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Request for waiver of the immunity of Mr Marcin Romanowski

Report[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
Rapporteur: Ms Heike ENGELHARDT, Germany, Socialists, Democrats and Greens Group

1. Reference to committee: Request Rule 73, Reference 4831 of 30 September 2024.

A. Draft resolution[2]

1. Parliamentary immunity, in its two forms – non-liability and inviolability –, is a democratic safeguard, born of the need to preserve the integrity of parliaments, including in their operation and their acts, and to protect their members' independence in the performance of their duties.

2. In addition, and quite apart from the national immunities they may enjoy, members of the Parliamentary Assembly of the Council of Europe are covered by special rules on immunity at European level, laid down by the General Agreement on Privileges and Immunities of the Council of Europe of 1949 and its additional Protocol of 1952 (ETS Nos. 2 and 10). These rules establish the same twofold principle of parliamentary non-liability (article 14) and inviolability (article 15) and provide in addition for the free movement of Assembly members within the territory of the member States.

3. Immunity is not accorded for the personal benefit of the individual Assembly member, but in order to guarantee the independence and integrity of the Parliamentary Assembly as a whole and of its members in the exercise of their functions.

4. There are two exceptions to the parliamentary inviolability of a member of the Assembly: *flagrante delicto* and waiver. In particular, the parliamentary immunity must be waived before one of its member's freedom may be restricted; the Assembly alone is able to waive the immunity of a member.

5. The Assembly's Rules of Procedure specify the procedure to be followed to waive the inviolability of a member of the Parliamentary Assembly following a request by a competent national authority, as well as the role of the President in defending the immunity of a member of the Assembly who has been arrested or deprived of freedom of movement in the absence of *flagrante delicto* or prior waiver by the Assembly.

6. On 29 September 2024, the President of the Assembly received a request for waiver of the immunity of Mr Marcin Romanowski from the Public Prosecutor General and Minister of Justice of the Republic of Poland. According to the relevant Rules of Procedure, the President subsequently announced it in a plenary sitting on 30 September 2024 and the Committee on Rules of Procedure, Immunities and Institutional Affairs immediately considered this request.

7. The Assembly regrets that Mr Romanowski did not avail himself of the opportunity offered to him to be heard by the Committee on Rules of Procedure, Immunities and Institutional Affairs or to be represented by any member of the Assembly.

8. At the outset, the Assembly observes that the alleged offences do not concern opinions expressed or votes cast by Mr Marcin Romanowski in the exercise of his functions as a member of the Parliamentary Assembly. The request for waiver of immunity concerns facts which relate to activities of a local nature prior to the acquisition of the status of, and consequently immunity as, a member of the Parliamentary Assembly.

9. In conformity with the Rules, the committee did not make any examination of the merits of the case in question, nor did it pronounce itself on the guilt or otherwise of the member concerned.

10. When considering a request to waive the inviolability, the Assembly has to consider the following elements: whether the legal proceedings initiated against the member jeopardize the proper functioning of the Parliamentary Assembly, and whether the request is serious, namely it should not be inspired by reasons other than that of dispensing justice.

11. In the present case, the Assembly considers that, in the light of the current tasks of Mr Romanowski, his prosecution, possible arrest and detention would not as such affect the proper functioning of the Assembly.

12. Further, in the light of the material before it, the Assembly considers that there are no sufficient reasons to doubt the genuine intention of the prosecution against Mr Marcin Romanowski as aiming solely at the proper administration of justice. The request is therefore "serious".

13. Having regard to the above considerations and without any prejudice as to the merits of the case, the Assembly decides to waive the immunity of Mr Marcin Romanowski to allow justice to be administered. It expects the Polish authorities to ensure that such administration of justice be fair and impartial, in full respect of the national law and the guarantees provided by the European Convention of Human Rights (ETS No. 5).

2. Draft resolution adopted by the committee on 1 October 2024.

14. It Instructs its President to forward this decision and the report of the Committee on Rules of Procedure, Immunities and Institutional Affairs immediately to the competent authorities of the Republic of Poland and to Mr Marcin Romanowski.

B. Explanatory report by Ms Heike Engelhardt, rapporteur

1. Introduction

1. On 29 September 2024, the President of the Parliamentary Assembly received from the Public Prosecutor General and Minister of Justice of Poland, Mr Adam Bodnar, a request for waiver of the immunity of Mr Marcin Romanowski (Poland, EC/DA), member of the Polish delegation to the Parliamentary Assembly. The request was submitted in the context of the ongoing investigation about criminal acts Mr Romanowski has allegedly committed between 2018 and 2023 in his capacity as a public officer, and in relation to the management and distribution of the Fund for Victims' Support and Post-Penitentiary Support (Justice Fund).

2. On 30 September 2024, the President of the Assembly announced the request for waiver of Mr Romanowski's immunity in the plenary sitting just before the adoption of the agenda of the fourth part-session of the Assembly. It was immediately referred for report to the Committee on Rules of Procedure, Immunities and Institutional Affairs, in line with Rule 73.2 of the Assembly's Rules of Procedure, and the Assembly agreed to hold the relevant debate on 2 October 2024. The committee met in the afternoon of 30 September and appointed me rapporteur.

3. By a letter sent by the chairperson of the committee on 30 September 2024, as soon as the committee was seized with the request for the waiver was received, Mr Romanowski was invited to participate in a committee hearing on 1 October 2024 or to be represented by any member of the Assembly, in line with Rule 73.3 of the Assembly's Rules of Procedure.

4. In an e-mail sent on 30 September 2024, in the evening, Mr Romanowski asked for his hearing to be postponed. Considering that there were no compelling reasons which were preventing Mr Romanowski from being present in person or online at the committee hearing or to be represented by any member of the Assembly, the committee undertook its role, according to the Rules, and proceeded to "immediately consider the request".

2. General legal framework[3]

5. The General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2, GAPI), concluded further to Article 40 of the Statute of the Council of Europe (ETS No. 1) provides two kinds of immunity for members of the Parliamentary Assembly:

– non-liability (immunity against any judicial proceedings for votes, opinions and remarks related to the exercise of parliamentary office) – Article 14 GAPI, and

– inviolability (exemption from arrest and prosecution) in the exercise of their functions as Assembly members or when travelling on Assembly business, whether this is inside or outside of their national territory, with two exceptions: *flagrante delicto* and waiver by the Parliamentary Assembly – Article 15 GAPI and Article 73 of the Assembly's Rules of Procedure.

6. This immunity is of an autonomous nature; it is distinct from and independent of any national immunity; it is based on international law and can be interpreted only by the Parliamentary Assembly. The parliamentary immunity of a member of the Assembly must be waived before his or her freedom can be restricted; the Assembly alone is able to waive the immunity of a member.

7. Immunity is not accorded for the personal benefit of the individual Assembly member, but in order to guarantee the independence and integrity of the Assembly as a whole and of its members, in the exercise of their functions.

3. Procedure for waiver of immunity of a member of the Assembly

8. According to Rule 73.2 of the Rules of Procedure, a request for immunity to be waived should be addressed to the President of the Assembly. It will be announced in a plenary sitting (or Standing Committee meeting if this takes place earlier than a plenary sitting) and will then be referred to the Committee on Rules of

3. See more information about the regulatory framework, Parliamentary Assembly relevant texts and precedents, as well as relevant reports by the Venice Commission, under the Parliamentary Assembly and parliamentary immunity special webpage.

Procedure, Immunities and Institutional Affairs ("Rules Committee"). The latter "shall immediately consider the request" and prepare the draft resolution to be considered by the Assembly at the next part-session after the request is sent.

9. As soon as a request for a waiver of the immunity conferred upon a parliamentarian by virtue of his membership of the Assembly is submitted, the President of the Assembly sets in motion the necessary internal procedures for an examination of this request in line with the Rules of Procedure.

10. This involves verification by the Rules Committee that the conditions for a waiving of immunity are fulfilled, allowing for a decision by the Assembly at the first sitting day after the report by the committee has been tabled. According to the Rules, the committee shall not make any examination of the merits of the case in question, nor shall it pronounce on the guilt or otherwise of the member concerned. In line with the Guidelines on the scope of parliamentary immunities enjoyed by members of the Parliamentary Assembly (paragraph 9.6), and in view of the functional purpose underlying the concept of immunities conferred upon a member of the Assembly, when considering a request to waive the immunity, the committee and – on the basis of its report – the Assembly, have to consider the following elements: legal proceedings initiated against the member should not jeopardize the proper functioning of the Assembly; and the request must be serious, namely it should not be inspired by reasons other than that of dispensing justice. If both these conditions are fulfilled, the Assembly should, in the usual course of events, propose to waive the immunity.

11. The report of the committee shall conclude with a draft resolution for the retention or the waiver of immunity. No amendment to that decision will be admissible.

4. Marcin Romanowski's case

12. In 2018 the Minister of Justice appointed Mr Romanowski as his plenipotentiary responsible for supervising the operation of the Justice Fund. The Justice Fund is a Polish public fund managed by the Minister of Justice, established in 2012 pursuant to the Code of Execution of Criminal Judgments. Initially named "Fund for Victims' Aid and Post-Penitentiary Assistance", its role was to assist victims of crime and witnesses; to prevent crime; and to provide assistance to persons deprived of their liberty, those released from prisons and detention centres, and their relatives.

13. Mr Romanowski was appointed Undersecretary of State at the Ministry of Justice (a role commonly referred to as the Deputy Minister of Justice) on 4 June 2019. He was dismissed from this post in December 2023, following the change of government.

14. On 15 October 2023, Mr Romanowski was elected a deputy to the Sejm. On 18 January 2024, the Presidium of the Sejm approved the composition of the Polish delegation to the Parliamentary Assembly and Mr Romanowski became a substitute member of the delegation.

15. On 19 June 2024, the Prosecutor General lodged a request with the Speaker of the Sejm of the Republic of Poland, for the Sejm to consent to the prosecution of Mr Marcin Romanowski and his arrest and detention on remand. According to this request, the evidence gathered in the case includes personal sources of evidence, documentation concerning proceedings for the award of grants from the Justice Fund, analysis of secure documents and electronic data carriers, and indicates a sufficiently justified suspicion that Mr Marcin Romanowski, during his mandate as Deputy Minister of Justice, committed 11 crimes, including participation in an organised group focused on committing crimes against property, in particular by exceeding his powers and failing to fulfil duties, as well as by declaring falsehoods in official documents, and causing large-scale damage to the property of the State Treasury, in order to obtain personal and financial gains, namely offences punishable under several provisions of the Penal Code.

16. In addition, according to the Prosecutor General, the established circumstances of the case created a real fear of unlawful obstruction of the proceedings by Mr Marcin Romanowski, which, in view of the need to safeguard the proper course of the proceedings, justified the request to detain him in order to carry out procedural activities requiring his participation and to apply immediately to the court for the application of a preventive measure in the form of detention on remand, due to the existing fear of obstruction and the threat of a severe punishment being imposed.

17. Following a vote, the Sejm lifted Mr Romanowski's immunity on 12 July 2024, consenting for him to be prosecuted under each of the 11 charges specified in the request, as well as for him to be arrested and detained on remand.

18. On 15 July 2024, upon the instructions of the National Prosecutor's office, Mr Romanowski was arrested on the basis of 11 charges for his activities during his term as Deputy Minister under the previous government.

19. On 16 July 2024, the Assembly received a letter from Mr Romanowski's lawyer asking the President to defend his client's immunity as a member of the Assembly.

20. In a letter sent on the same day to Mr Szymon Hołownia, Marshal of the Sejm, the President of the Assembly clarified that, as a member of the Assembly, Mr Romanowski enjoyed parliamentary immunity under the special rules on immunity at European level, laid down by the General Agreement on Privileges and Immunities of the Council of Europe of 1949 (GAPI) and its additional Protocol of 1952 (ETS Nos. 2 and 10).

21. Taking into account the President of the Assembly's letter invoking his immunity, Mr Romanowski was released by the Polish court in the evening of the same day, which refused to grant the prosecutor's request and detain Mr Romanowski on remand.

22. In a letter dated 19 July 2024, addressed to Mr Dariusz Korneluk, First Deputy Public Prosecutor General, National Public Prosecutor of Poland, the President of the Assembly also explained the Assembly's Rules that specify the procedure to be followed to waive the immunity of a member of the Assembly, following a request by a competent national authority, as well as the role of the President in defending the immunity of a member of the Assembly who has been arrested or deprived of freedom of movement.

23. As mentioned above, a request to waive the immunity of Mr Romanowski was sent by the Public Prosecutor General and Minister of Justice of Poland to the President of the Assembly on 29 September 2024, after a Polish court rejected the appeal by the national prosecutor against the decision of 27 September 2024 not to detain Mr Romanowski on remand in view of his immunity as member of the Assembly.

5. Verification that the conditions for a waiving of immunity are fulfilled

24. The Rules Committee is asked to consider whether the conditions for a waiving of immunity are fulfilled or not. According to Rule 73 of the Rules of Procedure "The committee shall not make any examination of the merits of the case in question. In particular, the committee shall not, under any circumstances, pronounce on the guilt or otherwise of the member, or on whether or not the opinions or acts attributed to him or her justify prosecution."

25. From the outset, it should be recalled that immunity cannot be invoked in case of in *flagrante delicto*. This is not the case of Mr Romanowski.

5.1. Question 1: Was the request for waiver of immunity transmitted in accordance with Rule 73 of the Rules of Procedure of the Assembly?

26. Immunity cannot be waived except by the Assembly at the request of a "competent authority" of the member State concerned.

27. Paragraph 9.7 of the Guidelines on the scope of parliamentary immunities enjoyed by members of the Parliamentary Assembly states that "The competent authority is normally the judge in charge of the case, but it could also be the public prosecutor or the Minister of Justice."

28. Insofar as the request was submitted by the Public Prosecutor General and Minister of Justice of Poland, the conditions for the "competent authority" have been met.

5.2. Question 2: Do the legal proceedings initiated against Mr Romanowski jeopardize the proper functioning the Parliamentary Assembly?

29. Parliamentary inviolability is a democratic safeguard, born of the need to preserve the integrity of parliaments, including in their operation and their acts, and to protect their members' independence in the performance of their duties. Having considered the tasks of the member in question, the prosecution, possible arrest and detention of Mr Romanowski would not, as such, affect the proper functioning of the Assembly.

5.3. Question 3: Is the request serious? That is not inspired by reasons other than that of dispensing justice.

30. While being aware of the controversy surrounding various recent appointments in Poland, including that of the national prosecutor, I consider that, on the basis of the different elements before the committee, there are no sufficient reasons to doubt the genuine intention of the prosecution against Mr Romanowski as solely aiming at the proper administration of justice.

6. Conclusions

31. For all the above-mentioned reasons and without any prejudice as to the merits of the case, I propose that the Assembly waives Mr Romanowski's immunity in order to allow justice to be administered. At the same time, it is expected from the Polish authorities to ensure that such administration of justice will be fair and impartial, in full respect of national law and the guarantees provided by the European Convention of Human Rights (ETS No. 5).