



EUROPSKI PARLAMENT

2014 - 2019

Dokument s plenarne sjednice

A8-0150/2015

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IZVJEŠĆE

o zahtjevu za ukidanje imuniteta Januszu Korwin-Mikkeu
(2015/2049(IMM))

Odbor za pravna pitanja

Izvjestitelj: Kostas Chrysogonos

SADRŽAJ

Stranica

PRIJEDLOG ODLUKE EUROPSKOG PARLAMENTA	3
EXPLANATORY STATEMENT	5
REZULTAT KONAČNOG GLASOVANJA U ODBORU	9

PRIJEDLOG ODLUKE EUROPSKOG PARLAMENTA

o zahtjevu za ukidanje imuniteta Januszu Korwin-Mikkeu (2015/2049(IMM))

Europski parlament,

- uzimajući u obzir zahtjev za ukidanje imuniteta Janusza Korwin-Mikkeu koji je 29. prosinca 2014. proslijedio Glavnom državnom odvjetniku Republike Poljske, u vezi s kaznenim postupkom koji je pokrenuo Okružni ured državnog odvjetništva u Varšavi (Predmet br. V. Ds 223/14) i koji je objavljen na plenarnoj sjednici 28. siječnja 2015.,
 - nakon saslušanja Janusza Korwin-Mikkeu u skladu s člankom 9. stavkom 5. Poslovnika,
 - uzimajući u obzir članke 8. i 9. Protokola br. 7 o povlasticama i imunitetima Europske unije te članak 6. stavak 2. Akta od 20. rujna 1976. o izboru zastupnika u Europski parlament neposrednim općim izborima,
 - uzimajući u obzir presude Suda Europske unije od 12. svibnja 1964., 10. srpnja 1986., 15. i 21. listopada 2008., 19. ožujka 2010., 6. rujna 2011. i 17. siječnja 2013.¹,
 - uzimajući u obzir članak 105. stavak 2. Ustava Republike Poljske te članak 7b. stavak 1. i članak 7c. stavak 1. poljskog Zakona od 5. svibnja 1996. o obavljanju dužnosti zastupnika poljskog Zastupničkog doma ili Senata;
 - uzimajući u obzir članak 5. stavak 2., članak 6. stavak 1. i članak 9. Poslovnika,
 - uzimajući u obzir izvješće Odbora za pravna pitanja (A8-0150/2015),
- A. budući da je Glavni državni odvjetnik Republike Poljske proslijedio zahtjev Okružnog ureda državnog odvjetništva u Varšavi za odobrenje pokretanja kaznenog postupka protiv zastupnika u Europskom parlamentu Janusza Korwin-Mikkeu zbog kaznenog djela iz članka 222. stavka 1. Kaznenog zakona Republike Poljske; budući da se postupak konkretno odnosi na navode o povredi fizičkog integriteta javnog službenika;
- B. budući da u skladu s člankom 8. Protokola o povlasticama i imunitetima Europske unije zastupnici u Europskom parlamentu ne mogu biti podvrgnuti nikakvom obliku ispitivanja, zadržavanja ili sudskog postupka zbog izraženih mišljenja ili glasanja pri obnašanju svojih dužnosti;
- C. budući da u skladu s člankom 9. Protokola o povlasticama i imunitetima Europske unije zastupnici u Europskom parlamentu na državnom području svoje države moraju imati

¹ Presuda Suda od 12. svibnja 1964., Wagner/Fohrmann i Krier, 101/63, ECLI:EU:C:1964:28; Presuda Suda od 10. srpnja 1986., Wybot/Faure i drugi, 149/85, ECLI:EU:C:1986:310; Presuda Općeg suda od 15. listopada 2008., Mote/Parlament, T-345/05, ECLI:EU:T:2008:440; Presuda Suda od 21. listopada 2008., Marra/De Gregorio i Clemente, C 200/07 et C-201/07, ECLI:EU:C:2008:579; Presuda Općeg suda od 19. ožujka 2010., Gollnisch/Parlament, T-42/06, ECLI:EU:T:2010:102; Presuda Suda od 6. rujna 2011., Patriciello, C 163/10, ECLI: EU:C:2011:543; Presuda Općeg suda od 17. siječnja 2013., Gollnisch/Parlament, T-346/11 et T-347/11, ECLI:EU:T:2013:23.

pravo uživati imunitet priznat članovima parlamenta te države;

- D. budući da u skladu s člankom 105. stavkom 2. Ustava Republike Poljske zastupnik ne može biti pozvan na kaznenu odgovornost bez odobrenja Sejma;
- E. budući da jedino Parlament može odlučiti hoće li se u navedenom slučaju imunitet ukinuti ili ne; budući da pri donošenju odluke o tome hoće li ukinuti imunitet zastupniku ili ne, Parlament može objektivno uzeti u obzir položaj u kojem se zastupnik nalazi¹;
- F. budući da, kao što je potvrđeno na ovom saslušanju, navodno kazneno djelo nije izravno ili očigledno povezano s obnašanjem dužnosti Janusza Korwin-Mikkeu u svojstvu zastupnika u Europskom parlamentu niti je u vezi s izraženim mišljenjem ili glasanjem pri obnašanju njegovih dužnosti zastupnika u Europskom parlamentu u smislu članka 8. Protokola br. 7 o povlasticama i imunitetima Europske unije;
- G. budući da ne postoji razlog za pretpostavku, odnosno dovoljno ozbiljna i osnovana sumnja, da je postupak pokrenut s namjerom nanošenja političke štete dotičnom zastupniku (*fumus persecutionis*);
 - 1. odlučuje ukinuti imunitet Januszu Korwin-Mikkeu;
 - 2. nalaže svojem predsjedniku da odmah proslijedi ovu Odluku i izvješće nadležnog odbora nadležnom tijelu Republike Poljske i Januszu Korwin-Mikkeu.

¹ Predmet T-345/05, *Mote/Parlament* (naveden gore), stavak 28.

EXPLANATORY STATEMENT

1. Background

On 29 December 2014, the Prosecutor-General of the Republic of Poland forwarded to the President of Parliament a request made by the District Prosecutor's Office in Warsaw on 19 December 2014 to grant authorisation to bring criminal proceedings against a Member of the European Parliament, Mr Janusz Korwin-Mikke.

The District Prosecutor's Office claims that on 11 July 2014 Mr Korwin-Mikke infringed the physical integrity of Mr Michał Boni by striking him in the face with his hand at an event in Warsaw – a meeting of the newly elected Polish Members of the European Parliament organised by the Polish Ministry of Foreign Affairs – at which the injured party was performing official duties in connection with his office as a Member of the European Parliament. Mr Korwin-Mikke's conduct may constitute an offence under Article 222(1) of the Polish Criminal Code insofar as the physical integrity of a public official has allegedly been infringed¹. Pursuant to Article 115(13)(2a) of the Polish Criminal Code, a Member of the European Parliament is a public official.

At the plenary sitting on 28 January 2015, the President announced, under Rule 9(1) of the Rules of Procedure, that he had received a letter from the Prosecutor-General of the Republic of Poland requesting the waiver of the parliamentary immunity of Mr Janusz Korwin-Mikke.

The President referred this request to the Committee on Legal Affairs under Rule 9(1). Mr Korwin-Mikke was heard by the Committee on 16 April 2015 in accordance with Rule 9(5).

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

Articles 8 and 9 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.

Article 9

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;

¹ Article 222(1) of the Polish Criminal Code reads as follows:

Whoever violates the physical integrity of a public official, or a person called upon to assist him, during or in connection with the performance of official duties shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 3 years.

b. in the territory of other Member States, immunity from any measures or 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 6(1) and 9 of the Rules of Procedure of the European Parliament read as follows:

*Rule 6
Waiver of immunity*

1. In the exercise of its powers 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 the 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.

The Member or former Member may be represented by another Member. The request may not be made by another Member without the agreement of the Member concerned.

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 privileges and immunities.

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.

(...)

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.

(...)

Article 105(2) of the Constitution of the Republic of Poland reads as follows:

From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.

Article 7b(1) and 7c(1) of the Act of 9 May 1996 on the exercise of the mandate of Deputy and Senator:

Article 7b

1. A motion for expression of consent for bringing a deputy or senator to penal accountability in a case concerning a crime prosecuted by public accusation shall be submitted through the Minister of Justice – Public Prosecutor General.

Article 7c

1. A motion for expression of consent for bringing a deputy or senator to penal accountability shall be submitted to the Speaker of the Sejm or Speaker of the Senate, who shall forward this motion to the body competent for examining the motion pursuant to the rules of procedure of the Sejm or Senate, at the same time notifying the deputy or senator that the motion concerns, of the contents of this motion.

3. Justification for the proposed decision

On the basis of the aforementioned facts, the present case qualifies for the application of Article 9 of the Protocol No 7 on the Privileges and Immunities of the European Union.

Pursuant to that provision, Members enjoy, in the territory of their own State, the immunities accorded to members of the Parliament of that State. In turn, Article 105(2) of the Polish Constitution stipulates that criminal prosecution of members of the Sejm are subject to prior authorisation from the latter. A decision of the European Parliament is, therefore, required, whether the prosecution of Mr Korwin-Mikke is to go ahead.

In order to decide whether or not to waive a Member's parliamentary immunity, the European Parliament applies its own consistent principles. One of these principles is that immunity is usually waived when the offence falls within Article 9 of the Protocol, provided that there is no *fumus persecutionis*, i.e. a sufficiently serious and precise suspicion that the matter is being brought before a court with the intention of causing political damage to the Member concerned.

It appears from the circumstances of the case and from the statements made by Mr Korwin-Mikke at his hearing that there is no evidence of *fumus persecutionis*. Indeed, although the above-mentioned facts occurred when Mr Korwin-Mikke was already a Member of the European Parliament and in an explicitly political context, the alleged offence and the ensuing prosecution clearly have nothing to do with the position of Mr Korwin-Mikke as a Member of the European Parliament.

4. Conclusion

On the basis of the above considerations and pursuant to Rule 9(3) of the Rules of Procedure, the Committee on Legal Affairs recommends that the European Parliament should waive the parliamentary immunity of Mr Janusz Korwin-Mikke.

REZULTAT KONAČNOG GLASOVANJA U ODBORU

Datum usvajanja	6.5.2015
Rezultat konačnog glasanja	+ : 16 - : 0 0 : 0
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Zamjenici nazočni na konačnom glasanju	Luis de Grandes Pascual, Angel Dzhambazki, Sylvia-Yvonne Kaufmann, Virginie Rozière