

EUROOPA PARLAMENT

2004



2009

Istungidokument

LÕPLIK
A6-0268/2005

19.9.2005

RAPORT

Mario Matsakiselt puutumatus e äravõtmise taotlus
(2004/2194(IMM))

Õiguskomisjon

Raportöör: Klaus-Heiner Lehne

SISUKORD

lehekülg

EUROOPA PARLAMENDI OTSUSE ETTEPANEK.....	3
EXPLANATORY STATEMENT.....	4
LISA: Küprose Vabariigi põhiseaduse artiklid 83 ja 113	8
MENETLUS.....	9

EUROOPA PARLAMENDI OTSUSE ETTEPANEK

Mario Matsakiselt puutumatus e äravõtmise taotluse kohta (2004/2194(IMM))

Euroopa Parlament,

- võttes arvesse Mario Matsakiselt puutumatus e äravõtmise taotlust, mille Küprose Vabariigi peaprokurör edastas 20. septembril 2004. aastal ning millest anti teada 13. oktoobri 2004. aasta täiskogu istungil;
 - võttes arvesse kirja, millest anti teada 14. oktoobri 2004. aasta istungil ja milles Marios Matsakis vaidlustas peaprokuröri pädevuse esitada temalt puutumatus e äravõtmise taotlust;
 - võttes arvesse Küprose Vabariigi alalise esindaja 13. oktoobri 2004. aasta kirja ja 10. veebruari 2005. aasta kirja Euroopa Parlamendi presidendile, milles kinnitatakse peaprokuröri pädevust esitada Küprosel pärit Euroopa Parlamendi liikmelt puutumatus e äravõtmise taotlust;
 - võttes arvesse Küprose ülemkohtu presidendi 16. juunil 2005. aastal saadetud kirja;
 - olles Mario Matsakise ära kuulunud vastavalt kodukorra artikli 7 lõikele 3;
 - võttes arvesse 8. aprilli 1965. aasta Euroopa ühenduste privileegide ja immunitetide protokollis artikleid 9 ja 10 ning otsestel ja üldistel valimistel esindajate Euroopa Parlamenti valimist käsitleva 20. septembri 1976. aasta akti artikli 6 lõiget 2;
 - võttes arvesse Euroopa Kohtu 12. mai 1964. aasta ja 10. juuli 1986. aasta otsuseid¹;
 - võttes arvesse Küprose Vabariigi põhiseaduse artikleid 83 ja 113;
 - võttes arvesse kodukorra artikli 6 lõiget 2 ja artiklit 7, eriti selle lõiget 4;
 - võttes arvesse õiguskomisjoni raportit (A6-0268/2005),
1. võtab teadmiseks, et vastavalt Küprose Vabariigi põhiseaduse artiklitele 83 ja 113 on Küprose Vabariigi peaprokurör pädev ametiisik esitada parlamendiliikmelt puutumatus e äravõtmise taotlust;
 2. otsustab võtta Marios Matsakiselt puutumatus e ära tingimusel, et puutumatus e äravõtmist kohaldatakse ainult kohtu alla andmise suhtes ning et kuni lõpliku kohtuotsuse tegemiseni ei tohi hr Matsakist vahistada ega eelvangistada ega võtta tema suhtes muid meetmeid, mis takistavad tal täitmast Euroopa Parlamendi liikme mandaadiga seotud kohustusi;
 3. teeb presidendile ülesandeks edastada käesolev otsus ja vastutava komisjoni raport

¹ Kohtuasi 101/63: Wagner v Fohrmann ja Krier, EKL 1964, lk 195 ja kohtuasi 149/85: Wybot v Faure ja teised, EKL 1986, lk 2391.

EXPLANATORY STATEMENT

I. Facts

At the plenary session of 13 October 2004 the President of the European Parliament announced that he had received a request from the Attorney-General of the Republic of Cyprus for the waiver of the parliamentary immunity of Mr Marios Matsakis.

The waiver of his immunity is indispensable, under Article 10 (a) of the PPI and Article 83(2) of the Constitution of Cyprus, in order to enable a full criminal investigation to be undertaken into two separate cases, in connection with which Mr Matsakis is being investigated. Following completion of the criminal investigation, the Court will initiate criminal proceedings against him if justified by the evidence.

I.a The first case in connection with which Mr Matsakis is being investigated

In January 2004, a police officer, in charge of an operation by the drugs squad, shot and wounded a citizen whom he was pursuing. The victim was taken to hospital where, on the following day, he asked to be examined by Mr Matsakis, whom he appointed his legal adviser. Apart from examining the victim, Mr Matsakis examined the scene of the incident and the vehicle which the victim had been driving when he was wounded. Since this incident involved the wounding of a citizen by a police officer in the performance of his duties, the Attorney General appointed an independent criminal investigator to examine the case.

The case against the Member in question is based on an accusation made by the police officer that the Member approached him and offered to assist him in the case against him in exchange for something. In particular, the Member allegedly said that in exchange for a sum of money he would ensure that the police officer was absolved of any criminal responsibility for wounding Mr Matsakis' client.

In view of the above, the criminal investigation conducted so far has been confined to taking depositions from third persons. The Member himself has not been questioned and the prosecution services do not therefore have his version of events. In order to complete the investigation, including the investigation of any statements which Mr Matsakis may make, it is necessary for his parliamentary immunity to be waived.

If the allegations made by the police officer are borne out, Mr Matsakis could be found guilty of committing a crime under Article 123 of the Code. According to that article, whosoever requests property or a benefit of any kind on the basis of an agreement under which he undertakes to withhold any evidence concerning the commission of a crime, is guilty of a criminal offence. It is an indictable offence punishable by a term of imprisonment of up to two years and a fine of up to C£1500.

I.b The second case in connection with which Mr Matsakis is being investigated

In the course of the investigation into the complaint brought by the same police officer against Mr Matsakis (case I.a), that officer told the police in passing that during his visit to Mr Matsakis house he had seen a number of carved wooden chests in the garage which 'seemed to be old or antique'.

This gave rise to the suspicion that Mr Matsakis might be trafficking in antiquities, and the police decided to investigate the case further .

For the same reasons as are set out above, it is necessary to waive the parliamentary immunity of the Member in order to complete the investigation, including the appraisal of the chests which are allegedly in Mr Matsakis's house. The criminal investigation conducted so far has been confined to taking depositions from and investigating the premises of third parties. The Member of Parliament himself has not been questioned; this means that the prosecuting authorities do not have his own version of the events. Nor has his house been searched.

Pursuant to Article 33 of the Law the possession of antiquities by any person must be registered in special records kept by the Department of Antiquities. Failure to do so renders the possessor guilty of a criminal offence punishable by a fine of C£250 and the confiscation of the antiquity or antiquities in question.

Given that it is impossible to question the Member of Parliament, the means by which the antiquities were obtained by Mr Matsakis cannot be verified. It should be pointed out that, under Article 26(7) of the Law, the acquisition of antiquities in breach of the above provisions of the Law constitutes a criminal offence punishable by a term of imprisonment of up to three years or a fine of C£1500 or both penalties.

II. The objection raised to the waiver of immunity

By letter addressed to the President of the European Parliament and announced at the plenary sitting of 14 October 2004, Mr Matsakis challenged the Attorney-General's authority to make such a request for waiver of his immunity. Mr Matsakis' objection is supported by three legal opinions.

He relies essentially on the wording of the Cyprus Constitution, which provides in Article 83(2): "A Representative cannot, without the leave of the High Court, be prosecuted, arrested or imprisoned so long as he continues to be a Representative(...)".

Consequently, in Mr Matsakis' opinion, the Attorney-General should have first applied to the High Court of Cyprus. Only after the High Court had considered the matter and granted leave, could the Attorney-General become the competent authority to apply to the European Parliament for waiver of his immunity.

On 13 October 2004 and on 10 February 2005 the Permanent Representative of the Republic of Cyprus wrote to the President of the European Parliament in order to confirm that, under the Cyprus Constitution, the Attorney-General has the authority to make a request for waiver

of the immunity of a Cypriot MEP.

On 7 June 2005 the Chairman of the Committee on Legal Affairs, in reliance on the principle of loyal cooperation set out in Article 10 EC and as reflected in Article 19 of the PPI, wrote a letter seeking the opinion of the Supreme Court of Cyprus on the Attorney-General's competence.

On 16 June 2005, the President of the Supreme Court of Cyprus replied that the Supreme Court is not vested with jurisdiction to give legal opinions on matters addressed to it outside the proper procedure envisaged by the constitution, laws and regulations.

III. Rapporteur's assessment

First of all, pursuant to Rule 7(7) of the Rules of Procedure, we have to offer an opinion about the competence of the Attorney-General of Cyprus to make a request for waiver of the immunity of a Cypriot MEP.

Generally speaking, a request submitted to the European Parliament is valid where it has been drawn up and forwarded by the authorities which, under the relevant national legislation, are entitled to submit and forward a similar request to the Parliament of the Member State concerned.

Under Articles 83 and 113 of the Constitution of the Republic of Cyprus, it is beyond doubt that the Attorney-General of the Republic has the power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. In the case of criminal proceedings brought against an MP he has to make a request for the waiver of his immunity to the High Court. That means that the Attorney-General is the competent authority to submit requests for the waiver of immunities and that the High Court has the competence to give the Attorney-General leave to prosecute an MP.

As far as an MEP is concerned, the same rule should be applied *mutatis mutandis*: the Attorney-General is the competent authority to submit a request for the waiver of immunity and the European Parliament is entitled to accede to or to reject such a request.

This is the only way in which the provisions of the Cyprus Constitution can be interpreted in conformity with Article 10(a) of the PPI which reads as follows: *"During the sessions of the European Parliament, its members shall enjoy:*

(a) in the territory of their own Member State, the immunities accorded to members of their parliament;(...)".

Furthermore, it has to be borne in mind that this argument is borne out by two letters from the Permanent Representative of the Republic of Cyprus to the European Union which officially informed the President of the European Parliament that the Attorney-General is the competent authority to request the waiver of the immunity of a Cypriot MEP.

As for the merit of the request, Article 10 (a) of the PPI can be applied. Accordingly, under

Article 83(2) of the Cyprus Constitution, it is necessary to waive the parliamentary immunity of Mr Matsakis in order to complete the investigation.

Past decisions on requests for waiver of immunity have created a consistent notion of an independent and autonomous European parliamentary immunity, which the Committee on Legal Affairs would confirm.

The application of these principles has become a fundamental criterion in the practice of the Parliament when considering what action should be taken on individual requests for waiver of immunity. In all cases where the charges against a Member are related to the exercise of political activity, immunity has not been waived.

Now, in this case, the request submitted by the Attorney-General of Cyprus does not seem to be motivated by the desire to prejudice the political activities of the Member in question (*fumus persecutionis*).

It follows that, as the charges are not related the political activity of Mr Matsakis, a full criminal investigation can be held in accordance with the applicable national legislation.

Having regard to Article 83 of the Constitution of the Republic of Cyprus, which provides that "A Representative cannot, without the leave of the High Court be ... imprisoned so long as he continues to be a Representative", it is considered appropriate to apply Rule 7(4) of the Rules of Procedure, which provides as follows: "... The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other measure which prevents him from performing the duties proper to his mandate".

IV. Conclusion

In the light of the above considerations, the Committee on Legal Affairs recommends that the European Parliament:

- take note that, under Articles 83 and 113 of the Constitution of the Republic of Cyprus, the Attorney-General of the Republic of Cyprus is the competent authority to present a request for the waiver of a Member's immunity;
- after consideration of the arguments for and against the waiver of immunity, waive the parliamentary immunity of Mr Marios Matsakis;
- apply Rule 7(4) of the Rules of Procedure.

LISA: Küprose Vabariigi põhiseaduse artiklid 83 ja 113

Artikkel 83

1. Rahvaesindajaid ei saa esindajatekojas tehtud avalduste ega hääleandmise eest ei tsiviil- ega kriminaalkorras kohtulikule vastutusele võtta.
2. Rahvaesindajat ei saa ilma ülemkohtu loata kohtulikult jälitada, arreteerida ega vangistada, niikaua kui tal säilib rahvaesindaja staatus. Selline luba ei ole nõutav, kui tegemist on kuriteoga, mille puhul rakendatakse surmanuhtlust või vähemalt viieaastast vabadusekaotust, kui kurjategija võetakse kinni otse sündmuskohal. Sellisel juhul teavitab pädev asutus viivitamatult ülemkohut, kes teeb otsuse loa andmise kohta edasiseks jälitamiseks või vangistamiseks ajal, mil kõnealusel isikul on veel rahvaesindaja staatus.
3. Kui ülemkohus keeldub andmast luba rahvaesindaja kohtulikuks jälitamiseks, ei arvestata aega, mille jooksul ei tohi rahvasaadikut kohtulikult jälitada, kõnealuse kuriteoga seotud aegumistähtaaja hulka.
4. Kui ülemkogu keeldub andmast luba pädeva kohtu poolt rahvaesindajale mõistetud vabadusekaotust nõudva kohtuotsuse täitmiseks, lükatakse kohtuotsuse täitmine niikauaks edasi, kuni süüdimõistetul ei ole enam rahvaesindaja staatust.

Artikkel 113

1. Vabariigi peaprokurör, keda abistab vabariigi peaprokuröri asetäitja, on vabariigi, vabariigi presidendi, vabariigi asepresidendi, ministrite nõukogu ja ministrite juriidiline nõustaja ning ta teostab kõiki teisi volitusi ja täidab kõiki teisi ülesandeid ja kohustusi, mis on talle põhiseaduse või seaduse alusel antud või määratud.
2. Vabariigi peaprokuröril on pädevus üldsuse huvides oma äranägemisel iga kuriteo alusel iga isiku vastu vabariigis kohtumenetlust algatada, läbi viia, üle võtta, jätkata või lõpetada. Sellist pädevust võib vabariigi peaprokurör kasutada isiklikult, samuti võib ta selle pädevuse delegeerida oma alluvale ametnikule, kes töötab vastavalt peaprokuröri juhistele.

MENETLUS

Pealkiri	Marios Matsakiselt puutumatus e äravõtmise taotlus				
Menetluse number	2004/2194(IMM)				
Puutumatus e äravõtmise taotlus esitaja taotluse esitamise kuupäev istungil teada andmise kuupäev	Küprose Vabariigi peaprokurör 20.9.2004 18.10.2004				
Vastutav komisjon istungil teada andmise kuupäev	JURI 13.10.2004				
Menetlusalus	art 6 lg 2 ja art 7				
Raportöör nimetamise kuupäev	Klaus-Heiner Lehne 26.10.2004				
Aseraportöör					
Arutamine komisjonis	30.11.2004	20.1.2005	21.4.2005	24.5.2005	14.9.2005
Vastuvõtmise kuupäev	14.9.2005				
Lõpphääletuse tulemused	poolt: vastu: erapooletuid:		17 1 0		
Lõpphääletuse ajal kohal olnud liikmed	Maria Berger, Marek Aleksander Czarnecki, Monica Frassoni, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Aloyzas Sakalas, Francesco Enrico Speroni, Andrzej Jan Szejna, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka				
Lõpphääletuse ajal kohal olnud asendusliikmed	Alexander Nuno Alvaro, Brian Crowley, Adeline Hazan, Othmar Karas, Manuel Medina Ortega				
Lõpphääletuse ajal kohal olnud asendusliikmed (kodukorra art 178 lg 2)					
Esitamise kuupäev – A6	19.9.2005		A6-0268/2005		