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REPORT

on the request for waiver of the immunity of Viktor Uspaskich
(2014/2203(IMM))

Committee on Legal Affairs

Rapporteur: Laura Ferrara

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Viktor Uspaskich (2014/2203(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Viktor Uspaskich, forwarded on 1 October 2014 by the Prosecutor General of Lithuania and announced in plenary on 12 November 2014,
 - having heard Viktor Uspaskich in accordance with Rule 9(5) of its Rules of Procedure,
 - having regard to Articles 8 and 9 of Protocol No 7 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, 19 March 2010, 6 September 2011 and 17 January 2013¹,
 - having regard to Article 62 of the Constitution of the Republic of Lithuania,
 - having regard to Rule 5(2), Rule 6(1) and Rule 9 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0149/2015),
- A. whereas the Prosecutor General of Lithuania has requested the waiver of the parliamentary immunity of Viktor Uspaskich, Member of the European Parliament, in connection with a pre-trial investigation concerning an alleged criminal offence;
- B. whereas Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union states that Members of the European Parliament 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 Republic of Lithuania and Article 22, third paragraph, of the Statute of the Seimas state that criminal proceedings may not be instituted against a Seimas Member, and that she or he may not be arrested or subjected to any other restrictions of personal freedom without the consent of the Seimas, except in cases of flagrante delicto;

¹ Judgment of the Court of Justice of 12 May 1964, *Wagner v Fohrmann and Krier*, 101/63, ECLI:EU:C:1964:28; judgment of the Court of Justice of 10 July 1986, *Wybot v Faure and others*, 149/85, ECLI:EU:C:1986:310; judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440; judgment of the Court of Justice of 21 October 2008, *Marra v De Gregorio and Clemente*, C-200/07 and C-201/07, ECLI:EU:C:2008:579; judgment of the General Court of 19 March 2010, *Gollnisch v Parliament*, T-42/06, ECLI:EU:T:2010:102; judgment of the Court of Justice of 6 September 2011, *Patriciello*, C-163/10, ECLI:EU:C:2011:543; judgment of the General Court of 17 January 2013, *Gollnisch v Parliament*, T-346/11 and T-347/11, ECLI:EU:T:2013:23.

- D. whereas Viktor Uspaskich is accused of having committed the offence of contempt of court under Article 232 of the Criminal Code of the Republic of Lithuania;
 - E. whereas there is no evidence of *fumus persecutionis*, that is to say a well-founded suspicion that the legal proceedings have been instituted with the intention of causing political damage to the Member;
1. Decides to waive the immunity of Viktor Uspaskich;
 2. Instructs its President to forward this decision and the report of its committee responsible immediately to the Prosecutor General of Lithuania and to Viktor Uspaskich.

EXPLANATORY STATEMENT

I. THE FACTS

On 28 July 2013, Viktor Uspaskich was answering questions by journalists at the Vilnius Airport, when he allegedly described as being cowards, criminals, and puppets the judges who handed down on 12 July 2013 a verdict of guilty in a criminal case against him.

The Prosecutor-General's Office opened a preliminary investigation on 7 August 2013 on the basis of indications that a punishable offence had been committed within the meaning of Article 232 of the Lithuanian Criminal Code. Under this article, a person who publicly, in an abusive manner by an action, word of mouth or in writing, humiliates a court or a judge executing justice by reason of their activities shall be punished by a fine or by arrest or by imprisonment for a term of up to two years.

At the time of the alleged offence, Mr. Uspaskich served as a member of the Lithuanian parliament (Seimas). Therefore a request to waive his parliamentary immunity was sent to the Seimas. In the meantime, Mr. Uspaskich decided to run for election to the European Parliament and the permission to take criminal proceedings against him as a candidate for election to the European Parliament was sent to the Lithuanian Supreme Electoral Commission.

On 25 May 2014, Viktor Uspaskich was elected to the European Parliament and thus acquired the political immunity enjoyed by Members of the European Parliament.

As a consequence, in order to be able to conduct pre-trial proceedings, arrest or subject Viktor Uspaskich to other restrictions on his freedom, the Prosecutor General of Lithuania sent a request for the waiver of the parliamentary immunity of Viktor Uspaskich to the President of the European Parliament on 1 October 2014.

The President of the European Parliament announced the request at the plenary sitting of 12 November 2014 and referred it to the Committee on Legal Affairs.

Mr Uspaskich was heard by the Committee on Legal Affairs on 24 March 2015.

II. THE LAW

(a) European legislation

Primary law: Protocol No 7 on the Privileges and Immunities of the European Union

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.

Rules of procedure of the European Parliament

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 7

Defence of privileges and immunity

3. A request for the defence of the privileges and immunities of a Member shall not be admissible if a request for the waiver or defence of that Member's immunity has already been received in respect of the same legal proceedings, whether or not a decision was taken at that time.
4. No further consideration shall be given to a request for the defence of the privileges and immunities of a Member if a request for the waiver of that Member's immunity is received in respect of the same legal proceedings.
5. In cases where a decision has been taken not to defend the privileges and immunities of a Member, the Member may make a request for reconsideration of the decision, submitting new evidence. The request for reconsideration shall be inadmissible if proceedings have been instituted against the decision under Article 263 of the Treaty on the Functioning of the European Union, or if the President considers that the new evidence submitted is not sufficiently substantiated to warrant reconsideration.

(b) National legislation

The Constitution of the Republic of Lithuania

(Adopted by the citizens of the Republic of Lithuania in a referendum on 25 October 1992, entered into force on 2 November 1992)

Article 62

The person of a Member of the Seimas shall be inviolable.

A Member of the Seimas may not be held criminally liable, arrested, nor may his freedom be otherwise restricted without the consent of the Seimas.

A Member of the Seimas may not be prosecuted for his voting or his speeches at the Seimas. However, he may be held liable according to the general procedure for personal insult or slander.

Rules of Procedure (Statute) of the Seimas of the Republic of Lithuania

(17 February 1994, No I-399)

(Last amended on 23 April 2009 - No XI-228) (Unofficial translation)

Article 22 - Immunity of a Member of the Seimas

1. The person of a Seimas Member shall be inviolable.
2. A Seimas Member may not be prosecuted for his voting or speeches in the Seimas, i.e. at the sittings of the Seimas, Seimas committees, commissions and parliamentary groups; however, he may, for personal insult or slander, be held liable in accordance with the general procedure.
3. Criminal proceedings may not be instituted against a Seimas Member, he may not be arrested, and may not be subjected to any other restrictions of personal freedom, without the consent of the Seimas, except in cases when he is caught in the act of committing a crime (in flagrante delicto). In such cases the Prosecutor-General must immediately notify the Seimas thereof.

Lithuanian Criminal Code

Article 232 - Contempt of Court

A person who publicly, in an abusive manner by an action, word of mouth or in writing, humiliates a court or a judge executing justice by reason of their activities shall be punished by a fine or by arrest or by imprisonment for a term of up to two years.

III. JUSTIFICATION OF THE PROPOSED DECISION

The immunity of Members of the European Parliament is protected by Article 8 and Article 9 of the Protocol (No 7) on the Privileges and Immunities of the European Union.

In order to enjoy immunity under Article 8 of the Protocol (No 7) on the Privileges and Immunities of the European Union, the proceedings must concern an opinion expressed or a vote cast by a Member of the European Parliament in the performance of his or her duties. Consequently, Article 8 of the Protocol does not apply as Viktor Uspaskich was not a Member of the European Parliament at the time of the facts.

Considering article 9(a) of the Protocol and the fact that the alleged offence took place in Lithuania, the Lithuanian law is applicable and more specifically Article 62 of the Lithuanian Constitution.

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 before Viktor Uspaskich became a Member of the European Parliament and that pre-trial proceedings had already been initiated before he assumed his seat in the European Parliament. It follows that the criminal proceedings to be brought against Viktor Uspaskich are not connected with his current office as Member of the European Parliament. Finally, there are no sufficiently serious and specific grounds for suspecting that it is a case of *fumus persecutionis*.

IV. CONCLUSION

In light of the above and pursuant to Rule 9(3) of the Rules of Procedure, the Committee on Legal Affairs recommends that the European Parliament should waive the immunity of Viktor Uspaskich.

RESULT OF FINAL VOTE IN COMMITTEE

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| Date adopted | 6.5.2015 |
| Result of final vote | +: 12 -: 0 0: 3 |
| Members present for the final vote | Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Laura Ferrara, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Pavel Svoboda, Tadeusz Zwiefka |
| Substitutes present for the final vote | Luis de Grandes Pascual, Angel Dzhambazki, Sylvia-Yvonne Kaufmann, Virginie Rozière |