Tuesday 27 April 2021

P9_TA(2021)0117

Request for waiver of the immunity of Zdzisław Krasnodębski

European Parliament decision of 27 April 2021 on the request for waiver of the immunity of Zdzisław Krasnodębski (2020/2224(IMM))

(2021/C 506/19)

The European Parliament,

— having regard to the request for waiver of the immunity of Zdzisław Krasnodębski, dated 9 September 2020 and submitted by the President of the District Court for Warsaw-Śródmieście in Warsaw, Criminal Division X, in connection with criminal proceedings brought against him by way of a private indictment, and announced in plenary on 22 October 2020,

— having heard Zdzisław Krasnodębski in accordance with 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 2019 [1],

— having regard to Article 105(2) and (5) of the Constitution of the Republic of Poland,

— 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 (A9-0132/2021),

A. whereas on 23 January 2020 the President of Criminal Division X of the District Court for Warsaw-Śródmieście, Poland, transmitted a request for waiver of the parliamentary immunity of Zdzisław Krasnodębski submitted to it by a private party on the grounds of certain statements made by Zdzisław Krasnodębski during a radio interview on 1 February 2019; whereas on 19 February 2020 Criminal Division X of the District Court for Warsaw-Śródmieście was informed that a question of the competence of the authority was at issue pursuant to Rule 9(1) and (12) of the Rules of Procedure, thereby bearing on the admissibility of the request; whereas on 18 May 2020 the Court requested clarifications with the Office of the Prosecutor-General and whereas on 8 September 2020 the Office of the Prosecutor-General expressed the position that 'where a private case is brought in which a public prosecutor is not participating, the authority competent to transmit a request from the private prosecutor for a waiver of immunity is the court, in accordance with Rule 9(1) and (12) of the Rules of Procedure of the European Parliament' and that the concept of 'competent authority' is to be interpreted in the light of Rule 9(12) of the Rules of Procedure; whereas the request for waiver of parliamentary immunity was communicated by the judicial authorities in accordance with Rule 9(12) of its Rules of Procedure, and whereas under Rule 9(1) of its Rules of Procedure, any request for waiver of parliamentary immunity must be submitted by 'a competent authority of a Member State', the two concepts not being identical;

B. whereas the private prosecution against Zdzisław Krasnodębski was initially lodged with the District Court for Kraków-Krowodrza on 6 May 2019; whereas on 18 October 2019, that court, acting *ex officio*, having established that the recording of the interview programme in which Zdzisław Krasnodębski took part took place at the radio studio in Warsaw and not in Kraków, ruled that it did not have jurisdiction to hear the case and referred it to the District Court for Warsaw-Śródmieście in Warsaw;

C. whereas on 1 February 2019, during a morning interview programme on a radio station, Zdzisław Krasnodębski referred to the private prosecutor as an 'unknown lawyer' and a 'gangster', and claimed that he was 'throwing accusations around left, right and centre';

---

[1] 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; judgment of the Court of Justice of 19 December 2019, *Junqueras Vies*, C-502/19, ECLI:EU:C:2019:1115.

D. whereas, in making those comments, Zdzisław Krasnodębski is alleged to have publicly slandered the private prosecutor, allegedly causing him to suffer a loss of the trust necessary for him to pursue his business activity and denigrating him in the eyes of the public, an offence which may be privately prosecuted under Article 212(2) of the Polish Criminal Code;

E. whereas Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union stipulates that 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;

F. whereas Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union states that Members of the European Parliament enjoy, in the territory of their own state, the immunities accorded to members of the parliament of that state;

G. whereas according to Article 105(2) and (5) of the Polish Constitution, from the day of the announcement of the results of the elections until the day of the expiry of his/her mandate, a Deputy shall not be subjected to criminal accountability without the consent of the *Sejm* (lower house of parliament) and he/she shall be neither detained nor arrested without the consent of the *Sejm*, except for cases when he/she has been apprehended in the commission of an offence and in which his/her detention is necessary for securing the proper course of proceedings;

H. whereas the alleged actions do not relate to opinions expressed or votes cast by Zdzisław Krasnodębski in the performance of his duties within the meaning of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;

I. whereas, in this case, Parliament found no evidence of *fumus persecutionis*, i.e. factual elements which suggest that the intention underlying the legal proceedings in question is to undermine the Member's political activity as a Member of the European Parliament;

J. 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 ([2]);

K. whereas the purpose of parliamentary immunity is 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;

1. Decides to waive the immunity of Zdzisław Krasnodębski;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of Poland and to Zdzisław Krasnodębski.

([2]) Judgment of the General Court of 30 April 2019, *Briois* v *Parliament*, T-214/18, ECLI:EU:T:2019:266.