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Requests for defence of the parliamentary immunity of Viktor Uspaskich

European Parliament decision of 1 December 2011 on the requests for defence of the immunity and privileges of Viktor Uspaskich (2011/2162(IMM) and 2011/2099(IMM))

The European Parliament,

- having regard to the request by Viktor Uspaskich for defence of his immunity of 5 April 2011, announced in plenary sitting on 9 May 2011, and to his request of 11 April 2011, announced in plenary sitting on 4 July 2011, for a review of Parliament's decision of 7 September 2010 to waive his immunity¹,
 - having heard Viktor Uspaskich on 10 October 2011, in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Articles 7 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union ("the Protocol"), 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 2010²,
 - having regard to the provisions of Article 62 of the Constitution of the Republic of Lithuania,
 - having regard to Parliament's decision of 7 September 2010 to waive the immunity of Viktor Uspaskich,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the reports of the Committee on Legal Affairs (A7-0411/2011 and A7-0413/2011),
- A. whereas it is appropriate to deal with the requests made by Viktor Uspaskich on 5 and 11 April 2011 together since they relate to the same legal proceedings;
- B. whereas criminal proceedings have been brought against Viktor Uspaskich, Member of the European Parliament, who is accused in the proceedings pending in the Vilnius Regional Court of criminal offences under Article 24(4) in conjunction with Article 222(1), Article 220(1), Article 24(4) in conjunction with Article 220(1), Article 205(1) and Article 24(4) in conjunction with Article 205(1) of the Criminal Code of the Republic of Lithuania;

¹ OJ C 308 E, 20.10.2011, p. 90.

² 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*.

- C. whereas, according to Article 9 of the Protocol, 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 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’;
- D. whereas, according to Article 62 of the Constitution of the Republic of Lithuania, a Member of the national parliament (the Seimas) may not be held criminally liable or arrested, nor may his freedom be otherwise restricted, without the consent of that parliament;
- E. whereas Article 62 of the Constitution of the Republic of Lithuania goes on to provide that a Member of the Seimas may not be persecuted for his voting or his speeches in the Seimas, although he may be held liable under the general procedure for personal insult or slander;
- F. whereas Viktor Uspaskich is charged essentially with offences of false accounting in relation to the financing of a political party during a period prior to his election to the European Parliament;
- G. whereas on 7 September 2010 Parliament waived Viktor Uspaskich's immunity, considering that no cogent evidence had been adduced as to the existence of any *fumus persecutionis* and that the criminal offences with which Viktor Uspaskich is charged had nothing to do with his activities as a Member of the European Parliament;
- H. whereas on 28 October 2010 Viktor Uspaskich brought an action for the annulment of Parliament’s decision of 7 September 2010 before the General Court, only to withdraw it in July 2011;
- I. whereas in his letter of 5 April 2011 requesting the defence of his immunity Viktor Uspaskich claims that the criminal proceedings initiated by the Lithuanian authorities prevent him from performing, or make it difficult for him to perform, his parliamentary duties by restraining his freedom of movement contrary to Article 7 of the Protocol;
- J. whereas Article 7 of the Protocol has the function of protecting Members against restrictions on their freedom of movement, other than judicial restrictions, and consequently contains not an immunity but a privilege, and does not protect against judicial restrictions on Members’ freedom of movement¹;
- K. whereas, consequently, it is impossible for Parliament to accede to Viktor Uspaskich’s request of 5 April 2011 to defend his immunity on the basis of Article 7 of the Protocol;
- L. whereas in his letter of 11 April 2011 Viktor Uspaskich requests the revision of Parliament’s decision of 7 September 2010 on the grounds of alleged new facts raised by WikiLeaks, which he maintains show he was the victim of *fumus persecutionis*;
- M. whereas this claim should be rejected on the grounds that no sufficient nexus has been established between the alleged new facts and the bringing of proceedings against Viktor Uspaskich for false accounting;
- N. whereas in addition – and this applies also to Viktor Uspaskich’s claim that his fundamental

¹ Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, paragraphs 48 to 52.

right of defence and the European Charter of Fundamental Rights were violated by the adoption of the decision of 7 September 2010 –, the application for a review of Parliament's decision of 7 September 2010 does not constitute a request for the defence of his immunity and privileges within the meaning of Rules 6 and 7;

1. Decides not to defend the immunity and privileges of Viktor Uspaskich;
2. Instructs its President to forward this decision and the reports of its competent committee immediately to the appropriate authority of the Republic of Lithuania.