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Request for the waiver of the immunity of Harald Vilimsky

European Parliament decision of 11 November 2021 on the request for waiver of the immunity of Harald Vilimsky (2021/2073(IMM))

(2022/C 205/07)

The European Parliament,

— having regard to the request for waiver of the immunity of Harald Vilimsky, submitted by the Public Prosecutor's Office in Vienna and transmitted on 7 May 2021 by the Head of the Permanent Representation of Austria to the EU in connection with criminal proceedings, and announced in plenary on 20 May 2021,

— having heard Harald Vilimsky 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 57(2) and (3) of the Austrian 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 (A9-0303/2021),

A. whereas the Vienna Public Prosecutor's Office has requested the waiver of the immunity of Harald Vilimsky, Member of the European Parliament, in order to initiate criminal prosecution proceedings in connection with the offence of embezzlement under Section 153(1) and (3), first instance, and the offence of involvement in misappropriation of funds under Sections 12, second alternative, and 133(1) and (2), first instance, and misuse of funds under Section 153b(1), (2) and (3) of the Austrian Criminal Code;

B. whereas Harald Vilimsky served as finance officer of the Austrian Freedom Party (FPÖ) National Assembly group from 27 October 2006 to 23 October 2019; whereas he was elected to the European Parliament as result of the European Parliament elections held in May 2019;

C. whereas from 1 October 2011 to 13 August 2019, Harald Vilimsky allegedly abused his authority to avail himself of bank accounts belonging to the parliamentary group of the FPÖ in the Austrian National Assembly, by arranging for the payment of bills by means of regular transfers from the FPÖ National Assembly group's account for mobile phone services used for entirely private ends by a third party, resulting in a financial loss to the FPÖ National Assembly group;

D. whereas he allegedly used the funds granted to the FPÖ National Assembly group for purposes beyond the scope of those defined in Section 1 of the Austrian Parliamentary Groups Funding Act 1985 (KlubFG), and whereas he allegedly did so in full knowledge of the fact that the services paid were non-party-related;

E. whereas the alleged offence does not concern opinions expressed or votes cast in the performance of the duties of the Member of the European Parliament for the purposes of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;

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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, EU:C:2008:579; judgment of the General Court of 19 March 2010, *Gollnisch* v *Parliament*, T-42/06, EU:T:2010:102; judgment of the Court of Justice of 6 September 2011, *Patriciello*, C 163/10, EU:C:2011:543; judgment of the General Court of 17 January 2013, *Gollnisch* v *Parliament*, T-346/11 and T-347/11, EU:T:2013:23; judgment of the Court of Justice of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115.

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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 Article 57(2) and (3) of the Austrian Constitution states:

'2. The members of the National Council may on the ground of a criminal offense — the case of apprehension in the act of committing a crime excepted — be arrested only with the consent of the National Council. Likewise, searches of houses of members of the National Council require the consent of the National Council.

3. Otherwise members of the National Council may only be officially prosecuted on account of a punishable act, with the consent of the National Council, if it has obviously no connection with the official activity of the deputy in question. However, the agency (Behörde) must seek a ruling from the National Council concerning the existence of such a connection if the deputy concerned or a third of the members of the Standing Committee [which is] entrusted with these matters, demands it. In the case of such a demand, any official prosecuting action must immediately cease or be terminated.';

H. 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]);

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 their parliamentary duties and which cannot be separated from those duties;

J. whereas in this case, Parliament has found no evidence of *fumus persecutionis*, i.e. factual elements which indicate that the intention underlying the legal proceeding may be to damage a Member's political activity and thus the European Parliament;

1. Decides to waive the immunity of Harald Vilimsky;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of the Republic of Austria and to Harald Vilimsky.

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