

EUROOPA PARLAMENT

2004



2009

Istungidokument

LÕPLIK
A6-0330/2005

22.11.2005

RAPORT

Euroopa Parlamendi endise liikme Andrzej Pęczaki puutumatus ja privileegide kaitse taotlus
(2005/2128(IMM))

Õiguskomisjon

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EUROOPA PARLAMENDI OTSUSE ETTEPANEK

Euroopa Parlamendi endise liikme Andrzej Pęczaki puutumatus ja privileegide kaitse taotluse kohta (2005/2128(IMM))

Euroopa Parlament,

- võttes arvesse Andrzej Pęczaki poolt 18. aprillil 2005. aastal esitatud ja 25. mai 2005. aasta täiskogu istungil teatavaks tehtud taotlust kaitsta tema puutumatus seoses tema vastu Poolas Łódži ringkonnakohtus algatatud kriminaalasjaga;
 - võttes arvesse 8. aprilli 1965. aasta Euroopa ühenduste privileegide ja immunitetide protokollis artikleid 8, 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 kodukorra artikli 6 lõiget 3 ja artiklit 7;
 - võttes arvesse õiguskomisjoni raportit (A6-0330/2005),
- A. arvestades, et Andrzej Pęczak valiti 23. septembril 2001 Poola parlamenti (Sejmi); arvestades, et pärast ühinemislepingu allkirjastamist 16. aprillil 2003 sai temast vaatleja; arvestades, et ta oli 1. maist 2004 kuni 19. juulini 2004 Euroopa Parlamendi liige; arvestades, et tema ametiaeg Poola parlamendis lõppes 19. oktoobril 2005;
- B. arvestades Andrzej Pęczaki kaebust, et Poola prokuratuur rikkus menetluse käigus seadust ning et tema vahistamisel ja vahi all pidamisel, samuti eelvangistuse hilisematel pikendamistel on poliitilised põhjused;
- C. arvestades Andrzej Pęczaki kaebust, et tema vastu algatatud kriminaalmenetlus on vastuolus süütuse presumptsiooniga ning et tema vahistamise ja eelvangistuse tingimused piiravad tema võimet ennast kaitsta;
- D. arvestades Andrzej Pęczaki kaebust, et menetlus, mille abil Sejm temalt puutumatuse ära võttis, oli "õigustühine" ning põhines ajakirjanduses ilmunud materjalidel ning et tema poolt erinevatele isikutele (nt ombudsmanile) saadetud meetmettepanekud ei andnud tulemust;
- E. arvestades, et saadud teabe põhjal ei ole Andrzej Pęczakil parlamendiliikme puutumatus seoses ühegi nõudega, millele on Euroopa Parlamendi presidendi tähelepanu juhitud,
1. otsustab mitte kaitsta Andrzej Pęczaki puutumatus ja privileege;

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

EXPLANATORY STATEMENT

I. Facts of the case

1. Andrzej Pęczak was elected Member of the Polish Parliament (Sejm) on 23 September 2001 from the list of Sojusz Lewicy Demokratycznej (Left Democratic Alliance party - SLD). Having been delegated by the Sejm as an Observer to the European Parliament after the signature of the Accession Treaty on 16 April 2003, Mr Pęczak became a Member of the EP for the period from 1 May 2004 to 19 July, when the first sitting of the Parliament elected in June 2004 took place. From then on he was a Member of Polish Parliament until 19 October 2005, when the first sitting of newly elected Sejm took place.

On 22 October 2004, the Public Appeal Prosecutor in Łódź applied for the waiver of the immunity of Mr Pęczak and the request was transmitted to the Sejm by the General Prosecutor on 27 October 2004. The Polish Parliament decided to agree to Mr Pęczak's arrest on 19 November 2004, following which the criminal proceedings were brought against him before the District Court in Łódź.

2. According to Mr Pęczak's letter, the Polish Public Prosecutor's office violated the law by sending the first request to waive his immunity in June 2004 only to the Polish Parliament Marshal, and not to the European Parliament as well. That request had no further effect.

Moreover, Mr Pęczak considers, that "the Public Prosecutor did not have the right to apply for [his] provisional arrest to be approved, as, under Polish law, such a measure can be decided exclusively by the competent court". With regard to the District Court's decisions on his detention and arrest as well as the subsequent extensions of his provisional arrest, he complains about the politically motivated influence of the Prosecutor's office over the Court, resulting in the breach of the presumption of innocence.

Mr Pęczak also claims that the conditions of his detention and arrest intentionally limit his ability to defend himself, and that the example of his case (including a two-month period waiting for a blood test to be made on medical grounds) puts into question the fundamental rights of an ordinary Polish citizen.

Finally, he maintains that he is unaware of the reasons for the extension of his arrest, as the Public Prosecutor's office applied for its extension on the grounds of a "strong intention to present new charges". Mr Pęczak has not informed the European Parliament of the charges brought against him, referring only in general terms to the pre-election¹ "ostentatious show of principle in the fight against corruption".

3. Mr Pęczak claims that the simplified procedure by which the Sejm waived his immunity was "legally invalid". Moreover, he considers that its decision was influenced by the 'public verdict' based on mass media publishing certain "unsubstantiated evidence" from the inquiry.

¹ The parliamentary elections in Poland took place on 25 September 2005 and the Presidential elections on 9 and 23 October 2005.

Mr Pęczak insists that because the Sejm's decision was not included in the Prosecutor's application file sent to the District Court, the latter's approval of detention and arrest were illegal. He complains also about the Regional Court's decision to uphold the ruling, regardless of the fact that it discovered that the Prosecutor's office had supplied the relevant documents only 33 days after the detention.

Finally, he states that neither the guarantees offered by public figures (*no names mentioned in his letter*), nor the letters sent to the Marshal of the Sejm and the Ombudsman, have had any effect for his case.

In conclusion, Mr Pęczak asks for the defence of his parliamentary immunity in order that he may not be prosecuted. Otherwise he claims not to be able to "exercise [his] right to be presumed innocent" and defend himself in the criminal proceedings.

II. Procedure

1. The relevant provisions of the Rules of Procedure are Rules 6 and 6a, in particular Rule 6(1) and (3):

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.

3. Any request addressed to the President by a Member or a former Member to defend privileges and immunities shall be announced in Parliament and referred to the committee responsible.'

2. As the President of Parliament considered that Andrzej Pęczak had opened the procedure for defending his immunity, as laid down in the above-mentioned Rules, the request was announced in Parliament.
3. The formal requirements have therefore been met for the matter to be referred to the Committee on Legal Affairs.

III. Applicable provisions

1. Articles 8, 9 and 10 of the Protocol on the privileges and immunities of the European Communities (PPI)¹

¹ The protocols annexed to the original Treaties form part of primary Community law and have the same legal status as the Treaties themselves. The judgment in a case concerning the liability of Community officials for property tax made clear that a breach of the provisions of the PPI represented a breach of the obligations arising out of the Treaties (judgment of 24 February 1988, *Commission v Belgium*, Case 260/86, ECR. 966).

Those articles read as follows:

Article 8

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;*
- b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.*

Article 9

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 10

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.

2. In order to assess the possible infringement of the PPI, it is useful to call to mind two pertinent facts:

a) It is not possible to say that the charges brought against Mr Pęczak, which are at the origin of his detention and provisional arrest, refer to opinions expressed or votes cast in the performance of his duties as a MEP (May - July 2004). Mr Pęczak does not claim that in his letter. The information available suggest that the proceedings concern corruption practices in the period before the time when he was Member of the European Parliament. According to various media reports, Mr Pęczak is charged with

receiving in April 2004 up to 500 000 PLN (125 000€ being the value of a luxury Mercedes car placed at his disposal) for arranging certain outcomes in the privatisation process of the Polish energy sector.

b) The Polish Parliament (Sejm) adopted the decision to waive Mr Pęczak's immunity on 19 November 2004 in response to an application from the Public Prosecutor's office issued on 22 October 2004 and transmitted to the Sejm on October 27th. At that time Mr Pęczak was not a Member of the European Parliament.

3. It is appropriate to consider how the above-mentioned facts and allegations square with the privileges and immunities granted by Chapter III, Articles 8 to 10 b) of the PPI:

1) Article 8, first paragraph grants MEPs the privilege of free movement (in respect of customs and exchange control) when travelling to or from the place of meeting of the European Parliament. This protection is granted only to Members during the period of their mandate and not afterwards. The letter of Mr Pęczak does not claim this privilege and it is, in any event, clearly not applicable.

2) Article 9 grants inviolability to Members *in respect of opinions expressed or votes cast by them in the performance of their duties*. This protection extends beyond the duration of the mandate but always within the restricted scope expressed by the plain language of the Article. What is protected is Member's opinions or votes in Parliament, even when they are not physically within the premises of the House, but always when they are acting entirely as parliamentarians. Mr Pęczak makes no reference to any of the indicated areas of activity protected, although he mentions some documents of his parliamentary work in the Sejm and NATO Assembly being seized by the Public Prosecutor's office as evidence. Article 9 is therefore not applicable to Mr. Pęczak.

3) Article 10 declares that *[d]uring 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...*

As it can clearly be established, the criminal proceeding against Mr Pęczak in Poland, setting aside his reference to the Prosecutor's application in June 2004, took place after he was a Member of the EP. Moreover, the Polish parliament (of which he was Member since 1997, elected for his second term in 2001) has waived his national parliamentary immunity in accordance with the Polish Constitution (Art. 105 par. 1) and its Rules of Procedure. Doubts about the legality of the proceedings before the District Court should be resolved by the Polish judiciary within the available legal means. They are, in any case, beyond the possible scope of action to be taken by the European Parliament.

Mr Pęczak claimed that there is a political motivation of the charges brought against him (*fumus persecutionis*). As he is no longer a Member of the European Parliament, his allegation of being politically prosecuted cannot be examined by the Committee on Legal Affairs. It belongs to the Polish Courts to evaluate it and, ultimately, judge it.

Moreover, it is difficult to imagine Article 10 being applicable to former Members of Parliament. No case-law exists for this situation. When a Member ceases to be an MEP, it is possible that he needs to be defended from an attack against him for an opinion or a vote in Parliament (that is why Rule 6§3 provides for that situation) but it is difficult to extend the protection beyond Article 9 of the Protocol. Article 8 and 10 seem to be limited by the jurisprudence of the Court of Justice and the case-law of the Committee on Legal Affairs to active Members of Parliament during parliamentary sessions.

IV. Conclusion

On the basis of the above considerations and pursuant to Article 6(3) of the Rules of Procedure, after considering the reasons for and against defending the former Member's immunity, the Committee on Legal Affairs recommends that the European Parliament should not defend the parliamentary immunity of Andrzej Pećzak.

MENETLUS

Pealkiri	Euroopa Parlamendi endise liikme Andrzej Pęczaki puutumatus ja privileegide kaitse taotlus	
Menetluse number	2005/2128(IMM)	
Puutumatus ja privileegide kaitse taotlus	esitaja	Andrzej Pęczak
	taotluse esitamise kuupäev	18.4.2005
	istungil teada andmise kuupäev	25.5.2005
Vastutav komisjon	JURI	
	istungil teada andmise kuupäev	25.5.2005
Menetlusalus	art 6 lg 3 ja art 7	
Raportöör	Maria Berger	
	nimetamise kuupäev	15.6.2005
Endine raportöör		
Arutamine komisjonis	13.7.2005	14.9.2005
Vastuvõtmise kuupäev	21.11.2005	
Lõpphääletuse tulemused	poolt:	13
	vastu:	0
	erapooletuid:	0
Lõpphääletuse ajal kohal olnud liikmed	Maria Berger, Bert Doorn, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Aloyzas Sakalas, Nicola Zingaretti, Tadeusz Zwiefka	
Lõpphääletuse ajal kohal olnud asendusliikmed	Jean-Paul Gauzès, Eva Lichtenberger, Manuel Medina Ortega, Marie Panayotopoulos-Cassiotou, Michel Rocard	
Lõpphääletuse ajal kohal olnud asendusliikmed (kodukorra art 178 lg 2)		
Esitamise kuupäev – A6	22.11.2005	A6-0330/2005