Reports of Cases

ORDER OF THE GENERAL COURT (Seventh Chamber)

5 May 2025*

(Action for annulment – Law governing the institutions – Member of Parliament – Privileges and immunities – Refusal of the Parliament to accede to a request for privileges and immunities to be defended – Member found in the act of committing an offence – Act not open to challenge – Inadmissibility)

In Case T-248/24,

EC, represented by C. Marchand, S. Mary and G. Boye, lawyers,

applicant,

v

European Parliament, represented by N. Lorenz and A.-M. Dumbrăvan, acting as Agents,

defendant,

THE GENERAL COURT (Seventh Chamber),

composed of K. Kowalik-Bańczyk, President, G. Hesse and B. Ricziová (Rapporteur), Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure, including:

– the application for a decision that there is no need to adjudicate and the plea of inadmissibility put forward by the Parliament by separate document lodged at the Court Registry on 14 August 2024,

– the observations of the applicant lodged at the Court Registry on 27 September 2024,

makes the following

* Language of the case: English.

Order

1 By her action under Article 263 TFEU, the applicant, EC, seeks annulment of the decision taken on 7 March 2024 by the Committee on Legal Affairs of the European Parliament, communicated by the President of the European Parliament at the plenary session of 11 March 2024, rejecting her request that the Parliament defend her privileges and immunities ('the contested act').

Background to the dispute

2 The applicant was a Member of Parliament during the eighth (2014-2019) and ninth (2019-2024) parliamentary terms. She was not re-elected in the European elections in June 2024 and her mandate ended on 16 July 2024 with the opening of the inaugural session of the tenth parliamentary term.

3 On 9 December 2022, the applicant was arrested in Belgium, where she was detained pending trial for five months, four months of which were spent in prison, her residence was searched and preventative measures were taken against her without her immunity being waived.

4 On 1 June 2023, the applicant lodged a request for the defence of her privileges and immunities with the President of the Parliament. That request referred, in particular, first, to Rule 5(2) and to Rules 7, 8 and 9 of the Rules of Procedure of the Parliament applicable to the ninth parliamentary term (2019-2024) ('the Parliament's Rules of Procedure') and, second, to Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union (OJ 2010 C 83, p. 266; 'Protocol No 7').

5 In the request for the defence of her privileges and immunities, the applicant alleged infringement of her immunity as a result, inter alia, of her arrest on 9 December 2022 'under the false premiss of *flagrante delicto*', her detention and her subsequent submission to house arrest, as well as the 'illegal investigation[s] [to which she has been subject] since at least July 2022'.

6 The request for the defence of the applicant's privileges and immunities was announced in plenary on 12 June 2023 by the President of the Parliament and forwarded to the Parliament's Committee on Legal Affairs in accordance with Rule 9(1) of the Parliament's Rules of Procedure.

7 On 11 March 2024, the President of the Parliament announced in plenary session that 'on 7 March 2024, the [Committee on Legal Affairs] had concluded that the request for the defence of [the applicant's privileges and immunities] was inadmissible in direct application of [Protocol No 7], under which immunity cannot be claimed when a Member is found in the act of committing an offence' and that 'the procedure relating to that request … was therefore closed'.

Forms of order sought

8 The applicant claims that the Court should:

– annul the contested act;

– order the Parliament to pay the costs.

9 The Parliament contends that the Court should:

– declare that there is no longer any need to adjudicate on the action or, in the alternative, dismiss it as inadmissible;

– order the applicant to pay the costs.

Law

10 Under Article 130 of the Rules of Procedure of the General Court, where, by separate document, the defendant asks the Court for a decision on the inadmissibility of the action or on the lack of competence of the Court without going to the substance of the case, the Court must decide on the application as soon as possible.

11 The Parliament asks the Court to declare that the action has become devoid of purpose and that there is no longer any need to adjudicate on it since the applicant has not been a Member of the European Parliament since 16 July 2024 and therefore no longer has an interest in obtaining the annulment of the contested act. In addition, the Parliament submits that the action is inadmissible since the contested act has no legal effect and, therefore, cannot be challenged under Article 263 TFEU.

12 In the circumstances of the present case, it is appropriate to begin by examining the plea of inadmissibility raised by the Parliament.

13 According to the Parliament, although the waiver of a Member of the European Parliament's immunity is expressly provided for in the third paragraph of Article 9 of Protocol No 7, the defence of parliamentary immunity has its legal basis only in Rules 7 and 9 of the Parliament's Rules of Procedure, which set out the rules governing the internal organisation of the Parliament and cannot confer on the Parliament powers which are not expressly acknowledged by primary law, such as Protocol No 7, or by a legislative act. Accordingly, the Parliament considers that it may not, on the basis of point (b) of the first paragraph of Article 9 or the second paragraph of Article 9 of Protocol No 7, which do not confer on it the exclusive competence to establish whether or not their conditions for application are fulfilled, adopt decisions defending the immunity of one of its members which produce binding legal effects, and that, consequently, the contested act cannot be challenged in application of Article 263 TFEU.

14 The applicant contends that the Parliament's decision not to defend her immunity pursuant to Rules 7 and 9 of the Parliament's Rules of Procedure, in accordance with Article 9 of Protocol No 7, is an act having binding legal effects. She submits, inter alia, that the wording of the third paragraph of Article 9 of Protocol No 7 means that the Parliament does not only have the right to waive the immunity of one of its Members, but it also has the right to defend that immunity, that is to say, to decide whether proceedings brought against a Member of the European Parliament infringe the immunities provided for in Article 9 of that protocol, with the result that such a decision produces binding legal effects vis-à-vis the judicial authorities of the Member States.

15 It is appropriate to recall that, according to settled case-law, all acts, whatever their form, that have binding legal effects capable of affecting the interests of the applicant, by bringing about a distinct change in his or her legal position, are regarded as actionable measures for the purposes of

Article 263 TFEU (judgments of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9, and of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraph 51). Conversely, any EU act not producing binding legal effects falls outside the scope of the judicial review provided for in Article 263 TFEU (see judgment of 15 July 2021, *FBF*, C-911/19, EU:C:2021:599, paragraph 37 and the case-law cited).

16 In order to determine whether an act produces binding legal effects, it is necessary to examine the substance of that act and to assess those effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the institution which adopted it (see judgments of 20 February 2018, *Belgium* v *Commission*, C-16/16 P, EU:C:2018:79, paragraph 32 and the case-law cited, and of 9 July 2020, *Czech Republic* v *Commission*, C-575/18 P, EU:C:2020:530, paragraph 47).

17 Furthermore, when a decision of an EU institution amounts to a rejection, it must be appraised in the light of the nature of the request to which it constitutes a reply (judgments of 8 March 1972, *Nordgetreide* v *Commission*, 42/71, EU:C:1972:16, paragraph 5; of 24 November 1992, *Buckl and Others* v *Commission*, C-15/91 and C-108/91, EU:C:1992:454, paragraph 22; and of 9 October 2018, *Multiconnect* v *Commission*, T-884/16, not published, EU:T:2018:665, paragraph 45). In particular, a refusal constitutes an act in respect of which an action for annulment may be brought under Article 263 TFEU, provided that the act which the EU institution refuses to adopt could itself have been contested under that provision. It follows that the rejection by an institution of a request addressed to it does not constitute a measure against which an action for annulment may be brought where that request is not aimed at the adoption by that institution of a measure producing binding legal effects (orders of 5 September 2012, *Farage* v *Parliament and Buzek*, T-564/11, not published, EU:T:2012:403, paragraph 27, and of 1 February 2018, *Collins* v *Parliament*, T-919/16, not published, EU:T:2018:58, paragraph 19).

18 Therefore, in the present case, in order to determine whether the contested act refusing to defend the privileges and immunities of the applicant is a challengeable act for the purposes of Article 263 TFEU, it is necessary to examine whether, in the present case, the measure sought was capable of producing legal effects.

19 In that regard, it is important to note, first of all, that, in accordance with Article 5(1) TEU and Article 13(2) TEU, the Parliament acts within the limits of the powers conferred on it by the Treaties.

20 Next, it must be borne in mind that Article 8 of Protocol No 7 provides that ‘Members of the … 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’.

21 As for Article 9 of Protocol No 7, it states as follows:

‘During the sessions of the … 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 … Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the … Parliament from exercising its right to waive the immunity of one of its Members.'

22 The parliamentary immunity of Members of the European Parliament, as provided for in Articles 8 and 9 of Protocol No 7, thus comprises the two forms of protection usually afforded to members of national parliaments in the Member States, that is to say, immunity in respect of opinions expressed and votes cast in the exercise of their parliamentary duties, and parliamentary privilege, including, in principle, protection from judicial proceedings (judgments of 21 October 2008, *Marra*, C-200/07 and C-201/07, EU:C:2008:579, paragraph 24, and of 6 September 2011, *Patriciello*, C-163/10, EU:C:2011:543, paragraph 18).

23 In the present case, the applicant, who was elected in a Member State other than Belgium, was arrested, detained and prosecuted in Belgium. She does not claim that those judicial proceedings are linked to opinions expressed or votes cast by her in the performance of her duties. In those circumstances and as is apparent from her pleadings, she must therefore be regarded as relying solely on the immunity, or inviolability, provided for in point (b) of the first paragraph of Article 9 of Protocol No 7. It must also be stated that, in the present case, the national judicial authorities did not request the waiver of the applicant's immunity, but considered that this was a case of a Member being found in the act of committing an offence.

24 Lastly, it must be noted that the examination of a request for waiver of immunity and the examination of a request for the defence of privileges and immunities entail two distinct exercises.

25 In that regard, the waiver of immunity is expressly envisaged by the third paragraph of Article 9 of Protocol No 7, which provides that 'immunity … shall not prevent the … Parliament from exercising its right to waive the immunity of one of its Members'. Thus, that provision confers on the Parliament the exclusive right to waive the immunity provided for in Article 9 of that protocol, namely, the right to deprive a Member of the European Parliament of the protection he or she enjoys under that provision. Such a decision constitutes an act open to challenge for the purposes of Article 263 TFEU (judgment of 15 October 2008, *Mote* v *Parliament*, T-345/05, EU:T:2008:440, paragraph 31).

26 By contrast, the defence of the privileges and immunities of a Member of the European Parliament by the Parliament is not expressly provided for in Protocol No 7, but only in Rules 7 and 9 of the Parliament's Rules of Procedure.

27 Against that background, it should be recalled, first, as regards the immunity provided for in Article 8 of Protocol No 7, that it has previously been held that the decision of the Parliament to defend such immunity constituted an opinion without binding effect on national judicial authorities (see, to that effect, judgments of 21 October 2008, *Marra*, C-200/07 and C-201/07, EU:C:2008:579, paragraph 39, and of 6 September 2011, *Patriciello*, C-163/10, EU:C:2011:543, paragraph 39). In reaching that conclusion, the Court found, inter alia, that Protocol No 7 did not confer on the Parliament the power to determine, in cases of legal proceedings against one of its Members in respect of opinions expressed or votes cast by him or her, whether the conditions for applying the immunity provided for in Article 8 of that protocol were met and that such competence could not derive from the provisions of the Parliament's Rules of Procedure, which

were rules of internal organisation and could not grant powers to the Parliament which were not expressly acknowledged by a legislative measure, in this case Protocol No 7 (judgment of 21 October 2008, *Marra*, C-200/07 and C-201/07, EU:C:2008:579, paragraphs 32 and 38).

28 Second, as regards the immunity provided for in Article 9 of Protocol No 7, a distinction must be drawn between two situations.

29 On the one hand, the Parliament's power to defend immunity may, where appropriate, derive from point (a) of the first paragraph of Article 9 of Protocol No 7, in so far as that provision implies that the extent and scope of the immunity enjoyed by Members of the European Parliament in their national territory, in other words, the substantive content of that immunity, are determined by the various national laws to which it refers. That reference to national law implies that, where the law of a Member State provides for a procedure for the defence of the immunity of members of the national parliament, enabling that parliament to intervene with the judicial or police authorities, in particular by requiring the suspension of the prosecution of one of its members, the same powers are conferred on the Parliament in relation to Members of the European Parliament elected for that State (see, to that effect, judgment of 19 March 2010, *Gollnisch* v *Parliament*, T-42/06, EU:T:2010:102, paragraphs 105 and 115).

30 On the other hand, point (b) of the first paragraph of Article 9 of Protocol No 7 does not refer to national law and, therefore, cannot be used to establish the Parliament's power to defend the immunity of a Member of the European Parliament.

31 Moreover, it cannot be considered that the third paragraph of Article 9 of Protocol No 7 constitutes, in itself, the basis for the Parliament's power to defend the immunity of a Member of the European Parliament. In that regard, the Court has already held that the exclusive right to waive the immunity provided for in that provision cannot be interpreted as conferring on the Parliament exclusive competence to decide, with binding effect, whether or not a Member of the European Parliament enjoyed the immunity provided for in Article 9 of Protocol No 7 in respect of the facts alleged against him or her (judgment of 5 July 2023, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament*, T-115/20, under appeal, EU:T:2023:372, paragraph 65).

32 Indeed, the negative wording of the third paragraph of Article 9 of Protocol No 7 (see paragraph 21 above) provides for only two limits to the immunity, or inviolability, provided for in Article 9 of that protocol. First, when a Member is found in the act of committing an offence, that immunity cannot be invoked. That necessarily implies that that immunity can still less be defended when a Member is found in the act of committing an offence. Second, the immunity cannot preclude the Parliament's right to waive it.

33 Nevertheless, the applicant relies on the effectiveness of Article 9 of Protocol No 7.

34 In that regard, it should be borne in mind that a broad interpretation of a provision of EU law in order to preserve its effectiveness cannot result in the division of powers between the European Union and its Member States under the Treaties being disregarded. Yet that would be the case if it were to be inferred from the third paragraph of Article 9 of Protocol No 7 that the Parliament has exclusive competence to determine, with binding effect, whether or not the judicial proceedings brought against a Member of the European Parliament calls his or her immunity into question, whereas that competence lies, in general, primarily with the authorities which conduct judicial proceedings (see, to that effect, judgment of 5 July 2023, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament*, T-115/20, under appeal, EU:T:2023:372, paragraphs 66 and 68).

The same applies a fortiori where it is a question of determining whether or not the conditions for *flagrante delicto* are satisfied, since that specific competence lies solely with the authorities conducting judicial proceedings.

35 It should be noted that, in general, if the authorities conducting legal proceedings find that the acts alleged against a Member of the European Parliament are covered by the immunity provided for in Article 9 of Protocol No 7, they are required, if they wish to continue those proceedings, to request the Parliament to waive that immunity. Moreover, the third paragraph of Article 9 of Protocol No 7 also governs a specific situation relating to a Member being found in the act of committing an offence, in which those authorities are not obliged to request the Parliament to waive immunity, given that, in such a case, immunity cannot even be invoked. The examination of compliance with the conditions for concluding that a Member was found in the act of committing an offence thus falls within the exclusive competence of those authorities and accordingly does not depend on the Parliament's opinion.

36 The contrary interpretation advocated by the applicant would mean that the Parliament has the power to decide whether or not judicial proceedings brought against a Member of the European Parliament call into question his or her immunity in all cases of offences committed by Members of the European Parliament without exception, including in the event of a Member being found in the act of committing an offence, with the result that the first part of the third paragraph of Article 9 of Protocol No 7 would be deprived of its effectiveness.

37 Consequently, it must be held that the provisions of point (b) of the first paragraph of Article 9 of Protocol No 7, even in conjunction with those of the third paragraph of Article 9 of that protocol, do not confer any power on the Parliament to adopt a decision to defend privileges and immunities, with the result that, in such a situation and in particular in the case of a Member being found in the act of committing an offence, a decision to defend privileges and immunities adopted on the basis of the Parliament's Rules of Procedure cannot produce binding effects vis-à-vis third parties. In those circumstances, the contested act, which refuses to defend the applicant's privileges and immunities, does not constitute an act producing binding legal effects either.

38 It follows that the contested act cannot be challenged by means of an action for annulment under Article 263 TFEU. The plea of inadmissibility raised by the Parliament must therefore be upheld and, accordingly, the action must be dismissed as inadmissible, without there being any need to consider whether the applicant still has an interest in obtaining the annulment of the contested act.

Costs

39 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

40 Since the applicant has been unsuccessful, she must be ordered to bear her own costs and to pay those incurred by the Parliament, in accordance with the form of order sought by the Parliament.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby orders:

1. The action is dismissed.

2. EC shall bear her own costs and pay those incurred by the European Parliament.

Luxembourg, 5 May 2025.

V. Di Bucci
Registrar

K. Kowalik-Bańczyk
President