In particular, Article 23 of the Standing Orders of the Croatian Parliament reads as follows:

*Members of Parliament shall have legal immunity from the date of the constitution of Parliament until the end of their term of office.*

*When the conditions are fulfilled for pre-trial detention (remand) of a Member of Parliament or for filing criminal charges against a Member of Parliament, the authorised state body, or the injured party as plaintiff, or a private plaintiff shall be obliged to seek approval therefor from Parliament.*

*Along with the request set out in paragraph 2 hereof, the private plaintiff shall also submit proof of bringing an action before a competent court.*

*The request for approval for pre-trial detention (remand) or for filing criminal charges against a Member of Parliament shall be submitted to the Speaker of Parliament by the authorised state body or the injured party as plaintiff or private plaintiff for its referral to the Credentials and Privileges Commission.*



Article 28 of the Standing Orders of the Croatian Parliament reads as follows:

*When Parliament or the Credentials and Privileges Commission grants approval for pre-trial detention (remand) or for the filing of criminal charges against a Member of Parliament, pre-trial detention (remand) may be ordered for, or criminal proceedings may be conducted against, a Member of Parliament, but only for the criminal offence for which approval was granted.*

It follows *inter alia* that, under those provisions, the request to initiate criminal proceedings against a Member may be made by any authorised State body, the injured party as plaintiff or a private plaintiff.

The case of requests for waiver made by private persons is not new to Parliament. In its resolution of 24 April 2009 on parliamentary immunity in Poland, Parliament requested Member States to ensure that requests for waiver of the immunity of Members of the European Parliament are always transmitted by the “competent authority” in accordance with Rule 9(1) of the Rules of Procedure, in order to guarantee observance of provisions of substantive and procedural national law, including the procedural rights of private persons, as well as Parliament’s prerogatives<sup>1</sup>.

In order to avoid any doubt and let the Committee reach a decision on this request, by letter of 8 December 2014 the Chair of the Committee on Legal Affairs requested the Permanent Representative of the Republic of Croatia to confirm that the legal proceedings in connection of which the waiver of Mr Jakovčić’s immunity had been requested were actually pending before the competent court in Croatia. By the letter of 16 January 2015 the Permanent Representative officially confirmed the actual existence of these proceedings.

It also appears that under Article 61(1) of the Croatian Criminal Procedure Code (*Zakon o kaznenom postupku*) in case of private prosecution, the private charge must be submitted within three months of the day on which the authorised physical or legal person came to the knowledge of the offence and its perpetrator. When requesting the waiver of Jakovčić’s immunity, the lawyer of the injured party also requested that Parliament reach its decision before the three-month limitation period referred to in Article 61(1) of the Croatian Criminal Procedure Code. This period began on 22 July 2014, when Mr Jakovčić is alleged to have made the statement in question.

Although the Committee takes note of this requirement under Croatian law, it considers that the legal framework applicable to Parliament provides for thorough consideration of requests for waiver, which may therefore not be subject to any deadline. In particular, pursuant to Rule 9(2) of the Rules of Procedure, requests for waiver must be considered without delay, but having regard to their relative complexity. In addition to this general principle, there are specific procedural requirements that imply that no deadline can reasonably be set to Parliament: Rule 9(4) allows the committee responsible to ask the authority concerned to provide any further information the committee deems necessary to form an opinion on

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<sup>1</sup> See European Parliament resolution of 24 April 2009 on parliamentary immunity in Poland (P6\_TA(2009)0316).

whether the immunity should be waived or not and, most importantly, Rule 9(5) provides the Member concerned with the right to be heard and present any documents or other written evidence before the committee takes its decision. These requirements prove that Parliament is entitled to the time needed to reach its decision on a request for waiver and that no deadline may therefore be imposed to it.

In any event, according to the letter of the Permanent Representative of 16 January 2015, the competent court decided to stay the proceedings until Parliament takes its decision. The injured party lodged an appeal against the court order, but to the Committee's knowledge no decision has yet been taken thereon.

In the light of the above, the Committee considers that the request for the waiver of the immunity of Mr Jakovčić has been submitted by the competent authority within the meaning of Rule 9(1) of the Rules of Procedure. The request is, therefore, to be deemed admissible. The Committee also considers that, having particular regard to Rule 9(2),(4) and (5) of the Rules of Procedure, Parliament cannot be imposed any deadline to reach a decision on a request for waiver.

*b) The scope of Members' immunity and its applicability to the case in point*

On the basis of the aforementioned facts, the present case qualifies for the application of Article 8 of the Protocol No 7 on the Privileges and Immunities of the European Union. For the purpose of that provision, 'opinion' must be understood in a wide sense so as to include remarks and statements that, by their content, correspond to assertions amounting to subjective appraisal<sup>1</sup>.

In order to enjoy immunity under Article 8 of the Protocol, an opinion must have been expressed by a Member of the European Parliament 'in the performance of [his or her] duties', thus entailing the requirement of a link between the opinion expressed and the parliamentary duties<sup>2</sup>.

In the view of the Court of Justice, Article 8 of the Protocol must be interpreted to the effect that, although parliamentary immunity essentially covers statements made within the precincts of the European Parliament, it is not impossible that a statement made beyond those precincts may also amount to an opinion expressed in the performance of parliamentary duties. Whether or not it is such an opinion must therefore be determined having regard to its character and content, not to the place where it was made<sup>3</sup>. This is all the more true in modern democracies where political debates take place not only in Parliament but also through communications media, ranging from press statements to the Internet. The Court, however, has made it clear that the connection between the opinion expressed and parliamentary duties must be direct and obvious<sup>4</sup>.

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<sup>1</sup> Judgment in *Patriciello*, cited above, at paragraph 32.

<sup>2</sup> Judgment in *Patriciello*, cited above, at paragraph 33.

<sup>3</sup> Judgment in *Patriciello*, cited above, at paragraph 30.

<sup>4</sup> Judgment in *Patriciello*, cited above, at paragraph 35.

It follows that absolute immunity under Article 8 may, in general, apply also to opinions which may be regarded as excessive, annoying or offensive, provided that they are directly and obviously linked to the performance of parliamentary duties.

It appears from the context referred above, that, having regard to its character and content, the statement made by Mr Jakovčić does not have a direct and obvious connection with Mr Jakovčić's performance of his duties as a Member of the European Parliament nor does it constitute an opinion expressed or a vote cast in the performance of his duties as a Member of the European Parliament for the purposes of Article 8 of Protocol. In particular, the above-mentioned facts show that, although it was made when Mr Jakovčić was already a Member of the European Parliament, the statement in question relates to a matter which dates back to a time when he did not yet hold such office.

#### **4. Conclusion**

In light of the foregoing, after considering the reasons for and against waiving the Member's immunity, the Committee recommends that the European Parliament should waive the parliamentary immunity of Mr Jakovčić.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	24.3.2015
<b>Result of final vote</b>	+: 19 -: 2 0: 1
<b>Members present for the final vote</b>	Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Andrzej Duda, Laura Ferrara, Enrico Gasbarra, Mary Honeyball, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Evelyn Regner, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Mario Borghesio, Daniel Buda, Pascal Durand, Jytte Guteland, Heidi Hautala, Victor Negrescu, Giovanni Toti