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## Request for defence of the immunity of Witold Tomczak

P6\_TA(2008)0048

### European Parliament decision of 19 February 2008 on the request for defence of the immunity and privileges of Witold Tomczak (2007/2130(IMM))

(2009/C 184 E/20)

*The European Parliament,*

- having regard to the request by Witold Tomczak for defence of his immunity in connection with the criminal case conducted by the District Court in Ostrów Wielkopolski, Poland, made on 21 May 2007, announced in plenary sitting on 24 May 2007,
  - having heard Witold Tomczak on 4 October 2007 in accordance with Rule 7(3) of its Rules of Procedure,
  - having regard to Articles 8, 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities 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 12 May 1964 and 10 July 1986 <sup>(1)</sup> of the Court of Justice of the European Communities,
  - having regard to Article 105 of the Polish Constitution,
  - having regard to Rules 6(3) and 7 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A6-0008/2008),
- A. whereas Witold Tomczak was elected to the Sejm (the lower house of the Polish Parliament) on 21 September 1997 and on 23 September 2001; whereas after the signature of the Accession Treaty on 16 April 2003 he became an Observer; whereas he was a Member of the European Parliament from 1 May 2004 until 19 July 2004; whereas he was elected to the European Parliament on 13 June 2004 and his term of office in the Polish Parliament expired on 16 June 2004,
- B. whereas Witold Tomczak is charged with insulting two police officers in the performance of their duties in Ostrów Wielkopolski on 26 June 1999 in breach of Article 226(1) of the Polish Penal Code; whereas after a number of failures by Witold Tomczak to appear at the hearings, the District Court in Ostrów Wielkopolski decided on 10 January 2005, in accordance with Article 377(3) of the Polish Code of Criminal Procedure, to proceed with the trial in absentia,
- C. whereas, in accordance with Article 9 of the Act of 23 January 2004 on elections to the European Parliament, 'A person shall be eligible for elections to the European Parliament held in the Republic of Poland if he or she [...] has not been convicted of an offence committed intentionally and prosecuted by indictment ...'; whereas Article 142, paragraph 1(1) of that Act states that 'The forfeiture of a seat of a Member of the European Parliament shall be a result of forfeiture of eligibility'; whereas no such provisions exist in the Act of 12 April 2001 on elections to the Sejm and Senat of the Republic of Poland (the Polish parliament),

<sup>(1)</sup> Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195 and Case 149/85 *Wybot v Faure and others* [1986] ECR 2391.

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- D. whereas Witold Tomczak had previously (on 29 April 2005) asked Parliament to defend his immunity in these criminal proceedings; whereas Parliament decided in plenary on 4 April 2006 not to defend his immunity, even though Mr Tomczak had sent a letter prior to the plenary sitting by which he purported to withdraw his earlier application for defence of his immunity,
- E. whereas Witold Tomczak claims that the judge presiding in the case is not objective, and that the possibility of holding the trial in absentia infringes the principle of the presumption of innocence,
- F. whereas Witold Tomczak complains that the District Court is not granting him access to the files in the case and that the criminal proceedings against him are biased because he sought to challenge the legality of the actions of local police and the local prosecutor,
- G. whereas, on the basis of the information obtained, Witold Tomczak is not protected by parliamentary immunity in respect of any of the claims which have been drawn to the attention of the President of the European Parliament,
1. Decides not to defend the immunity and privileges of Witold Tomczak.
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