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REPORT

on the request for waiver of the immunity of Sergei Stanishev
(2014/2259(IMM))

Committee on Legal Affairs

Rapporteur: Andrzej Duda

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Sergei Stanishev (2014/2259(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Sergei Stanishev, forwarded by the Chief Public Prosecutor of the Republic of Bulgaria on 24 November 2014 (ref. CCAN No C-280/2013), and announced in plenary on 15 December 2014,
 - having heard Mr Stanishev in accordance with Rule 9(5) of its Rules of Procedure,
 - having regard to Articles 8 and 9 of Protocol No 7 to the Treaty on the Functioning of the European Union on the Privileges and Immunities of the European Union, and to 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, 19 March 2010, 6 September 2011 and 17 January 2013¹,
 - having regard to Article 70 of the Constitution of the Republic of Bulgaria,
 - having regard to Rules 5(2), 6(1) and 9 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0045/2015),
- A. whereas the Chief Public Prosecutor of the Republic of Bulgaria has forwarded a request from the Public Prosecutor's Office of the City of Sofia for authorisation to continue criminal proceedings against Sergei Stanishev with regard to an offence under Article 358(1), in conjunction with Article 26(1), of the Bulgarian Criminal Code;
- B. whereas, according to Article 8 of the Protocol on the Privileges and Immunities of the European Union, Members of the European Parliament may 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;
- C. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, Members of the European Parliament must enjoy, in the territory of their own State, the immunities accorded to members of their parliament;
- D. whereas, under Article 70(1) of the Constitution of the Republic of Bulgaria, a Member

¹ Judgment in Case 101/63 *Wagner v Fohrmann and Krier*, EU:C:1964:28; judgment in Case 149/85 *Wybot v Faure and others*, EU:C:1986:310; judgment in Case T-345/05 *Mote v Parliament*, EU:T:2008:440; judgment in Joined Cases C-200/07 and C-201/07 *Marr v De Gregorio and Clemente*, EU:C:2008:579; judgment in Case T-42/06 *Gollnisch v Parliament*, EU:T:2010:102; judgment in Case C-163/10 *Patriciello*, EU:C:2011:543; judgment in Joined Cases T-346/11 and T-347/11 *Gollnisch v Parliament*, EU:T:2013:23.

of the National Assembly is immune from detention or criminal prosecution except for the perpetration of a criminal offence, and whereas in such cases the permission of the National Assembly or, should the latter be in recess, of the Speaker of the National Assembly, is required, save in the case of detention *in flagrante delicto*; whereas, under Article 70(2) of the Constitution of the Republic of Bulgaria, permission to initiate a criminal prosecution is not required where the Member of the National Assembly has given his or her consent thereto in writing;

- E. whereas it is for Parliament alone to decide whether immunity is or is not to be waived in a given case; whereas Parliament may reasonably take account of the Member's position in reaching its decision on whether or not to waive his or her immunity¹;
 - F. whereas the alleged offence does not have a direct or obvious connection with Mr Stanishev's performance of his duties as a Member of the European Parliament, and nor does it constitute an opinion expressed or a vote cast in the performance of his duties as a 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 pre-trial investigations against Sergei Stanishev had already started long before he became a Member of the European Parliament, and whereas the proceedings in question are, therefore, not connected in any way with his position as a Member of the European Parliament;
 - H. whereas, in his time firstly as Prime Minister and subsequently as a member of the National Assembly, Sergei Stanishev submitted two written statements to the Speaker of the National Assembly in which he consented to criminal proceedings being opened against him in accordance with Article 70(2) of the Constitution of the Republic of Bulgaria;
 - I. whereas in this case Parliament has found no evidence of *fumus persecutionis*, that is to say, a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member concerned;
1. Decides to waive the immunity of Sergei Stanishev;
 2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of the Republic of Bulgaria and to Sergei Stanishev.

¹ Case T-345/05 *Mote v Parliament* (cited above), paragraph 28.

EXPLANATORY STATEMENT

1. Background

Sergei Stanishev is alleged to have lost, in his former capacity as Prime Minister of the Republic of Bulgaria, seven documents containing information which constituted State secrets under the Bulgarian Act on the Protection of Classified Information (hereinafter ‘the PCI Act’) in the period from 4 November 2005 to 27 July 2009. In particular, Mr Stanishev is alleged to have passed on these documents in breach of the established rules, since the transfer was not duly recorded in the Council of Ministers’ classified information registry.

The prosecution, therefore, claims that Sergei Stanishev has failed to exercise care with regard to the procedures for the safeguarding, transfer and circulation of documents set out in the PCI Act and Rules of Implementation thereof and in the Council of Ministers’ internal rules on the handling of classified information. This conduct constitutes a crime punishable under Article 358(1) of the Bulgarian Criminal Code (offences against information constituting a State secret and foreign classified information) in conjunction with Article 26(1) thereof.

On 3 November 2009, the then Chief Public Prosecutor of Bulgaria sent a request to the National Assembly, asking for authorisation to bring criminal proceedings against Prime Minister Stanishev. Mr Stanishev himself immediately consented to the opening of criminal proceedings against him by submitting a written statement to the President of the National Assembly in accordance with Article 70(2) of the Bulgarian Constitution.

After criminal proceedings had been initiated in 2010, they had to be stayed owing to the fact that in the meantime Mr Stanishev had become member of the National Assembly and, therefore, enjoyed a new type of immunity. Again, Mr Stanishev gave his consent to criminal proceedings being continued against him and the proceedings were resumed on 4 November 2013.

On 19 December 2013, the Public Prosecutor’s Office proposed that Mr Stanishev be exempted from criminal liability for the offence under Article 358(1) of the Criminal Code and that, instead, an administrative fine be imposed under Article 78a of the Criminal Code. Consequently, a criminal case of an administrative nature (CCAN) was opened. However, when Mr Stanishev was elected Member of the European Parliament in May 2014, the Court decided to stay the proceedings because of his new type of immunity.

At the plenary sitting of 15 December 2014 the President announced, under Rule 9(1) of the Rules of Procedure, that he had received a letter from the Chief Prosecutor of Bulgaria requesting that the immunity of Mr Stanishev be waived in order to continue criminal proceedings against him.

The President referred this request to the Committee on Legal Affairs under Rule 9(1). Mr Stanishev was heard by the Committee on 9 March 2015 in accordance with Rule 9(5).

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

Articles 8 and 9 of the Protocol (No 7) on the Privileges and Immunities 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 other Member States, immunity from any measures 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.

Rules 6(1) and 9 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 acts to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in the performance of their duties. Any request for waiver of immunity shall be evaluated in accordance with Articles 7, 8 and 9 of the Protocol on the Privileges and Immunities of the European Union and with the principles referred to in this Rule.

(...)

Rule 9

Procedures on immunity

1. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived, or by a Member or a former Member that privileges and immunities be defended, shall be announced in Parliament and referred to the committee responsible.

The Member or former Member may be represented by another Member. The request may not be made by another Member without the agreement of the Member concerned.

2. The committee shall consider without delay, but having regard to their relative complexity, requests for the waiver of immunity or requests for the defence of privileges and immunities.

3. 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 privileges and immunities.

4. 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.

5. 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.

The Member shall not be present during debates on the request for waiver or defence of his or her immunity, except for the hearing itself.

The chair of the committee shall invite the Member to be heard, indicating a date and time. The Member may renounce the right to be heard.

If the Member fails to attend the hearing pursuant to that invitation, he or she shall be deemed to have renounced the right to be heard, unless he or she has asked to be excused from being heard on the date and at the time proposed, giving reasons. The chair of the committee shall rule on whether such a request to be excused is to be accepted in view of the reasons given, and no appeals shall be permitted on this point.

If the chair of the committee grants the request to be excused, he or she shall invite the Member to be heard at a new date and time. If the Member fails to comply with the second invitation to be heard, the procedure shall continue without the Member having been heard. No further requests to be excused, or to be heard, may then be accepted.

(...)

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.

(...)

Article 70 of the Constitution of the Republic of Bulgaria reads as follows:

(1) A Member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a criminal offence, and in such cases the permission of the National Assembly or, should the latter be in recess, of the Speaker of the National Assembly, shall be required. No permission shall be required when a Member is detained in flagrante delicto; the National Assembly or, should the latter be in recess, the Speaker of the National Assembly, shall be notified forthwith.

(2) No permission to initiate a criminal prosecution shall be required, where the Member of the National Assembly has given his or her consent thereto in writing.

Article 358(1) of the Bulgarian Criminal Code reads as follows:

The one who loses documents, publications or materials, containing information which qualifies as a state secret, or foreign classified information obtained by virtue of an international agreement to which the Republic of Bulgaria is a party, shall be punished by deprivation of liberty of up to two years or by probation.

Article 78a(1) of the Bulgarian Criminal Code reads as follows:

1. A person of full legal age shall be released from penal responsibility by the court, whereas the punishment imposed on him shall be a fine from BGN 500 to BGN 5,000 where the following conditions are concurrently available:

a) for such crime punishment by deprivation of liberty for up to three years or another milder punishment is provided, if committed intentionally, or deprivation of liberty for up to five years or another milder punishment, if committed through negligence;

b) the perpetrator has not been sentenced for a common crime and has not been previously released from penal responsibility pursuant to this Section; and

c) the damages to property, which have been caused by the crime, have been restored.

3. Justification for the proposed decision

On the basis of the aforementioned facts, the present case qualifies for the application of Article 9 of the Protocol No 7 on the Privileges and Immunities of the European Union.

Pursuant to that provision, Members enjoy, in the territory of their own State, the immunities accorded to members of the Parliament of that State. In turn, Article 70 of the Bulgarian Constitution stipulates that criminal prosecution of members to the National Assembly are

subject to prior authorisation from the latter. A decision of the European Parliament is, therefore, required, whether the prosecution of Mr Stanishev is to go ahead.

In order to decide whether or not to waive a Member's parliamentary immunity, Parliament applies its own consistent principles. One of these principles is that immunity is usually waived when the offence is not at all related to the performance of a Member's duties – for it falls within Article 9 of the Protocol –, provided that there is no *fumus persecutionis*, i.e. a sufficiently serious and precise suspicion that the matter is being brought before a court with the intention of causing political damage to the Member concerned.

It appears from the above-mentioned facts that the alleged offence was committed when Mr Stanishev was Prime Minister of Bulgaria and solely in the context of that office, and that pre-trial proceedings had already been initiated long before he became a Member of the European Parliament. It follows that the criminal proceedings to be brought against Sergei Stanishev are not connected in any way with his current office as Member of the European Parliament.

Furthermore, Mr Stanishev had already given his written consent to the opening of criminal proceedings against him with regard to the above-mentioned allegations twice in the course of the previous stages of the investigation. It can be inferred from Mr Stanishev's own consent that he himself acknowledges the lack of *fumus persecutionis*.

In the light of the above, the Committee has found no evidence of *fumus persecutionis* in the case in point.

4. Conclusion

On the basis of the above considerations and pursuant to Rule 9(3) of the Rules of Procedure, the Committee on Legal Affairs recommends that the European Parliament should waive the parliamentary immunity of Mr Stanishev.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	9.3.2015
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Joëlle Bergeron, Marie-Christine Boutonnet, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Andrzej Duda, Mary Honeyball, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss
Substitutes present for the final vote	Mario Borghezio, Heidi Hautala, Sylvia-Yvonne Kaufmann, Constance Le Grip, Virginie Rozière