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REPORT

on the request for waiver of the immunity of Ágnes Hankiss
(2010/2213(IMM))

Committee on Legal Affairs

Rapporteur: Diana Wallis

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Ágnes Hankiss (2010/2213(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Ágnes Hankiss, forwarded by the Central District Court of Buda on 6 July 2010 and announced in plenary sitting on 6 September 2010,
 - having heard Ágnes Hankiss on 11 April 2011 in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Article 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, 15 and 21 October 2008 and 19 March 2010¹,
 - having regard to Rules 6(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0196/2011),
- A. whereas the Central District Court of Buda, Budapest, has requested the waiver of immunity of Ágnes Hankiss, a Member of the Parliament, in order to conduct renewed criminal proceedings against Ágnes Hankiss as ordered by the judgment of the Supreme Court of the Republic of Hungary,
- B. whereas the waiver of the immunity of Ágnes Hankiss relates to an alleged offence of defamation under Section 181 of the Hungarian Criminal Code as a result of a statement made during the programme ‘*Péntek 8 mondatvadász*’ on 23 January 2004,
- C. whereas Ágnes Hankiss was accused by a private plaintiff in an accusation dated 18 February 2004 and submitted to the Central District Court of Buda on 23 February 2004; whereas the Central District Court of Buda gave its judgment on 28 June 2005, which was then appealed against in the Budapest Municipal Court and annulled by that Court on 3 February 2006,
- D. whereas as a result the case was referred back to the Central District Court of Buda, which acquitted Ágnes Hankiss of the charges on 6 February 2009; whereas an appeal was brought by the plaintiff against this judgment in the Budapest Municipal Court, which on 25 March 2009 decided to uphold the judgment of the District Court on all its grounds,

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, and case T-42/06 *Gollnisch v Parliament*.

- E. whereas on 12 November 2009 the Supreme Court of the Republic of Hungary annulled both judgments on the grounds of breach of substantive law and instructed the Central District Court of Buda to conduct new proceedings,
- F. whereas Ágnes Hankiss has been a Member of the Parliament since 15 July 2009,
- G. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, during the sessions of the Parliament its Members enjoy in the territory of their own State the immunities accorded to members of its parliament; and whereas this does not prevent the Parliament from exercising its right to waive the immunity of one of its Members,
- H. whereas Section 552(1) of the Hungarian Act on Criminal Proceedings requires that criminal proceedings against a person enjoying immunity be suspended and a waiver of such immunity requested, and whereas Section 551(1) of that Act provides that criminal proceedings may only be initiated against, inter alia, a Member of the European Parliament after the suspension of immunity,
- I. whereas Section 12(1) of Act LVII provides that the request for waiver of immunity in cases subject to private action are to be made by the court to the President of the Parliament,
- J. whereas in the new proceedings following the annulment Ágnes Hankiss stated that she is a Member of the Parliament and in consequence the Central District Court of Buda, acting on the basis of Section 552(1) of the Hungarian Act on Criminal Proceedings and Section 12 of the Act LVII, decided to suspend the proceedings and ask for the waiver of immunity,
- K. whereas it is therefore appropriate to recommend that parliamentary immunity be waived in this instance,
 - 1. Decides to waive the immunity of Ágnes Hankiss;
 - 2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of Hungary and to Ágnes Hankiss.

EXPLANATORY STATEMENT

1. Background

At the sitting of 6 September 2010 the President announced, under Rule 6(2) of the Rules of Procedure, that he had received a letter sent by the Central District Court of Budapest on 6 July 2010 requesting the waiver of the parliamentary immunity of Ágnes Hankiss.

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

The Central District Court of Buda, Budapest, is asking the European Parliament to waive the immunity of its Member, Ágnes Hankiss, in connection with renewed criminal proceedings ordered by the judgement of the Supreme Court of the Republic of Hungary given on 12 November 2009. Ágnes Hankiss is accused by a private plaintiff of an alleged offence of defamation of honour committed in public (Section 179 of the Hungarian Criminal Code) and, in particular the defamation of the memory of a dead person, the plaintiff's father, under Section 181 of the Hungarian Criminal Code, as a result of a statement made during the programme 'Péntek 8 mondatvadász' on 23 January 2004. The accusation, dated 18 February 2004, was submitted to the Central District Court of Buda on 23 February 2004. On 28 June 2005 the Court gave its judgment, which was then appealed to the Budapest Municipal Court and annulled by that Court on 3 February 2006. As a result the case went back to the Central District Court of Buda, which acquitted Ágnes Hankiss of the charges on 6 February 2009. This judgement was appealed by the plaintiff to the Budapest Municipal Court, which on 25 March 2009 decided to uphold the judgment of the District Court on all its grounds.

Subsequently the plaintiff filed with the Hungarian Supreme Court an application for review of the appeal court's judgement considering that the acquittal resulted from a violation of the substantive provisions of criminal law. On 12 November 2009 the Supreme Court considered that there was indeed a violation of the substantive provisions of criminal law and ordered a renewed procedure to be conducted by the Central District Court of Buda. The court is to conduct this renewed procedure in the light of considerations stated in the decision of the Supreme Court.

The Central District Court of Buda opened renewed proceedings on 31 March 2010. At the same day the proceedings were suspended on the grounds that Ágnes Hankiss enjoys parliamentary immunity as a Member of the Parliament. The relevant request for the waiver of that immunity was made by the Court on 6 July 2010.

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

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.

Section 12 of the Act LVII of 2004 on the Legal Status of the Hungarian Members of the European Parliament ('Act LVII') reads as follows: "*(1) The European Parliament is entitled to decide in connection with the suspension of the immunity of MEPs.*

(2) void

(3) void

(4) Authorities submitting a request for suspension of immunity shall give to the European Parliament and its Committee dealing with immunity cases all information that this Committee deems necessary in order to form its opinion in connection with the suspension of immunity.

(5) If the immunity is suspended, the court or the authority that passes any decision resulting from the suspension of the immunity shall inform the President of the European Parliament about its decision in connection with the immunity.

(6) void

(7) A decision concerning the suspension of immunity of candidates to the European Parliament shall be decided by the National Electoral Board. A request to this effect must be submitted to the Chairman of the National Electoral Board."

Section 10 of the Act LVII reads as follows:

„(1) MEPs are entitled to the privileges and immunities that are enshrined in the Protocol on Privileges and Immunities of the European Communities, which is attached to the Treaty Establishing a Single Commission of the European Communities (8 April 1965).

(2) MEPs are entitled to the same immunity that Members of Parliament enjoy.

(3) void”

Section 552(1) of the Hungarian Act on Criminal Proceedings requires to suspend the criminal proceedings against a person enjoying immunity and request a waiver of such immunity and Section 551(1) of that Act provides that the criminal proceedings may only be initiated against, inter alia, a Member of the Parliament after the suspension of the immunity.

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.*

3. Justification for the proposed decision

Under Article 9 of the Protocol, given that the proceedings concern an offence allegedly committed in Hungary, whose citizenship Ágnes Hankiss 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*’. The applicable Hungarian law is Section 10 and Section 12 of the Act LVII.

In order to decide whether or not to defend parliamentary immunity, Parliament applies its own consistent principles.

In the present case, the rapporteur finds that the case does not come within the scope of Ágnes Hankiss’s political activities as Member of the Parliament. It concerns instead a statement made in 2004, long before she was elected a Member of the Parliament. The rapporteur has also found no evidence of *fumus persecutionis*, i.e. a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member.

It should however be noted that the decision of the Supreme Court of 12 November 2009 ordering to conduct new proceedings was handed down when Ágnes Hankiss was a Member of the Parliament and enjoyed the parliamentary immunity, the waiver of which was not requested at that time. This can be argued to be a procedural mishap. However, waiver of immunity was correctly requested after the renewed proceedings were initiated at first instance on 31 March 2010 by the Central District Court of Buda, which acting on the basis of Section 552(1) of the Hungarian Act on Criminal Proceedings and Section 12 of the Act LVII, suspended the procedure and asked for the immunity to be waived.

It is therefore appropriate to recommend to waive parliamentary immunity in this instance.

4. 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 waive the parliamentary immunity of Ágnes Hankiss.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	24.5.2011
Result of final vote	+: 9 -: 0 0: 0
Members present for the final vote	Sebastian Valentin Bodu, Christian Engström, Klaus-Heiner Lehne, Jiří Maštálka, Bernhard Rapkay, Francesco Enrico Speroni, Dimitar Stoyanov, Diana Wallis, Tadeusz Zwiefka