



TEXTS ADOPTED

P9_TA(2023)0087

Request for waiver of the immunity of Anna Júlia Donáth

European Parliament decision of 30 March 2023 on the request for waiver of the immunity of Anna Júlia Donáth (2022/2208(IMM))

The European Parliament,

- having regard to the request dated 21 October 2022 of the District Court of Kecskemét in Hungary for the waiver of the immunity of Anna Júlia Donáth in connection with criminal proceedings brought against her by way of a private indictment pending before the District Court of Kecskemét, and announced in plenary on 24 November 2022,
- having regard to the fact that Anna Júlia Donáth has renounced her right to be heard under 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 Article 4(2) of the Basic Law of Hungary, to Articles 10(2) and 12(1) of Act LVII of 2004 on the Legal Status of the Hungarian Members of the European Parliament and to Article 74 of Act XXXVI of 2012 on the Hungarian National Assembly,
- 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 2019¹,

- 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 (A9-0071/2023),
- A. whereas on 21 October 2022, the District Court of Kecskemét, Hungary, submitted a request for waiver of the parliamentary immunity of Anna Júlia Donáth, Member of the European Parliament elected in Hungary, in the context of the criminal proceedings for defamation brought against her by way of private indictment; whereas the request includes a previous request for waiver of the immunity of Anna Júlia Donáth by the same District Court, dated 28 June 2022, which, however, appears never to have been received by the European Parliament;
- B. whereas on 20 January 2022, a statement by the Executive Committee of the Momentum Mozgalom Párt (Momentum Movement party) referring to the suspension of the claimant's party membership, alleging that this suspension came after a series of ethical violations by the claimant, was published in the party's online newspaper and on its Facebook page; whereas it appears that, between 21 November 2021 and 29 May 2022, Anna Júlia Donáth was serving as president of the Momentum Mozgalom Párt's Executive Committee;
- C. whereas on 31 January 2022, the claimant brought a private action before the District Court of Kecskemét against Anna Júlia Donáth, in her capacity as president of the Momentum Mozgalom Párt's Executive Committee, claiming the statutory offence of defamation in public pursuant to Article 226(2)(b) of Act C of 2012 on the Hungarian Criminal Code; whereas pursuant to Article 231(2) of the Hungarian Criminal Code, that offence may be punished only in the context of a private action;
- D. 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 parliamentary duties and

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.

which cannot be separated from those duties;

- E. whereas the alleged offence does not constitute an opinion expressed or a vote cast in the performance of Anna Júlia Donáth's duties as a Member of the European Parliament within the meaning of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union; whereas the alleged offence instead concerns activities of a national nature, carried out in her capacity as president of her national party;
- F. whereas, according to Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Members of the European Parliament enjoy, in the territory of their own State, the immunities accorded to members of their parliament and, in the territory of any other Member State, immunity from any measure of detention and from legal proceedings; whereas immunity cannot be claimed when a Member is found in the act of committing an offence and does not prevent the European Parliament from exercising its right to waive the immunity of one of its Members;
- G. whereas according to Article 4(2) of the Fundamental Law of Hungary, members of the Hungarian Parliament shall be entitled to immunity; whereas according to Article 10(2) of Act LVII of 2004 on the Legal Status of the Hungarian Members of the European Parliament, Members of the European Parliament are entitled to immunity equal to the immunity of members of the Hungarian Parliament, and whereas according to Article 12(1) of the same act, the decision to suspend the immunity of a Member of the European Parliament shall fall within the competence of the European Parliament; whereas pursuant to Article 74(1) of Act XXXVI of 2012 on the Hungarian National Assembly, criminal proceedings can only be initiated against a member with the prior consent of the National Assembly;
- H. whereas, in this case, Parliament has found no evidence of *fumus persecutionis*, namely factual elements indicating that the intention underlying the legal proceeding may be to damage the Member's political activity in her capacity as a Member of the European Parliament;
- I. whereas it is for Parliament alone to decide, in a given case, whether or not to waive immunity; whereas Parliament may reasonably take account of the position of the Member in order to decide whether or not to waive his or her immunity¹; whereas Anna Júlia Donáth has stated that she does not object to her parliamentary immunity being waived;
- J. whereas Parliament cannot assume the role of a court, and whereas,

¹ Judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440. paragraph 28.

in a waiver of immunity procedure, a Member cannot be regarded as a defendant¹;

1. Decides to waive the immunity of Anna Júlia Donáth;
2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of Hungary and to Anna Júlia Donáth.

¹ Judgment of the General Court of 30 April 2019, *Briois v Parliament*, T-214/18, ECLI:EU:T:2019:266.