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REPORT

on the request for waiver of the immunity of Małgorzata Handzlik
(2012/2238(IMM))

Committee on Legal Affairs

Rapporteur: Dimitar Stoyanov

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Małgorzata Handzlik

(2012/2238(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Małgorzata Handzlik, forwarded on 3 July 2012 by the Public Prosecutor of the Polish Republic in connection with Warsaw District Prosecutor's Office investigation VI DS 312/10 and announced in plenary on 10 September 2012,
 - having heard Małgorzata Handzlik in accordance with Rule 7(3) of its Rules of Procedure,
 - having also heard Giovanni Kessler, Director-General of the European Anti-Fraud Office, and Roger Vanhaeren, Director-General for Finance of the European Parliament,
 - having regard to Article 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(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0195/2013),
- A. whereas the Public Prosecutor of the Polish Republic has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Małgorzata Handzlik, in connection with an investigation and possible legal action concerning an alleged offence;
- B. whereas, under Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Members shall enjoy, in the territory of their own State, the immunities accorded to members of the Parliament of that State;
- C. whereas Article 105(2) of the Constitution of the Polish Republic provides that Members of Parliament may only be prosecuted with the Parliament's consent;
- D. whereas the request by the Public Prosecutor relates to proceedings concerning an alleged offence under the Polish Criminal Code of 6 June 1997;

¹ Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2391, Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente* [2008] ECR I-7929, Case T-42/06 *Gollnisch v Parliament* (not yet published in the ECR) and Case C-163/10 *Patriciello* (not yet published in the ECR).

- E. whereas the substantive allegation relates to the attempted infringement of Articles 270(1) and 286(1) of that code, which concern fraud and the use of forged documents respectively;
- F. whereas Małgorzata Handzlik is effectively accused of having attempted to commit fraud against the financial interests of the Union by allegedly submitting forged documents with a view to obtaining reimbursement of the costs of attending a language course which she did not in fact attend;
- G. whereas the alleged actions do not constitute opinions expressed or votes cast in the performance of the duties of the Member of the European Parliament within the meaning of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;
- H. whereas, however, given the circumstances in which the case against Małgorzata Handzlik was handled by the various authorities involved, and bearing in mind the small amount in question and the uncertain status and provenance of the evidence, there are serious doubts surrounding the procedure;
- I. whereas it therefore appears that this is a case where the existence of a *fumus persecutionis* may be assumed;
- J. whereas Ms Małgorzata Handzlik's immunity should therefore not be waived;
 - 1. Decides not to waive the immunity of Małgorzata Handzlik;
 - 2. Instructs its President to forward this decision and the report of its competent committee immediately to the Public Prosecutor of the Polish Republic and to Małgorzata Handzlik.

EXPLANATORY STATEMENT

1. Background

At the sitting of 10 September 2012, the President announced under Rule 6(2) of the Rules of Procedure that he had received a letter from the General Prosecutor's Office of the Polish Republic requesting the waiver of the parliamentary immunity of Ms Handzlik. The President referred the request to the Committee on Legal Affairs under Rule 6(2).

Ms Handzlik stands accused of having requested the European Parliament to reimburse the costs of attending a language course on the basis of the relevant provisions although she did not attend said course.

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

Articles 8 and 9 of Protocol No 7 on the immunities and privileges 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;

(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.”

Article 105 of the Constitution of the Polish Republic reads as follows:

“Article 105

1. 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.

- 2. 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.*
- 3. Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.*
- 4. A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paragraphs 2 and 3 shall not apply.*
- 5. A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.*
- 6. Detailed principles of and procedures for bringing Deputies to criminal accountability shall be specified by statute."*

Rules 6 and 7 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 shall seek primarily to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in the performance of their duties.*
- 2. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived shall be announced in Parliament and referred to the committee responsible.*

[...]

Rule 7 – Procedures on immunity

- 1. The committee responsible shall consider without delay and in the order in which they have been submitted requests for the waiver of immunity or requests for the defence of immunity and privileges.*
- 2. 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.*
- 3. 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. 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.

[...]

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.*

11. *The committee shall treat these matters and handle any documents received with the utmost confidentiality.*”

3. Justification for the proposed decision

The Public Prosecutor of the Polish Republic has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Małgorzata Handzlik, in connection with possible legal action concerning an alleged attempt to commit fraud against the financial interests of the Union by allegedly submitting forged documents with a view to obtaining the reimbursement of the costs of attending a language course which she did not, in fact, attend.

These actions would be contrary to Articles 270(1) and 286(1) of the Polish Criminal Code of 6 June 1997, which concern fraud and the use of forged documents.

The alleged actions do not constitute opinions expressed or votes cast in the performance of the duties of the Member of the European Parliament for the purposes of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union.

According to Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Members shall enjoy, in the territory of their own State, the immunities accorded to members of the Parliament of that State. Article 105(2) of the Constitution of the Polish Republic provides that Members of Parliament may only be prosecuted with the Parliament's consent.

Ms Handzlik has been heard twice in these proceedings, when she had the opportunity to voice concerns about the procedure.

The Committee also heard Giovanni Kessler, Director-General of the European Anti-Fraud Office, and Roger Vanhaeren, Director-General for Finance of the European Parliament.

The circumstances in which the case against Małgorzata Handzlik was handled, bearing in mind also the small amount concerned and the uncertain status and provenance of the evidence, have led to serious doubts as to the procedure. It would therefore appear that this is a case where the existence of a *fumus persecutionis* may be assumed.

Ms Handzlik's parliamentary immunity should therefore not be waived.

4. Conclusion

On the basis of the above considerations, after considering the reasons for and against waiving the Member's immunity, it is recommended that the European Parliament should not waive the parliamentary immunity of Małgorzata Handzlik.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	29.5.2013
Result of final vote	+ : 10 - : 0 0 : 3
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Mary Honeyball, Eva Lichtenberger