



TEXTS ADOPTED

P9_TA(2024)0227

Request for waiver of the immunity of Nils Ušakovs

European Parliament decision of 11 April 2024 on the request for waiver of the immunity of Nils Ušakovs (2023/2091(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Nils Ušakovs from the Prosecutor at the Anti-Corruption Coordination Section of the Criminal Justice Department of the Riga Public Prosecutor's Office, dated 24 May 2023 and transmitted on the same date by the Prosecutor General of the Republic of Latvia, in the context of criminal proceedings to be initiated in the Republic of Latvia, and announced in plenary on 14 June 2023,
- 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 Articles 29 and 30 of the Latvian Constitution,
- having regard to the judgments of the Court of Justice of the European Union (CJEU) of 21 October 2008, 19 March 2010, 6 September 2011, 17 January 2013 and 19 December 2019¹,

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.

- 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 (A9-0167/2024),
- A. whereas the Prosecutor at the Anti-Corruption Coordination Section of the Criminal Justice Department of the Riga Public Prosecutor's Office has requested the waiver of the immunity of Nils Ušakovs, Member of the European Parliament, elected in Latvia, with a view to bringing criminal proceedings against him for a criminal offence of obtaining a bribe before committing an unlawful act in the interest of a third party by using his official position, the offence of acquiring property of another by the use, in bad faith, of trust and deceit (fraud), on a large scale and in an organised group, and, finally, as a public official holding a position of responsibility and using his official position in bad faith, committing intentional acts with intent to cause serious consequences, pursuant to Article 177(3), Article 318(3), Article 15(4) and Article 320(4) of the Latvian Criminal Code;
 - B. whereas, during the period from 22 July 2017 to 17 September 2017, Nils Ušakovs, in his capacity as Mayor of Riga City Council, invested therefore with public authority in a position of responsibility, and representative of Riga City Council as a shareholder in Riga Transport, among other things allegedly demanded a bribe from the indirect owner of a minibuss transport company equivalent to 50% of the amounts which that company received from Riga City Council for carrying passengers entitled to concessionary fares;
 - C. whereas Nils Ušakovs was elected to the European Parliament at the European elections in May 2019;
 - D. whereas the alleged offence does not concern opinions expressed or votes cast by Nils Ušakovs in the performance of his duties, pursuant to Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;
 - E. whereas Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union provides that Members of the European Parliament enjoy, in the territory of their own state, the immunities accorded to members of their parliament;
 - F. whereas Article 29 and Article 30 of the Latvian Constitution state:

'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 and administrative fines may not be levied against its members’;

- G. whereas Parliament cannot assume the role of a court, and whereas, in a waiver of immunity procedure, a Member cannot be regarded as a defendant¹;
- H. 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 which cannot be separated from those duties;
- I. whereas Nils Ušakovs could not have carried out this criminal offence, i.e. receipt of a bribe, allegedly because the indirect owner of the minibuss transport company did not agree to pay such a large sum;
- J. whereas the investigation was not able to establish with certainty the precise place and time of the alleged offences;
- K. whereas the offences of which Nils Ušakovs is accused were allegedly committed in 2017, and whereas the Prosecutor General of the Republic of Latvia did not submit the request for waiver of immunity until 23 May 2023; whereas there is no convincing justification for such a delay in taking action;
- L. whereas on the basis of the information and explanations provided in the present case, including the answers given by the Deputy Public Prosecutor of the Republic of Latvia during the exchange of views with him, there are uncertainties as to the evidence on which the request for waiver of immunity is based and serious doubts surrounding the procedure, including the motivation underlying the request for waiver of immunity;
- M. whereas it follows from CJEU case-law that Parliament has a ‘broad discretion when deciding whether to grant or to refuse a request for waiver of immunity (...), owing to the political nature of such a decision’²;
- N. whereas the concordance of this concrete evidence raises a serious doubt that the intention may have been to undermine Nils Ušakovs’

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

² Judgment of the Court of Justice of 17 January 2013, *Gollnisch*, T-346/11 and T-347/11, ECLI:EU:T:2013:23, paragraph 59 and the case-law cited.

political activity, including, therefore, his activity as a Member of the European Parliament;

- O. whereas it would therefore appear that, in this instance, *fumus persecutionis* can be assumed, i.e. there is ‘concrete evidence’¹ that the intention underlying the legal proceedings in question is to undermine his political activity, and in particular his activity as a Member of the European Parliament;
- 1. Decides not 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.

¹ Judgment of the Court of Justice of 17 September 2020, *Troszczynski*, C-12/19, ECLI:EU:C:2020:725, paragraph 26.