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REPORT

on the request for waiver of the immunity of Tamás Deutsch
(2010/2123(IMM))

Committee on Legal Affairs

Rapporteur: Francesco Enrico Speroni

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Tamás Deutsch (2010/2123(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Tamás Deutsch, forwarded by the Hungarian judicial authorities on 9 June 2010 and announced in plenary sitting on 8 July 2010,
 - having heard Tamás Deutsch in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Articles 8 and 9 of the Protocol of 8 April 1965 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 and 21 October 2008¹,
 - having regard to Section 10(2) of Act LVII of 2004 on the legal status of Hungarian Members of the European Parliament, Section 5(1) of Act LV of 1990 on the legal status of Members of the Hungarian Parliament and Section 12(1) of Act LVII of 2004,
 - having regard to Rules 6(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0015/2011),
- A. whereas criminal proceedings have been brought by a Hungarian citizen against Tamás Deutsch, a Member of the European Parliament, who is accused in the Court of the 2nd and 3rd Districts of Budapest of defamation under Section 179(2)(b-c) of the Hungarian Criminal Code,
- B. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, 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 Section 10(2) of Act LVII of 2004 on the legal status of Hungarian Members of the European Parliament, a Member of the European Parliament is accorded the same immunity as a Member of the Hungarian Parliament,

¹ Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2391 and Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente*, not yet reported in the European Court Reports.

- D. whereas according to Section 5(1) of Act LV of 1990 on the legal status of Members of the Hungarian Parliament, criminal proceedings may be launched or pursued against the Member only with the prior consent of the Hungarian Parliament and pursuant to Section 12(1) of Act LVII of 2004 the European Parliament shall decide on the suspension of the immunity of a Member of the European Parliament,
- E. whereas Mr Deutsch is charged with an offence of defamation allegedly committed as a result of statements made about the accuser in the course of a radio programme broadcast on 25 March 2010 to which he was invited in his capacity as a politician and a Member of the European Parliament,
- F. whereas it is therefore appropriate to state that Mr Deutsch expressed opinions in the performance of his duties as the Member of the European Parliament,
1. Decides not to waive the immunity of Tamás Deutsch;
 2. Instructs its President to forward this decision and the report of its competent committee immediately to the appropriate authority of the Republic of Hungary.

EXPLANATORY STATEMENT

I. FACTS

At the sitting of 8 July 2010 the President announced, under Rule 6(2) of the Rules of Procedure, that he had received a letter sent by the Hungarian judicial authorities on 9 June 2010 requesting the waiver of the parliamentary immunity of Tamás Deutsch.

The President referred the request to the Committee on Legal Affairs under Rule 6(2).

The Court of the 2nd and 3rd Districts of Budapest asked the European Parliament to waive the immunity of its Member, Tamás Deutsch, against whom criminal proceedings are being brought in that court. Tamás Deutsch is accused in the proceedings pending in the Budapest Court of the criminal offence of defamation under Section 179(2)(b-c) of the Hungarian Criminal Code.

The case against Tamás Deutsch is that during a radio programme "Let's discuss it" (Megbeszéljük) broadcast on the "Klubradio" radio station on 25 March 2010 Tamás Deutsch expressed a number of allegedly untrue statements concerning the past of the accuser and considered by him to be defamatory. Accordingly, the accuser brought the criminal proceedings against Tamás Deutsch.

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

1. Articles 8 and 9 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965, 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 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.*
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 - 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.*

(...)

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. GENERAL CONSIDERATIONS AND JUSTIFICATION FOR THE PROPOSED DECISION

In view of the above, the request by the Court of the 2nd and 3rd District of Budapest should be treated as a request for a decision of the European Parliament to waive the immunity of Tamás Deutsch so that he can be subjected to criminal liability, as is possible under Hungarian law.

As far as the applicability of Article 8 of the Protocol is concerned, it should be noted that the charges brought against Tamás Deutsch refer to opinions expressed in the performance of his duties as a member of the European Parliament.

As for Article 9, given that the charges brought against Tamás Deutsch refer to an offence allegedly committed in Hungary, whose citizenship he enjoyed at the material time, the only applicable part is the one pursuant to which '*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*'.

It has to be argued that there is a nexus between Mr Deutsch's political activity and the statements made on the radio programme. As a matter of fact, in his statements reported in the writ of summons filed by the accuser Mr Deutsch merely commented on facts in the public domain based on documents which were published in the summer of 2002 in the *Népszabadság* newspaper. The accuser claims that those documents were forgeries as their content did not conform to the truth and that he informed the press of the contradictions in the documents in the *Magyar Nemzet* newspaper on 22 August 2002 and has continued to do so since then. It should also be observed that the comments pertained to Hungarian political life and, as stated by Mr Deutsch, referred also to EU affairs in that the accuser ran for an important EU office. It must be concluded therefore that in commenting on that he was carrying out his duty as a Member of Parliament in expressing his opinion on a matter of public interest to his constituents.

In short, Mr Deutsch was carrying out his duty as a Member of Parliament. To seek to gag Members of Parliament from expressing their opinions on matters of legitimate public interest and concern by bringing legal proceedings is unacceptable in a democratic society and in breach of Article 9 of the Protocol, which is intended to protect Members' freedom of expression in the performance of their duties in the interests of Parliament as an Institution.

On the basis of the foregoing and the available documents, it has to be concluded that Tamás Deutsch's immunity should not be waived.

IV. CONCLUSION

On the basis of the above considerations and pursuant to Article 6(2) of the Rules of Procedure, after considering the reasons for and against waiving the Member's immunity, the Committee on Legal Affairs recommends that the European Parliament should not waive the parliamentary immunity of Tamás Deutsch.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.1.2011
Result of final vote	+: 13 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Marielle Gallo, Klaus-Heiner Lehne, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sajjad Karim, Eva Lichtenberger