

Request for waiver of the parliamentary immunity of Zbigniew Ziobro

European Parliament decision of 4 February 2014 on the request for waiver of the immunity of Zbigniew Ziobro (2013/2189(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Zbigniew Ziobro, put forward by the Public Prosecutor of the Republic of Poland on 24 June 2013, in connection with criminal proceedings pending before the District Court for Warsaw City Centre, Department V (Criminal) [Reference No V K199/12], and announced in plenary on 9 September 2013,
 - having regard to the hearing of Zbigniew Ziobro, in accordance with Rule 7(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 and 6 September 2011¹,
 - having regard to Article 105 of the Constitution of the Republic of Poland,
 - having regard to Rules 6(1) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0045/2014),
- A. whereas the Public Prosecutor of the Republic of Poland has requested the waiver of the parliamentary immunity of Zbigniew Ziobro, Member of the European Parliament, in connection with legal action concerning an alleged criminal offence;
- B. whereas the request by the Public Prosecutor relates to an offence subject to private prosecution under Article 212(1) and (2) of the Polish Criminal Code;
- C. whereas, according to Article 8 of the Protocol on the Privileges and Immunities of the European Union, 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, according to Article 9 of the Protocol on the Privileges and Immunities of the

¹ Judgment of 12 May 1964 in Case 101/63, *Wagner v Fohrmann and Krier* (ECR 1964, p. 195); judgment of 10 July 1986 in Case 149/85, *Wybot v Faure and others* (ECR 1986, p. 2403); judgment of 15 October 2008 in Case T-345/05, *Mote v Parliament* (ECR 2008, p. II-2849); judgment of 21 October 2008 in Joined Cases C-200/07 and C-201/07, *Marra v De Gregorio and Clemente* (ECR 2008, p. I-7929); judgment of 19 March 2010 in Case T-42/06, *Gollnisch v Parliament* (ECR 2010, p. II-1135); judgment of 6 September 2011 in Case C-163/10, *Patriciello* (ECR 2011, p. I-7565).

European Union, Members of the European Parliament shall enjoy, in the territory of their own State, the immunities accorded to members of their Parliament;

- E. whereas, under Article 105 of the Constitution of the Republic of Poland, ‘a Deputy shall not be held accountable for his activity performed within the scope of a Deputy’s mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm’;
 - F. whereas whether immunity is or is not to be waived in a given case is for Parliament alone to decide; whereas Parliament may reasonably take account of the Member’s position in reaching its decision on whether or not to waive his/her immunity¹;
 - G. whereas the alleged offence does not have a direct or obvious connection with Zbigniew Ziobro’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 No 7 on the Privileges and Immunities of the European Union;
 - H. whereas the criminal proceedings brought against Zbigniew Ziobro bear no connection to his position as a Member of the European Parliament;
 - I. whereas in the present case Parliament has found no evidence of *fumus persecutionis*, that is, a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member concerned;
 - J. whereas the request is brought as a result of a counterclaim and whereas, in such a context, a decision not to waive a Member’s immunity would prevent the other private party from pursuing his case before the court as part of his defence;
1. Decides to waive the immunity of Zbigniew Ziobro;
 2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of the Republic of Poland and to Zbigniew Ziobro.

¹ Case T-345/05 Mote v Parliament [2008] ECR II-2849, paragraph 28.