

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0008/2009

22.1.2009

REPORT

on the request for waiver of the immunity of Miloslav Ransdorf
(2008/2176(IMM))

Committee on Legal Affairs

Rapporteur: Aloyzas Sakalas

CONTENTS

	Page
PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	3
EXPLANATORY STATEMENT	4
ANNEX: Article 27(4) of the Czech Constitution.....	4
RESULT OF FINAL VOTE IN COMMITTEE.....	4

PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Miloslav Ransdorf (2008/2176(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Miloslav Ransdorf, forwarded by the competent authority of the Czech Republic on 16 June 2008, and announced in plenary sitting on 9 July 2008,
 - having heard Miloslav Ransdorf in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Article 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities, 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 12 May 1964 and 10 July 1986¹ of the Court of Justice of the European Communities,
 - having regard to Article 27(4) of the Czech Constitution,
 - having regard to Rules 6(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0008/2009),
- A. whereas Miloslav Ransdorf is a Member of the European Parliament who was elected in the sixth direct elections of 10 to 13 June 2004 and whereas his credentials were verified by Parliament on 14 December 2004²,
- B. whereas, according to Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, during the sessions of the European Parliament its Members enjoy in the territory of their own State the immunities accorded to members of their parliament; whereas immunity cannot be claimed when a Member is caught in the act of committing an offence; and whereas this does not prevent the European Parliament from exercising its right to waive the immunity of one of its Members,
- C. whereas, according to Article 27(4) of the Czech Constitution, no Member of Parliament or Senator may be criminally prosecuted without the consent of the chamber of which he or she is member and, if the respective chamber denies its consent, criminal prosecution shall be excluded forever,

1. Decides to waive the immunity of Miloslav Ransdorf;

¹ Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195 and Case 149/85 *Wybot v Faure and others* [1986] ECR 2391.

² European Parliament Decision 2004/2140(REG) on the verification of credentials (OJ C 226 E, 15.9.2005, p. 51).

2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the appropriate authorities of the Czech Republic.

EXPLANATORY STATEMENT

I. BACKGROUND

1. On 9 July 2008, pursuant to Rule 6(2) of the Rules of Procedure, the President of Parliament forwarded to the Chairman of the Committee on Legal Affairs a letter from Commissioner J. Páda of the Police of the Czech Republic (Prague City Department, Criminal Police and Investigation Service, Road Accident Investigation Section) enclosing a request for the waiver of Mr Miroslav Ransdorf's parliamentary immunity for the purposes of a criminal prosecution.

2. According to the Czech authorities, on 8 June 2007, Mr Ransdorf was driving a private car in Prague 6 when he struck and injured a female pedestrian at a zebra crossing who sustained injuries which constituted bodily harm. By his action, Mr Ransdorf contravened the provisions of paragraph 5/1h of Law No 361/2000 Coll. on the road traffic act. This is a case of reasonable suspicion that a criminal act - injury to health - was committed under paragraph 223 of Law No 140/1961 Coll. - the Criminal Code, which states: "*A person who injures another's health through negligence, by breaching an important duty arising from his employment, profession, position or office or a duty imposed by law, shall be punished by a term imprisonment of up to one year or prohibition of a (specific) activity.*" Any person who himself commits a criminal act becomes an offender under the Criminal Code (paragraph 9). The provisions of paragraph 65 of the Criminal Code on the cessation of the danger represented by a criminal act to society, pursuant to which "*The liability to punishment for an act which was dangerous to society when it was committed shall extinguish if, because of a change in the situation or person of the offender, the danger represented by such criminal act to society has passed.*" may not be used in this case. Under paragraph 67/1d of the Criminal Code, the period of limitation is three years.

II. LAW AND GENERAL CONSIDERATIONS ON THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT

1. Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, read as follows:

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 other Member States, immunity from any measure or 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. The procedure in the European Parliament is governed by Articles 6 and 7 of the Rules of Procedure. The relevant provisions 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 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.

(...)

Rule 7 - Procedure 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 decision which simply 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 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; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.

4. Where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate decision. 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.

(...)

6. In cases concerning the defence of immunity or privileges, the committee shall state whether the circumstances constitute an administrative or other restriction imposed on the free movement of Members travelling to or from the place of meeting of Parliament or an opinion expressed or a vote cast in the performance of the mandate or fall within aspects of Article 10 of the Protocol on Privileges and Immunities which are not a matter of national law, and shall make a proposal to invite the authority concerned to draw the necessary conclusions.

7. The committee may offer a reasoned opinion about the competence of the authority in question and about 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.
(...)

III. JUSTIFICATION OF THE PROPOSED DECISION

1. First and foremost, the applicability of Article 9 of the Protocol is obviously out of question for the evident reason that in no way can personal injuries caused by a car driver be equated with the opinions expressed or the votes cast in the performance of the duties of a Member of the European Parliament.

2. As for Article 10, given that the charges brought against Mr Ransdorf refer to facts committed in the Czech Republic, whose citizenship he enjoyed at that moment, the only applicable part is the following: "*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*".

3. The scope of the parliamentary immunity in the Czech Republic is very similar to the one that serves the functioning of the European Parliament as based on the Protocol on the Privileges and Immunities. In particular, Law No 141/1961 Coll. - the Criminal Code, paragraph 10 relating to exclusion from the jurisdiction of the bodies competent for criminal proceedings, states: "*Persons enjoying privileges or immunities under national law or international law shall be excluded from the jurisdiction of the bodies competent for criminal proceedings under this code.*" Furthermore, Article 27(4) of the Czech Constitution provides that "*No Deputy or Senator may be criminally prosecuted without the consent of the chamber of which he or she is member. If the respective chamber denies its consent, criminal prosecution shall be excluded forever*". In other words, under current Czech laws, criminal proceedings may be initiated against Mr Ransdorf only on condition that his immunity be waived.

4. Following its established practice, the European Parliament could decide not to waive the immunity of one of its Members if a suspicion existed that the prosecution was based on an intention to prejudice the Member's political activities (*fumus persecutionis*). However, there is no clear evidence to that effect in this case.

IV. CONCLUSIONS

On the basis of the above considerations, the Committee on Legal Affairs, having examined the reasons for and against waiving his immunity, recommends that the immunity of Mr Miroslav Ransdorf should be waived.

ANNEX: Article 27(4) of the Czech Constitution

Article 27(4) of the Czech Constitution reads:

"No Member of Parliament or Senator may be criminally prosecuted without the consent of the chamber of which he or she is member. If the respective chamber denies its consent, criminal prosecution shall be excluded forever."

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	19.1.2009
Result of final vote	+: 8 -: 0 0: 0
Members present for the final vote	Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka