

Friday 24 April 2009

74. Deplores the fact that the Convention on the Protection of the European Communities' Financial Interests of 1995 and its protocols of 1996 and 2007 have still not been ratified by the Czech Republic, Hungary, Malta and Poland, that one of the two protocols has not been ratified by Estonia and Italy and that in seven Member States the transposition of the provisions has shortcomings;

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75. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice, the European Court of Auditors, the OLAF Supervisory Committee and OLAF.

Parliamentary immunity in Poland

P6_TA(2009)0316

European Parliament resolution of 24 April 2009 on parliamentary immunity in Poland (2008/2232(INI))

(2010/C 184 E/15)

The European Parliament,

- having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities,
 - having regard to Article 12(3) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,
 - having regard to Article 105 of the Constitution of the Republic of Poland of 2 April 1997,
 - having regard to Article 7b of the Polish Law of 9 May 1996 on the performance of the mandate of deputy or senator,
 - having regard to Articles 9 and 142 of the Polish Law of 23 January 2004 on elections to the European Parliament,
 - having regard to its resolution of 23 June 2005 on the amendment of the decision of 4 June 2003 on the adoption of the Statute for Members of the European Parliament ⁽¹⁾,
 - having regard to Rules 6, 7 and 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0205/2009),
- A. whereas, in the current parliamentary term, Parliament and its Committee on Legal Affairs, as the committee responsible, have considered requests for waiver of the immunity of Members elected in Poland and have come up against certain difficulties in the interpretation of provisions of law that might be applicable in the case of those Members,

⁽¹⁾ OJ C 133 E, 8.6.2006, p. 48.

Friday 24 April 2009

- B. whereas the responsible committee has been called upon, in particular, to decide on the admissibility of requests for waiver of immunity made directly by private persons to the President of the European Parliament; whereas under Polish law a private person has the right to make a direct request to the Polish Parliament (*Sejm* or *Senat*) to waive the immunity of one of its Members in the case of offences that may be the subject of a private prosecution, and whereas the relevant provisions of Polish law do not seem clearly to take account of all possible scenarios in the case of criminal proceedings relating to offences subject to private prosecution,
- C. whereas those provisions also apply to Members of the European Parliament elected in Poland, yet the admissibility of such requests raises difficult questions having regard to the Rules of Procedure, and in particular Rule 6(2) which refers to the 'competent authority',
- D. whereas under Rule 7(7) of the Rules of Procedure the responsible committee is competent to verify the admissibility of a request for waiver of immunity, including the question of the competence of the national authority to submit such a request; whereas, however, under the existing provisions the manifest conflict in this regard between the relevant provisions of Polish law and the Rules of Procedure would have to be resolved by regarding as inadmissible requests for waiver of immunity submitted by private persons,
- E. whereas the purpose of Rule 6(2) is to guarantee that Parliament receives only requests in proceedings that have received the attention of the authorities of a Member State; whereas it also guarantees for Parliament that requests for waiver of immunity which are received by it comply with national law as regards both substance and procedure, which in turn serves as a further guarantee that, in reaching its decision in its procedures on immunities, Parliament observes both the national law of a Member State and its own prerogatives; whereas the concept of 'authority' is clearly referred to in other provisions of Rules 6 and 7 in the context of the procedures on immunity,
- F. whereas to regard requests for waiver of immunity made by private persons as inadmissible would be unsatisfactory in that it could interfere with their rights in judicial proceedings and preclude prosecutors of some offences from being able to request waiver of immunity; whereas this could be regarded as giving rise to unjust and unequal treatment of applicants,
- G. whereas, however, it should be for the Member States to make provision for the exercise of such rights with regard to Members of the European Parliament in the light of the rules and procedures governing its functioning,
- H. whereas, by letters of 29 September 2004 and 9 March 2005, 25 Member States were invited, pursuant to Rule 7(12), to indicate which authorities are competent to present a request for waiver of a Member's immunity; whereas to date only Austria, Belgium, the Czech Republic, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Lithuania, the Netherlands, Portugal, Slovenia, Sweden and the UK have responded,
- I. whereas in its debates the responsible committee also addressed the question of the possible consequences of a waiver of immunity in the case of Members of the European Parliament elected in Poland,
- J. whereas, in the event that the Member is found guilty by the court and punished for an intentional offence prosecuted by public prosecution, such waiver might result in the automatic loss of his or her eligibility, which would result in turn in the Member losing his or her seat,
- K. whereas this automatism amounts, *de facto*, to an additional penal sanction being adjudged together with conviction,
- L. whereas in practice even minor offences might result in a loss of eligibility, despite the requirement that in order for an offence to give rise to ineligibility it must be both publicly prosecuted and committed intentionally,

Friday 24 April 2009

- M. whereas there is no equivalent provision applicable to Members of the Polish *Sejm* or *Senat*, who do not cease to be eligible for election in such cases,
- N. whereas Member States are free to make a provision for the withdrawal of the mandate of a Member of the European Parliament where, as a result, the seat of the Member falls vacant; whereas, however, the principle of equal treatment, as one of the basic principles of EU law, requires that similar situations be treated in similar ways and there is an apparent differentiation in treatment of the Members of Polish *Sejm* and *Senat*, on the one hand, and Members of the European Parliament elected in Poland, on the other, when it comes to loss of eligibility; whereas that loss of eligibility results directly and automatically in the Member concerned losing his or her seat and prevents him or her from being re-elected,
- O. whereas this inequality of treatment was brought to the Commission's attention by an oral question presented on behalf of the Committee on Legal Affairs by its Chairman and was debated in the European Parliament; whereas, notwithstanding this, the legal situation remains as it was,
- P. whereas equal treatment of Members of the national parliament and Members of the European Parliament should be secured as soon as possible, particularly in view of the coming elections in 2009,
1. Encourages the Commission to look at the discrepancies between the legal situation of Members of the European Parliament elected in Poland and that of Members of the Polish *Sejm* and *Senat*, and to engage as a matter of urgency in contacts with the competent authorities in Poland with a view to identifying how to eliminate the manifest discrimination between the Members of the two Parliaments as regards their eligibility;
 2. Separately asks the Republic of Poland to review the current situation in which conditions of eligibility and loss of mandate of Members of two parliamentary assemblies are clearly unequal, and to take steps to put an end to this discriminatory treatment;
 3. Calls on the Commission to carry out a comparative study designed to ascertain whether discrepancies in treatment of Members of national parliaments and Members of the European Parliament exist in the Member States which acceded to the European Union on or after 1 May 2004, and to communicate the results of that study to Parliament;
 4. Calls on the Member States to respect the rights deriving from EU citizenship, including the right to vote and stand as a candidate in elections to the European Parliament, which is of particular importance in the run-up to the 2009 elections, including the principle of equal treatment of persons in a similar situation;
 5. Requests the Member States, and in particular the Republic of Poland, to ensure that procedural measures are put in place in order to ensure that requests for waiver of the immunity of Members of the European Parliament are always transmitted by the 'competent authority' in accordance with Rule 6(2) of the Rules of Procedure in order to guarantee observance of provisions of substantive and procedural national law, including the procedural rights of private persons, as well as Parliament's prerogatives;
 6. In order to avoid any doubt, invites the Member States to indicate to Parliament the authorities which are competent to present requests for waiver of a Member's immunity;
 7. Reiterates the need for a uniform Statute for Members of the European Parliament and recalls, in this context, the commitment made on 3 June 2005 by the representatives of the Member States meeting within the Council to examine the request by Parliament for a revision of the relevant provisions of the 1965 Protocol on the privileges and immunities of the European Communities as regards the part thereof relating to Members of the European Parliament, in order to reach a conclusion as soon as possible;
 8. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice of the European Communities, the European Ombudsman and the governments and parliaments of the Member States.
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