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REPORT

on the request for waiver of the immunity of Spyros Danellis (II)
(2013/2028(IMM))

Committee on Legal Affairs

Rapporteur: Eva Lichtenberger

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Spyros Danellis (II) (2013/2028(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Spyros Danellis, forwarded on 11 December 2012 by the Deputy Prosecutor at the Supreme Court of the Hellenic Republic (ref. 4825/2012) in connection with the decision of the Cretan Three-Member Court of Appeal of 9 and 16 October 2012 (ref. 1382/2012) and announced in plenary on 6 February 2013,
 - having heard Spyros Danellis in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage, and Article 62 of the Constitution of the Hellenic Republic,
 - 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, 19 March 2010 and 6 September 2011¹,
 - having regard to Rules 6(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0160/2013),
- A. whereas the Deputy Prosecutor at the Supreme Court of the Hellenic Republic has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Spyros Danellis, in connection with possible legal action concerning an alleged offence;
- B. whereas, according to Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Members shall enjoy, in the territory of their own State, the immunities accorded to members of the Parliament of that State;
- C. whereas Article 62 of the Constitution of the Hellenic Republic provides that, during the parliamentary term, Members of Parliament may not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament;
- D. whereas Spyros Danellis is accused of falsely accusing a third party of an unlawful act with the intent of having him prosecuted for it, and of making false statements about a third party which could damage that party's reputation and good name, knowing such statements to be untrue;

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, Case T-42/06 Gollnisch v Parliament (not yet published in the ECR) and Case C-163/10 Patriciello (not yet published in the ECR).

- E. whereas said alleged false statements and accusations relate to the sale of the fruit of olive and other trees uprooted on expropriated land by a contractor carrying out public works in the context of the construction of a dam in the municipality of Hersonissos in the Prefecture of Iraklion, of which Spyros Danellis was mayor;
 - F. whereas the alleged actions do not constitute opinions expressed or votes cast in the performance of the duties of the Member of the European Parliament for the purposes of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;
 - G. whereas the accusation manifestly bears no relation to Spyros Danellis' position as Member of the European Parliament, but to his former position as Mayor of Hersonissos;
 - H. whereas there is no reason to suspect the existence of a *fumus persecutionis*, bearing in mind in particular that Spyros Danellis is far from being the only accused in the case in question;
1. Decides to waive the immunity of Spyros Danellis;
 2. Instructs its President to forward this decision and the report of its competent committee immediately to the Prosecutor at the Supreme Court of the Hellenic Republic and to Spyros Danellis.

EXPLANATORY STATEMENT

1. Background

At the sitting of 6 February 2013 the President announced, under Rule 6(2) of the Rules of Procedure, that he had received a request from the Greek authorities to waive the parliamentary immunity of Spyros Danellis. The President referred the request to the Committee on Legal Affairs under Rule 6(2).

Mr Danellis is accused of falsely accusing a third party of an unlawful act with the intent of having him prosecuted for it, and of making false statements about a third party which could damage their reputation and good name, knowing such statements to be untrue. Said alleged false statements and accusations relate to the sale of the fruit of olive and other trees uprooted on expropriated land by a contractor carrying out public works in the context of the construction of a dam in the municipality of Hersonissos in the Prefecture of Iraklion, of which Spyros Danellis was mayor.

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

Articles 8 and 9 of Protocol No 7 on the immunities and privileges of the European Union 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 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.”

Article 62 of the Constitution of the Hellenic Republic reads as follows:

“Article 62

During the parliamentary term the Members of Parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. [...]”

Rules 6 and 7 of the Rules of Procedure of the European Parliament 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 the 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 – Procedures 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 reasoned decision which 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 in order 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, may present any documents or other written evidence deemed by that Member to be relevant and may be represented by another Member.*

[...]

- 7. The committee may offer a reasoned opinion as to the competence of the authority in question and 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.*

[...]

11. The committee shall treat these matters and handle any documents received with the utmost confidentiality.”

3. Justification for the proposed decision

The Deputy Prosecutor at the Supreme Court of the Hellenic Republic has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Spyros Danellis, with regard to possible legal action concerning an alleged offence of falsely accusing a third party of an unlawful act with the intent of having him prosecuted for it, and of making false statements about a third party which could damage their reputation and good name, knowing such statements to be untrue. Said alleged false statements and accusations relate to the sale of the fruit of olive and other trees uprooted on expropriated land by a contractor carrying out public works in the context of the construction of a dam in the municipality of Hersonissos in the Prefecture of Iraklion, of which Spyros Danellis was mayor.

The alleged actions do not constitute opinions expressed or votes cast in the performance of the duties of the Member of the European Parliament for the purposes of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union.

According to Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Members shall enjoy, in the territory of their own State, the immunities accorded to members of the Parliament of that State. Article 62 of the Constitution of the Hellenic Republic provides that, during the parliamentary term, Members of Parliament may not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. A decision of this Parliament is therefore required if the prosecution of Mr Danellis is to go ahead.

The accusation relates to actions by Mr Danellis in his former capacity as Mayor of Hersonissos, and has no connection with his office of Member of the European Parliament. Mr Danellis has been heard, and there is no reason to suspect the existence of a *fumus persecutionis*.

4. Conclusion

On the basis of the above considerations, after considering the reasons for and against waiving the Member's immunity, it is recommended that the European Parliament should waive the parliamentary immunity of Spyros Danellis.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	24.4.2013
Result of final vote	+: 11 -: 1 0: 0
Members present for the final vote	Luigi Berlinguer, Françoise Castex, Giuseppe Gargani, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Mary Honeyball, Eva Lichtenberger