Tuesday 9 March 2021

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Request for waiver of the immunity of Valter Flego

European Parliament decision of 9 March 2021 on the request for waiver of the immunity of Valter Flego (2020/2054(IMM))

(2021/C 474/20)

The European Parliament,

— having regard to the request for waiver of the immunity of Valter Flego, dated 19 February 2020 by the President of the Council of the Rijeka County Court in the Republic of Croatia in connection with criminal proceedings pending before the Rijeka County Criminal Court, and announced in plenary on 26 March 2020,

— having regard to the waiver by Valter Flego of 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 2019 [1],

— having regard to Article 75 of the Constitution of the Republic of Croatia and to Articles 23 to 28 of the Standing Orders of the Croatian Parliament,

— 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 (A9-0023/2021),

A. whereas the presiding judge of Rijeka County Criminal Court submitted a request for waiver of the parliamentary immunity of Valter Flego in connection with pending proceedings brought against him for the criminal offence of abuse of office under Article 291(1) and (2) of the Criminal Code [2];

B. whereas in his capacity as Mayor of the Town of Buzet, Croatia, from 1 April 2010 to 30 May 2013, he allegedly facilitated the illegal payments of salary supplements to himself as Mayor, to his Deputy Mayor, to the Director of the Office of the Mayor and to three other directors;

C. whereas Valter Flego was elected to the European Parliament as result of the elections of May 2019;

D. whereas the alleged offence does not concern opinions expressed or votes cast by Valter Flego 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;

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

F. whereas pursuant to Article 75(2) and (3) of the Constitution of the Republic of Croatia:

'No representative shall be prosecuted, detained or punished for an opinion expressed or vote cast in the Croatian Parliament.

No representative shall be detained, nor shall criminal proceedings be instituted against him, without the consent of the Croatian Parliament';

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[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.

[2] Official Gazette of Croatia, 125/11, 144/12, 56/15, 61/15, 101/17, 118/2018 and 126/2019.

G. whereas the alleged offence has no clear or direct bearing on the performance by Mr Flego of his duties as a Member of the European Parliament;

H. 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 immunity ([3]);

I. 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;

J. whereas the offences of which Valter Flego is accused took place prior to his election to the European Parliament;

K. 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, including his activity as a Member of the European Parliament;

L. 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 ([4]);

1. Decides to waive the immunity of Valter Flego;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the Croatian authorities and to Valter Flego.

([3]) Judgment of the General Court of 15 October 2008, *Mote* v *Parliament*, T-345/05, EU:T:2008:440, point 28.
([4]) Judgment of the General Court of 30 April 2019, *Briois* v *Parliament*, T-214/18, ECLI:EU:T:2019:266.