

Request for the waiver of the parliamentary immunity of Małgorzata Handzlik

European Parliament decision of 11 June 2013 on the request for waiver of the immunity of Małgorzata Handzlik (2012/2238(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Małgorzata Handzlik, forwarded on 3 July 2012 by the Public Prosecutor of the Polish Republic in connection with Warsaw District Prosecutor’s Office investigation VI DS 312/10 and announced in plenary on 10 September 2012,
 - having heard Małgorzata Handzlik in accordance with Rule 7(3) of its Rules of Procedure,
 - having also heard Giovanni Kessler, Director-General of the European Anti-Fraud Office, and Roger Vanhaeren, Director-General for Finance of the European Parliament,
 - having regard to Article 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 and 6 September 2011¹,
 - having regard to Article 105 of the Constitution of the Republic of Poland,
 - having regard to Rules 6(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0195/2013),
- A. whereas the Public Prosecutor of the Polish Republic has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Małgorzata Handzlik, in connection with an investigation and possible legal action concerning an alleged offence;
- B. whereas, under 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 105(2) of the Constitution of the Polish Republic provides that Members of Parliament may only be prosecuted with the Parliament’s consent;

¹ Judgment of 12 May 1964 in Case 101/63, *Wagner v Fohrmann and Krier* (ECR 1964, p. 195); judgment of 10 July 1986 in Case 149/85, *Wybot v Faure and others* (ECR 1986, p. 2403); judgment of 15 October 2008 in Case T-345/05, *Mote v Parliament* (ECR 2008, p. II-2849); judgment of 21 October 2008 in Joined Cases C-200/07 and C-201/07, *Marra v De Gregorio and Clemente* (ECR 2008, p. I-7929); judgment of 19 March 2010 in Case T-42/06, *Gollnisch v Parliament* (ECR 2010, p. II-1135); judgment of 6 September 2011 in Case C-163/10, *Patriciello* (ECR 2011, p. I-7565).

- D. whereas the request by the Public Prosecutor relates to proceedings concerning an alleged offence under the Polish Criminal Code of 6 June 1997;
 - E. whereas the substantive allegation relates to the attempted infringement of Articles 270(1) and 286(1) of that code, which concern fraud and the use of forged documents respectively;
 - F. whereas Małgorzata Handzlik is effectively accused of having attempted to commit fraud against the financial interests of the Union by allegedly submitting forged documents with a view to obtaining reimbursement of the costs of attending a language course which she did not in fact attend;
 - G. 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 within the meaning of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;
 - H. whereas, however, given the circumstances in which the case against Małgorzata Handzlik was handled by the various authorities involved, and bearing in mind the small amount in question and the uncertain status and provenance of the evidence, there are serious doubts surrounding the procedure;
 - I. whereas it therefore appears that this is a case where the existence of a *fumus persecutionis* may be assumed;
 - J. whereas Ms Małgorzata Handzlik's immunity should therefore not be waived;
1. Decides not to waive the immunity of Małgorzata Handzlik;
 2. Instructs its President to forward this decision and the report of its competent committee immediately to the Public Prosecutor of the Polish Republic and to Małgorzata Handzlik.