



TEXTS ADOPTED

P9_TA(2023)0024

Request for waiver of the immunity of Marc Tarabella

European Parliament decision of 2 February 2023 on the request for waiver of the immunity of Marc Tarabella (2023/2005(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Marc Tarabella dated 28 December 2022, which was issued by the Federal Prosecutor at the Belgian Federal Public Prosecutor's Office in connection with criminal proceedings that he wishes to institute against him and was forwarded by the Federal Public Service for Foreign Affairs, Foreign Trade and Development Cooperation by letter dated 30 December 2022 and announced in plenary on 16 January 2023,
- having regard to the fact that Marc Tarabella has renounced his right to be heard under Rule 9(6) 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 21 October 2008, 19 March 2010, 6 September 2011, 17 January 2013 and 19 December 2019¹,
- having regard to Articles 58 and 59 of the Belgian Constitution,
- 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 (A9-0017/2023),

¹ Judgment of the Court of Justice of 21 October 2008, Marra, 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; judgment of the Court of Justice of 19 December 2019, Junqueras Vies, C-502/19, ECLI:EU:C:2019:1115.

- A. whereas the Federal Prosecutor at the Belgian Federal Public Prosecutor's Office has requested the waiver of the immunity of Marc Tarabella, a Member of the European Parliament elected for Belgium, in connection with an ongoing investigation into criminal offences;
- B. whereas the ongoing investigation has shown that Marc Tarabella may have been involved in acts of corruption connected with interference by one or more third countries aimed at influencing the debates and decisions taken in the European Parliament;
- C. whereas it has also emerged from the ongoing investigation that Marc Tarabella is suspected of having, over the past two years, supported certain positions within the European Parliament in favour of a third country in return for cash payments; whereas testimony against him suggests that such payments were made to him on several occasions, amounting to a total of between EUR 120 000 and EUR 140 000;
- D. whereas the acts allegedly committed by Marc Tarabella constitute the criminal offences of public corruption under Articles 246 and 247 of the Belgian Criminal Code, of participation in a criminal organisation under Articles 324a and 324b of the Belgian Criminal Code, and of money laundering under Article 505 of the Belgian Criminal Code;
- E. whereas Parliament cannot assume the role of a court, and whereas, in a waiver of immunity procedure, a Member cannot be regarded as a 'defendant'¹;
- F. whereas parliamentary immunity is not a personal privilege of the Member, but a guarantee of the independence of Parliament as a whole and of its members, and whereas parliamentary immunity is intended to protect Parliament and its members from legal proceedings in relation to activities carried out in the performance of parliamentary duties and which cannot be separated from those duties;
- G. whereas the alleged offences do not constitute opinions expressed or votes cast by Marc Tarabella in the performance of his duties as a 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 by virtue of Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Members of the European Parliament enjoy, in the territory of their own State, the immunities accorded to members of their parliament and, in the territory of any other Member State, immunity from any measure of detention and from legal proceedings; whereas immunity cannot be claimed when a member is found in the act of committing an offence, nor prevent the European Parliament from exercising its right to waive the immunity of one of its members;
- I. whereas Article 59 of the Belgian Constitution provides as follows:

¹ Judgment of the General Court of 30 April 2019, *Briois v Parliament*, T-214/18, ECLI:EU:T:2019:266.

Except in the case of a flagrant offence, no member of either House may, during a session and in criminal matters, be directly referred or summoned before a court or be arrested, except with the authorisation of the House of which he is a member.

Except in the case of a flagrant offence, coercive measures requiring the intervention of a judge cannot, during a session and in criminal matters, be instituted against a member of either House, except by the first President of the appeal court at the request of the competent judge. This decision is to be communicated to the President of the House concerned.

All searches or seizures executed by virtue of the preceding paragraph can be performed only in the presence of the President of the House concerned or a member appointed by him.

During the session, only the officers of the public prosecutor's office and competent officers may institute criminal proceedings against a member of either House.

The member concerned of either House may at any stage of the judicial enquiry request during a session and in criminal matters that the House of which he is a member suspend proceedings. To grant this request, the House concerned must decide by a two-thirds majority of the votes cast.

Detention of a member of either House or his prosecution before a court is suspended during the session if the House of which he is a member so requests.'

- J. whereas, in this case, Parliament has found no evidence of *fumus persecutionis*, or in other words factual elements indicating that the intention underlying the judicial investigation in question may be to damage a Member's political activity and thus the European Parliament;
 - K. whereas it is for Parliament alone to decide, in a given case, whether or not to waive immunity; whereas Parliament may reasonably take account of the position of the Member in order to decide whether or not to waive his immunity¹; whereas Marc Tarabella has stated that he has no objection to the waiver of his parliamentary immunity;
1. Decides to waive the immunity of Marc Tarabella;
 2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of the Kingdom of Belgium and to Marc Tarabella.

¹ Judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440, paragraph 28.