Thursday 11 November 2021

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Request for the waiver of the immunity of Nils Ušakovs

European Parliament decision of 11 November 2021 on the request for waiver of the immunity of Nils Ušakovs (2020/2239(IMM))

(2022/C 205/08)

The European Parliament,

— having regard to the request for waiver of the immunity of Nils Ušakovs, dated 23 October 2020 and transmitted by the General Prosecutor of the Republic of Latvia in connection with criminal proceedings to be initiated in the Republic of Latvia and announced in plenary on 13 November 2020,

— having heard Nils Ušakovs 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 Articles 29 and 30 of the Latvian 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 (A9-0304/2021),

A. whereas the Prosecutor at the Division for Investigation of Especially Serious Cases in the Criminal Justice Department of the General Prosecutor's Office in Riga has requested the waiver of the immunity of Nils Ušakovs, Member of the European Parliament, in order to initiate criminal proceedings against him in connection with the infringement of the prohibition on the circulation of devices modified for special clandestine operations;

B. whereas on 30 January 2019, during an authorised search of the office of Nils Ušakovs as Chairman of Riga City Council, in connection with other criminal proceedings, a device primarily intended for use as a means of clandestine video and audio recording, especially designed and used for special clandestine operations, was found;

C. whereas by keeping the device in his office at the Riga City Council premises, Mr Ušakovs allegedly infringed the prohibition laid down in Article 5^1, paragraph 1, of the Law on the circulation of goods of strategic importance banning natural persons from acquiring or keeping equipment, devices or tools or components thereof that have been specially designed or modified for special clandestine operations included in the Republic of Latvia's national list of goods and services of strategic importance; whereas by his actions, Mr Ušakovs allegedly committed a crime under Article 237^1, paragraph 2, of the Latvian Criminal Code;

D. whereas Nils Ušakovs was elected to the European Parliament as result of the European Parliament elections held in May 2019;

E. whereas the alleged offence does not concern opinions expressed or votes cast by Nils Ušakovs 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;

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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.

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 29 and Article 30 of the Latvian Constitution provide that:

'Article 29

Members of the Saeima shall not be arrested, nor shall their premises be searched, nor shall their personal liberty be restricted in any way without the consent of the Saeima. (…)

Article 30

Without the consent of the Saeima, criminal prosecution may not be commenced against its member.';

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 Nils Ušakovs;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of the Republic of Latvia and to Nils Ušakovs.

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