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REPORT

on the request for waiver of the immunity of István Ujhelyi
(2015/2237(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 István Ujhelyi (2015/2237(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of István Ujhelyi, by ruling of 26 November 2014 by the Central District Court of Pest (Hungary) in connection with criminal proceedings pending before that court, which was forwarded by the Hungarian Permanent Representative on 15 July 2015, and announced in plenary on 7 September 2015,
 - having heard István Ujhelyi on 28 January 2016 in accordance with Rule 9(5) of its Rules of Procedure,
 - having regard to Articles 8 and 9 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 2013¹,
 - having regard to Article 4(2) of the Fundamental Law of Hungary,
 - having regard to Article 10(2) of the Hungarian Act LVII of 2004 on the Status of the Hungarian Members of the European Parliament,
 - having regard to Articles 74(3) and 79(2) of the Hungarian Act XXXVI of 2012 on the National Assembly,
 - 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 (A8-0229/2016),
- A. whereas the Central District Court of Pest has requested the waiver of the parliamentary immunity of a Member of the European Parliament, István Ujhelyi, in connection with proceedings before it;
- B. whereas the request by the court relates to criminal proceedings relating to the crime of defamation in connection with statements made by István Ujhelyi on 25 April 2014

¹ Judgment of the Court of Justice of 12 May 1964, *Wagner v Fohrmann and Krier*, 101/63, ECLI:EU:C:1964:28; judgment of the Court of Justice of 10 July 1986, *Wybot v Faure and others*, 149/85, ECLI:EU:C:1986:310; judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440; judgment of the Court of Justice of 21 October 2008, *Marra v De Gregorio and Clemente*, C-200/07 and C-201/07, ECLI:EU:C:2008:579; judgment of the General Court of 19 March 2010, *Gollnisch v Parliament*, T-42/06, ECLI:EU:T:2010:102; judgment of the Court of Justice of 6 September 2011, *Patriciello*, C-163/10, ECLI:EU:C:2011:543; judgment of the General Court of 17 January 2013, *Gollnisch v Parliament*, T-346/11 and T-347/11, ECLI:EU:T:2013:23.

concerning an individual in Hungary;

- C. whereas pursuant to Article 8 of Protocol No 7, 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;
 - D. whereas pursuant to Article 9 of Protocol No 7, during the sessions of the European Parliament, its Members shall enjoy, in the territory of their own State, the immunities accorded to members of their parliament;
 - E. whereas pursuant to Article 4(2) of the Fundamental Law of Hungary, Members of Parliament shall be entitled to immunity and remuneration to promote their independence;
 - F. whereas pursuant to Article 10(1) of the Hungarian Act LVII of 2004 on the Status of the Hungarian Members of the European Parliament, such a Member shall be granted the same degree of immunity as is enjoyed by a Member of the Hungarian Parliament;
 - G. whereas pursuant to Article 74(3) of the Hungarian Act XXXVI of 2012 on the National Assembly, a motion to waive immunity shall be submitted to the speaker by the chief prosecutor before the submission of the indictment or by the court after the presentation of the indictment;
 - H. whereas pursuant to Article 79(2) of the Hungarian Act XXXVI of 2012 on the National Assembly, a person registered as a candidate in the election of Members shall enjoy the same immunity, so therefore the statements expressed on 25 April 2014 should be covered by the absolute immunity of the Hungarian Parliament, except that any waiver of immunity shall be determined by the National Electoral Committee and any motion for a waiver of immunity shall be submitted to the Chair of the National Electoral Committee;
 - I. whereas the statements in question were made on 25 April 2014, at a time when István Ujhelyi was not a Member of the European Parliament, but a Member of the National Parliament;
 - J. whereas the charges against István Ujhelyi do not relate to an opinion expressed or vote cast by him in the performance of his duties as a Member of the European Parliament and whereas the absolute immunity in accordance with Article 8 of Protocol No 7 is therefore not applicable;
1. Decides to waive the immunity of István Ujhelyi;
 2. Instructs its President to forward this decision and the report of its committee responsible immediately to the appropriate authorities in Hungary.

EXPLANATORY STATEMENT

I. THE FACTS

At the sitting of 7 September 2015, the President announced, pursuant to Rule 9(1) of the Rules of Procedure, that he had received on 15 July 2015 a letter from the Hungarian Permanent Representative to the EU submitting a ruling of 26 November 2014 by the Central District Court of Pest (Pesti Központi Kerületi Bíróság) requesting that the parliamentary immunity of István Ujhelyi be waived. The President referred the request to the Committee on Legal Affairs under Rule 9(1).

In criminal proceedings brought before the Central District Court of Pest, István Ujhelyi was charged with having committed the crime of defamation pursuant to Article 226(1) of Act C of 2012 on the Hungarian Criminal Code.

According to the ruling of the Court, the background to the criminal proceedings is as follows: During the *Egyenes Beszéd* ('Straight Talk') programme broadcast by Hungarian TV channel ATV on 25 April 2014 István Ujhelyi stated that he opposed Tamás Sneider's application for the post of Vice-President of the Hungarian Parliament by saying about Mr Sneider that 'he stated that he had a fight with a gypsy Mafioso and hit him with I don't know what kinds of implements, baseball bats', and that 'everyone else says he was the local boss of a Mafia-style organisation, a skinhead organisation'.

According to Article 226(1) of Act C of 2012 on the Hungarian Criminal Code, any person who alleges a fact before others which is liable to impugn a person's integrity, spreads a rumour or uses an expression referring directly to such a fact, thereby commits the crime of defamation, which is punishable by imprisonment of up to one year's duration. According to paragraph (2)(b), the punishment shall be imprisonment of up to two years' duration if the defamation is committed before the wider public.

By ruling of 26 November 2014, the Central District Court of Pest suspended the procedure in the criminal action brought against István Ujhelyi pursuant to Articles 501(2), 266(1)(a) and 188(1)(d) of the Hungarian Code of Penal Procedure and the Court moved, pursuant to Article 10(2) and 12(1) of Act LVII of 2004 on the legal status of Hungarian Members of the European Parliament and Article 5(1) of Act LV of 1990 on the legal status of members of the Hungarian Parliament, that the European Parliament waive his immunity.

István Ujhelyi takes the position that the European Parliament should defend his immunity with reference to the fact that in accordance with Hungarian Act XXXVI of 2012 on the National Assembly, candidates in the Hungarian elections to the European Parliament enjoy parliamentary immunity.

II. THE LAW

(a) European legislation

Protocol No 7 to the Treaty on the Functioning of the European Union (TFEU) on the Privileges and Immunities of the European Union

“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;

(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 European Parliament

“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 7

Defence of privileges and immunity

3. A request for the defence of the privileges and immunities of a Member shall not be admissible if a request for the waiver or defence of that Member’s immunity has already been received in respect of the same legal proceedings, whether or not a decision was taken at that time.

4. No further consideration shall be given to a request for the defence of the privileges and immunities of a Member if a request for the waiver of that Member’s immunity is received in respect of the same legal proceedings.

5. In cases where a decision has been taken not to defend the privileges and immunities of a Member, the Member may make a request for reconsideration of the decision, submitting new evidence. The request for reconsideration shall be inadmissible if proceedings have been instituted against the decision under Article 263 of the Treaty on the Functioning of the European Union, or if the President considers that the new evidence submitted is not sufficiently substantiated to warrant reconsideration.”

(b) National legislation

Fundamental Law of Hungary

“Article 4(2)

Members of Parliament shall be entitled to immunity and remuneration in order to promote their independence. A cardinal Act shall list the public offices which may not be held by Members of Parliament and may determine other criteria for incompatibility.”

Hungarian Act XXXVI of 2012 on the National Assembly

“73. (1) Members cannot be held accountable before a court or any other authority in the course of or following the termination of their mandate for their votes cast, or for facts and opinions in connection with their mandate which are stated during the exercise of their mandate.

(2) The immunity set out in paragraph (1) does not apply to Members’ accountability under civil law or to the following crimes:

(a) incitement against a community, defamation of the national emblem, publicly denying the crimes of the national socialist and communist regimes, misuse of data which are strictly secret or are classified as secret, misuse of data classified as confidential, and misuse of data classified as restricted, according to Act IV of 1978 on the Criminal Code that was in force until 30 June 2013,

(b) incitement against a community, defamation of the national emblem, publicly denying the crimes of the national socialist and communist regimes, misuse of classified data according to Act C of 2012 on the Criminal Code.”

74. (1) A criminal procedure or, in the event of immunity not being waived voluntarily in respect of the matter in question, a misdemeanour procedure may be initiated or pursued and coercive measures applied against a Member only with the prior consent of Parliament.

(2) A Member may only (a) be arrested or have other coercive measures under criminal law taken against him or her if he or she is caught in flagrante delicto of a criminal offence; (b) be arrested or have other coercive measures for a misdemeanour taken against him or her at the time of being caught in flagrante delicto of a misdemeanour if the conditions set out in the law on orders for misdemeanour arrest subsist.

(3) A motion to waive immunity shall be submitted to the speaker by the chief prosecutor before the submission of the indictment or by the court after the presentation of the indictment or in the case of a civil or substitute civil action. In the event of a Member being caught in flagrante delicto, the motion shall be submitted immediately.

(4) In a misdemeanour case the authority responsible shall inform the Member that he or she may waive his or her immunity voluntarily. In the event of a voluntary waiving of a Member’s immunity within eight days, the authority responsible shall inform the speaker through the chief prosecutor of the waiving of immunity or the result of the procedure when the procedure has been definitively concluded. The speaker shall forward the information to the Committee on Immunity, Conflicts of Interest, Discipline and Mandate Inspection. The Chair of the

Committee shall convey the information to the Committee at its next meeting. If the Member involved in a misdemeanour case fails to waive his or her immunity within eight days of receipt of the notice, a motion for a waiver of immunity based on the notice from the authority responsible shall be submitted to the speaker by the chief prosecutor. During the procedure, the Member may waive his or her immunity at any time before any acting authority and at the latest by the time a parliamentary resolution is passed.

...

79. (1) Immunity is in force starting from the day on which a Member is elected.

(2) A person registered as a candidate in the election of Members shall enjoy the same immunity, except that any waiver of immunity shall be determined by the National Electoral Committee and any motion for a waiver of immunity shall be submitted to the Chair of the National Electoral Committee."

Hungarian Act LVII of 2004 on the Status of the Hungarian Members of the European Parliament

"10. (1) The Member of the European Parliament shall enjoy privileges and immunities in accordance with the Protocol on the Privileges and Immunities of the European Communities, annexed to the Treaty of 8 April 1965 establishing a Single Commission of the European Communities.

(2) The Member of the European Parliament shall be granted the same degree of immunity as it is enjoyed by the Member of the Parliament.

11. For the purposes of the immunity, those having been registered as candidates for the elections to the European Parliament shall be considered as a Member of the European Parliament."

III. GENERAL CONSIDERATIONS AND JUSTIFICATION FOR THE PROPOSED DECISION

Since the statements in question were made on 25 April 2014, they were made before István Ujhelyi became a Member of the European Parliament following his election during the 2014 European Parliament elections.

As the Court of Justice has held, the scope of the absolute immunity provided for in Article 8 of the Protocol "must be established on the basis of Community law alone"¹. The Court has also held that "a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties"².

The facts of the case, as manifested in the request for waiver and at the hearing of István

¹ *Marra*, cited above, at paragraph 26.

² *Patricello*, cited above, operative part.

Ujhelyi, indicate that the statements were made at a time when he was not a Member of the European Parliament. The Committee therefore considers that, when making the statements in question, István Ujhelyi was not acting in the performance of his duties as Member of the European Parliament. The fact that under national Hungarian legislation candidates standing in elections to the national parliament or to the European Parliament may enjoy parliamentary immunity in accordance with national procedures does not alter this conclusion for the purposes of the procedure in the European Parliament.

On the basis of the above considerations and pursuant to the Rules of Procedure, after considering the reasons for and against defending the Member's immunity, the Committee on Legal Affairs recommends that the European Parliament should waive the parliamentary immunity of István Ujhelyi.

RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

Date adopted	11.7.2016
Result of final vote	+: 16 -: 0 0: 2
Members present for the final vote	Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mary Honeyball, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Tadeusz Zwiefka
Substitutes present for the final vote	Sergio Gaetano Cofferati, Heidi Hautala, Sylvia-Yvonne Kaufmann, Constance Le Grip, Stefano Maullu, Victor Negrescu
Substitutes under Rule 200(2) present for the final vote	Maria Noichl