

EVROPSKÝ PARLAMENT

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KONEČNÉ ZNĚNÍ
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ZPRÁVA

o žádosti, aby byl poslanec Vladimír Železný zbaven imunity
(2005/2011(IMM))

Výbor pro právní záležitosti

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OBSAH

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NÁVRH ROZHODNUTÍ EVROPSKÉHO PARLAMENTU

o žádosti, aby byl poslanec Vladimír Železný zbaven imunity (2005/2011(IMM))

Evropský parlament,

- s ohledem na žádost, aby byl poslanec Vladimír Železný zbaven imunity, kterou pod číslem jednacím KZv 295/2003-243 předložilo dne 27. srpna 2004 Městské státní zastupitelství v Praze a která byla oznámena na plenárním zasedání dne 16. prosince 2004,
 - s ohledem na žádost o ochranu imunity, které předložil Vladimír Železný v souvislosti s trestním stíháním vedeným Městským státním zastupitelstvím v Praze a která byla oznámena na plenárním zasedání dne 16. listopadu 2004,
 - poté, co Vladimír Železný dostal v souladu s čl. 7 odst. 3 jednacího řádu možnost k vyjádření a žádal, aby nebyl zbaven poslanecké imunity;
 - s ohledem na článek 10 Protokolu o výsadách a imunitách Evropských společenství ze dne 8. dubna 1965 a na čl. 6 odst. 2 Aktu o volbě zastupitelů v Evropském parlamentu ve všeobecných a přímých volbách ze dne 20. září 1976,
 - s ohledem na rozhodnutí Soudního dvora Evropských společenství ze dne 12. května 1964 a 10. července 1986¹,
 - s ohledem na článek 27 Ústavy České republiky,
 - s ohledem na čl. 6 odst. 2 a článek 7 jednacího řádu,
 - s ohledem na zprávu Výboru pro právní záležitosti (A6-0291/2005),
1. rozhodl, že Vladimír Železný bude zbaven imunity, a to výhradně v souvislosti s probíhajícím trestním stíháním a pod podmínkou, že dokud rozsudek v tomto řízení nenabyde právní moci, nebude Vladimír Železný zadržen ani vzat do vazby a nebudou proti němu přijata žádná opatření, která by mu mohla bránit ve výkonu mandátu poslance Evropského parlamentu;
 2. pověřuje svého předsedu, aby předal toto rozhodnutí a zprávu příslušného výboru příslušnému orgánu České republiky.

¹ Věc 101/63, *Wagner v. Fohrmann a Krier*, Recueil 1964, s. 195 a věc 149/85, *Wybot v. Faure a další*, Recueil 1986, s. 2391.

VYSVĚTLUJÍCÍ PROHLÁŠENÍ

I. BACKGROUND

At the sitting of 16 December 2004, the President of the Parliament informed the House that he had received a letter from the Prague Public Prosecutor requesting the waiver of the parliamentary immunity of Dr Vladimír Železný in respect of file number KZv 295/2003-243 of the Register of the Prosecuting Attorney Office.

In accordance with Rule 6(2) of the Rules of Procedure, the President referred the request to the Committee on Legal Affairs.

The application (supplicatoire) was submitted by the Prague Public Prosecutor to the President of Parliament. Pursuant to Rule 7(7) the Committee on Legal Affairs considered that the Prague Public Prosecutor was the appropriate authority to submit the application.

The Metropolitan Prosecuting Attorney's Office is requesting the waiver of parliamentary immunity in respect of the above-mentioned file on the ground that Dr Železný is believed to have committed acts constituting evasion of taxes, duties and other contributions under Section 148(1) and (3) of the Criminal Code up to 31 December 1997 and to had acted as an accomplice under Section 9(2) of the Criminal Code. The investigation is being carried out by the corruption and financial crime unit of the criminal police. The Prague Public Prosecutor's Office, which is charged with the supervision of the pre-trial proceedings, is requesting that Dr. Železný's immunity be waived.

The application from the Prosecutor's Office explains in detail the charges brought by the police against Dr Železný (Notice to Members 2/2005).

It is stressed by the Prosecutor that, in November 2003, during the course of the criminal proceedings, Dr Železný was elected Senator . At the request of the Police authority, the Senate voted on 23 January 2003 to waive Dr. Železný's immunity and agreed to criminal proceedings against the Member.

Pursuant to Rule 7(3) of the Rules of Procedure, Dr Železný was heard by the Committee on Legal Affairs. At this hearing Dr Železný informed the committee of his views on the situation in his country with respect to him. He also delivered a written declaration translated into English with numerous annexes and exhibits.

Dr. Železný has acknowledged that when he was Senator, a request to waive his parliamentary immunity was presented by the police and that he asked the Senate to waive his immunity on the hope that it would accelerate the investigation procedure. The Senate waived the parliamentary immunity of Mr Železný apparently for the same acts as those considered at the present request.

At his appearance, Dr Železný declared that he had been a victim of political harassment and public intimidation for the last six years. He also mentioned two of the cases that the police is currently investigating (the first of them is dealt with in this report). Dr Železný asserts that the three cases are linked (the other two cases are dealt with in two other reports) between them.

In his written declaration, Dr Železný points out that the police investigation on him has been purposely protracted for years and years to keep opponents away from fair political competition. Dr Železný claims also that the cases against him are without ground and artificially perpetuated with a view to damaging his political career.

The Minister of Justice, in reply to the questions submitted by the Committee on Legal Affairs, explains most of the observations made by Dr Železný and expressed its conviction that the bodies active in criminal proceedings conducted against Dr Železný have acted in accordance with the law and have in no way been influenced by the Government or by its Members.

II. PARLIAMENTARY IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT: TEXTS AND PRINCIPLES

1. Article 10 of the Protocol of the Privileges and Immunities of the European Communities⁽¹⁾, annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities⁽²⁾, which incorporates the provisions of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, reads as follows:

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 States, 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.

⁽¹⁾ See also Article 9 of this Protocol: '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.'

⁽²⁾ Referred to in Article 4(2) of the Act concerning the election of representatives of the European Parliament by direct universal suffrage of 20 September 1976.

2. The charges brought against Dr Vladimír Železný, a Czech MEP, relate to events that took place within the territory of the Czech Republic. Dr Železný therefore enjoys the same immunities as those granted to Members of the Czech Parliament, as based on Article 26 of the Czech Constitution.
3. The procedure to be followed by the European Parliament is laid down in Rules 6 and 7 of the Rules of Procedure.
4. Ever since its Members have been elected by direct suffrage, Parliament has responded to applications for the parliamentary immunity of its Members to be waived. Certain general principles have emerged from Parliament's deliberations; these were given recognition in the resolution adopted at the sitting of 10 March 1987⁽¹⁾ on the basis of Mr Donnez's report on the draft Protocol revising the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 in respect of Members of the European Parliament (A2-121/86). □
5. It seems useful to remind the principles that are applicable to the case under consideration, stressing the need for decisions on waivers of immunity to have a sound legal basis so that they are not influenced by considerations relating to political affiliation and even the nationality of the Member concerned.

A. Purpose of parliamentary immunity

Parliamentary immunity is not a Member's personal privilege, but a guarantee of the independence of Parliament and its Members in relation to other authorities. On the basis of this principle, the date on which the alleged deeds took place is of no importance and may be either prior to or subsequent to the election of the Member, since protection of Parliament through its Members is the sole consideration.

B. Time limit on immunity

The Court of Justice has twice been consulted on the interpretation of the phrase 'during the sessions of the European Parliament', which appears in Article 10 of the Protocol on the Privileges and Immunities of the European Communities.

From the two judgements of the Court (Wagner v Fohrmann and Krier of 12 May 1964, 101/63, ECR 1964, p. 397, and Wybot v Faure of 10 July 1986, 149/85, ECR 1986, p. 2403), it may be inferred that Parliament holds an annual session during which its Members, even during the periods when the session is interrupted, enjoy the immunity provided for in the above Protocol.

Furthermore, it stems from the very purpose of parliamentary immunity that the latter remains effective throughout a Member's term of office and covers the

⁽¹⁾ OJ No C 99, 13.4.1987, p. 44

commencement of the proceedings, preparatory inquiries, measures for the execution of pre-existing judgements, appeals or applications for judgments to be set aside.

C. Independent nature of European parliamentary immunity compared with national parliamentary immunity

The fact that Article 10, first paragraph, section (a), of the Protocol refers to the immunities accorded to members of national parliaments does not mean that the European Parliament cannot create its own rules which, in some way, constitute 'case law'. As regards the waiver of parliamentary immunity, such immunity, which is identical for Members of a given nationality in their national parliament and in the European Parliament, must not be confused with the waiver thereof, which is a prerogative of each individual parliament. These rules, which are derived from decisions adopted in respect of applications for immunity to be waived, create a consistent notion of European parliamentary immunity which, in general terms, is independent of the various national parliamentary procedures. If this were not the case the disparities between members of one and the same parliament would be accentuated on the basis of their nationality.

6. Through application of these principles, a constant factor has emerged in Parliament's decisions, which has become a basic criterion in its response to each request for waiver of immunity. Immunity is not waived in any case where a Member is accused of actions that come under the heading of political activity. Along with this criterion, there are further considerations that militate for or against waiver of immunity such as fumus persecutionis, i.e. the presumption that criminal proceedings have been brought with the intention of causing the Member political damage (for instance, proceedings based on anonymous accusations, requests made a long time after the alleged facts, etc.), and charges of a particularly serious nature.

III GROUNDS FOR THE PROPOSAL FOR A DECISION

1. Article 9 of the PPI obviously does not apply in this case. Absolute immunity, or inviolability provisions, apply only " to opinions or votes cast by (Members) in the performance of their duties". Although it is possible to conceive of circumstances in which Article 9 might apply to a Member in his own country (delegation or meeting of one of EP's committees, group meeting, etc), the facts and alleged criminal offences put forward by the Czech authorities cannot be considered as falling under the scope of this article.
2. Consequently, Article 10(a), of the Protocol must apply to the facts set in part I of this explanatory statement. It provides that *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 parliamen.*
3. Under Article 27 (2) of the Czech Constitution:

(2) No Deputy or Senator may be criminally prosecuted for statements made in the

Chamber of Deputies or in the Senate, or in their bodies. A Deputy or a Senator shall be subject only to the disciplinary jurisdiction of the chamber of which he or she is member.

This article is very clear in saying that it is up to the appropriate chamber to waive the immunity of a deputy or a senator before he or she may be criminally prosecuted. The criminal prosecution seems to include police investigations and the Chamber is not bound by any limitation with a view to granting or granting not immunity.

4. In the case of Dr Železný it is clear from the information provided by the Czech Senate that that Chamber gave its consent to the criminal prosecution of Senator Železný for acts which are the same that now are described in the application of the Prague Court.

The fact of that the Senate has already waived Dr Železný immunity is, in accordance with Article 10 (a) of the IPP, a patent indication that he does not enjoy parliamentary immunity in the territory of his own state. This could be enough for the European Parliament to waive the immunity of one of its Members (provided that he or she is not protected by Article 9 of the IPP).

5. Nevertheless and as pointed out in Part II. C, even though the members of the national parliament (here the Czech parliament) and Members of the European Parliament from the Member State in question enjoy the same immunities (or none, as it is the case for MEPs from UK), whether to waive the immunity at a particular case depends on the European Parliament.

In Dr Železný's declares that his prosecution in this case (and in the two other cases) is politically motivated.

The European Parliament has to look into these allegations and decide whether there is or there is not evidence of *fumus persecutionis* on this case. This is the key issue here.

6. As has been declared many times by Parliament, *immunity is not waived where the suspicion exists that the prosecution is based on the intention to prejudice the Member's political activities.* The non existence of any *fumus* is *conditio sine qua non* for waiving immunity. as mentioned in Part II C.

Who is supposed to assert the suspicion of *fumus*? The obvious answer is Parliament, and before Parliament, its competent committee.

How can such a conviction be arrived at with a certain degree of assurance?
The persuasion of the Members of the committee, in doubtful, unclear cases, is always an intimate belief that, nevertheless, has to be founded on the soundest possible facts.

By the way of examples, in past legislatures, the competent committee has taken into consideration the following factors:

- the anonymous character of the denunciation, complaint or accusation¹ ;
- the deferred submission of the accusation in relation to the date of the alleged acts²;
- an apparent link between the date of the accusation or denunciation and the Member's election to Parliament³;
- the fact that legal proceedings were brought against the Member alone when more than one person could be considered liable or responsible⁴;
- cases where the accusation was evidently unfounded (for instance, where it concerned decisions for which the Member was not responsible or where no evidence existed of his involvement in the reputed action) or there was an obvious aim to penalise the Member for his political activities⁵.

7. Throughout the fifth legislature, the practice in the Committee on Legal Affairs and the Internal Market followed these guidelines, enriching them when necessary.

Parliament decided not to waive the immunity in eight cases where the suspicion of *fumus persecutionis* was fully considered or was an important element of the decision. Sometimes it was not strongly evidenced.

These cases were the following: BRIE (A5-0151/00), PASCUA (A5-0032/02) and MARCHIANI (A5-0033/02), KORAKAS (A5-0245/02 et A5-0420/03), COHN-BENDIT (A5-246/03) and MARCHIANI (A5-0422/03 et A5-0423/03). In a total of eight cases the committee considered that *animus persecutionis* was present to different degrees.

In most cases Parliament found perturbation of a political activity (BRIE), abusive elements in the prosecution process and the conduct of the prosecutor (MARCHIANI cases), or the consideration that the Member was judicially attacked *because* he was a MEP (KORACAS case).

8. Dr Železný's case is of a certain intricacy. The committee has to weigh, on one hand, the suspicion cast by the Member on the accusations brought against him by the Czech authorities, and, on the other hand, the fact that the Senate has already waived his immunity in the same case and all the satisfactory responses and assurances furnished by the Minister of Justice, which has fully collaborated with the Committee on Legal Affairs.
9. Nevertheless, there are certain aspects to the case, as pointed out by Dr Železný (some disproportionate reaction from the police on his arrest, the rather obscure situation of other main accused, Mr Novotný in the first case brought before the Prague Court, certain police harassment and the length of the proceedings), that have demanded a thorough exam by the committee, but, as said above, the response from the Senate and

¹ Doc. 1-321/81

² A3-0021/93, A3-0169/93, A5-246/03

³ Doc-1-321/81

⁴ A2-0090/88, A5-246/03

⁵ A3-0247/90, A3-0076/92, A3-0077/92

the explanations from the Minister of Justice make the rapporteur inclined to advise Parliament to waive the immunity of Dr Železný.

Moreover, none of the criteria set out in point 6 and 7 of this explanatory statement has been clearly established in the present case, which makes it very difficult to appreciate whether there is a *fumus persecutionis*.

10. It is in the interest of Parliament to use the *fumus* principle very carefully so it is not seen as a privilege of the parliamentarian but a guarantee of Parliament's independence. In this complex case it might be in Parliament interest to allow Dr Železný to defend himself in the cases brought against him.

But, also, and given the convoluted nature of the case, it might be necessary for Parliament to secure the situation of Dr Železný so that the proceedings against him do not perturb his work as an MEP.

- 11 The Judge has stated that "Dr Železný remains at liberty and there is no ground for his imprisonment, and nothing prevents him from continuing to perform his duties". It does not seem that the nature of the counts brought against him would need such a precautionary measures.

With a view to ensure that his work as a parliamentarian is not perturbed during the proceedings brought against him, Parliament may use the right exceptionally granted by Rule 7 (4) of the Rules of Procedure.

It has to be absolutely clear that this precludes any form of detention or any other measure which prevents the Member from performing his duties as a parliamentarian but only until final judgment is given by the Court. It means that once final judgment is passed in this case, Dr Železný will have to face it in the same way as any other citizen without there be any need to request again the waive of his immunity.

The effect of Rule 7 (4) is that immunity is waived and so the proceedings may go on, but no measure hampering the Member from performing his duties is allowed until the final sentence is passed. Final sentence also covers any appeal until all avenues of appeal are exhausted.

IV CONCLUSION

In the light of the above considerations, pursuant Rule 7(1) and (2) of the Rules of Procedure, after having considered the arguments for and against waiving immunity, the JURI recommends that the EP waive Mr Vladimír Železný's parliamentary immunity, subject to the condition that the waiver of immunity shall apply solely to the prosecution proceedings and that, until such time as final sentence is given, Dr Železný must be

immune from any form of detention or remand or any other measure which prevents him from performing the duties attaching to his mandate as a Member of the European Parliament.

POSTUP

Název	Žádost, aby byl poslanec Vladimír Železný zbaven imunity		
Číslo postupu	2005/2011(IMM)		
Žádost o zbavení imunity, kterou předložilo	Městské státní zastupitelství v Praze		
Datum předložení	27.8.2004		
Datum oznámení na zasedání	16.12.2004		
Příslušný výbor	JURI		
Datum oznámení na zasedání	16.12.2004		
Právní základ	čl. 6 odst. 2 a článek 7		
Zpravodaj	Maria Berger		
Datum jmenování	19.1.2005		
Předchozí zpravodaj			
Projednáni ve výboru	14.9.2005	5.10.2005	6.10.2005
Datum přijetí	6.10.2005		
Výsledek závěrečného hlasování	pro:	17	
	proti:	0	
	zdrželi se:	0	
Členové přítomní při závěrečném hlasování	Maria Berger, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Hans-Peter Mayer, Aloyzas Sakalas, Daniel Stroj, Andrzej Jan Szejna, Diana Wallis, Rainer Wieland, Nicola Zingaretti, Jaroslav Zvěřina		
Náhradníci přítomní při závěrečném hlasování	Nicole Fontaine, Toine Manders, Manuel Medina Ortega		
Náhradníci (čl. 178 odst. 2) přítomní při závěrečném hlasování			
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