Request for the waiver of the immunity of Béla Kovács

2014/2044(IMM) - 12/10/2015 - Committee report tabled for plenary, single reading

The Committee on Legal Affairs adopted the report by Tadeusz ZWIEFKA (EPP, PL) in which it requested for waiver of the immunity of Béla KOVÁCS (NI, HU).

Members recalled that the request for the waiver of the immunity of Béla Kovács is made in order that investigations can be carried out, on the basis of reasonable suspicions, to see whether a charge will lie against him with regard to **the offence of espionage against the institutions of the European Union** under Section 261/A of Act C of 2012 on the Hungarian Criminal Code.

According to that Section, any person who conducts intelligence activities for a non-European Union third country against the European Parliament, the European Commission or the Council of the European Union shall be punishable in accordance with Section 261; paragraph (1) of which provides that any person who conducts intelligence activities for a foreign power or foreign organisation against Hungary is guilty of a felony punishable by a term of imprisonment of between two and eight years.

However, according to the information provided by the Prosecutor General, Mr Kovács' covert contacts **with Russian intelligence officers were first detected in 2010** by the Hungarian Constitution Protection Office in the course of its investigation into the activities of certain foreign nationals.

The Prosecutor made it clear that the investigation and any subsequent indictment for which the waiver of immunity is sought are limited to events having occurred **after 1 January 2014**.

It is further noted that the criminal investigation will be carried out by the Central Chief Prosecution Office of Investigation and that, under Article 29(1) of the Fundamental Law of Hungary, the **Prosecutor-General and the Prosecution Service are independent**, carry out their constitutional tasks independently from external organisations and proceed **in compliance with the presumption of innocence**.

Mr Kovács submits that, since Section 261/A of Act C of 2012 has been in force only since 1 January 2014, he could not be charged for acts committed prior to that date because of Article 49 of the Charter of Fundamental Rights of the EU, which, reflecting the general principle *nullum crimen sine lege*, provides that no one shall be held guilty of any criminal office on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Mr Kovács further claims that his activities in 2014 do not fall within Section 261/A.

Mr Kovács further argues that the surveillance conducted against him was unlawful, that there was a violation of the presumption of innocence, that Section 118(5) of Act CLXXXVI of 2013 criminalising espionage against the institutions of the EU was passed specifically in order to make Mr Kovács' behaviour punishable and that the classification of the whole case is unlawful and unreasonable.

Waiving immunity: in order to decide whether or not to waive a Member's parliamentary immunity, the European Parliament applies its own consistent principles. One of these principles is that **immunity is usually waived when the offence falls within Article 9 of Protocol No 7**, provided that there is no *fumus persecutionis*, i.e. a sufficiently serious and precise suspicion that the matter is being raised with the intention of causing political damage to the Member concerned.

After exchanges of letters with the national authorities, it is considered that there is no *fumus persecutionis* in this case.

More specifically as regards the argument based on the principle *nullum crimen sine lege*, it appears clearly from the statements of the Prosecutor General that the investigation and any subsequent indictment for which the waiver of immunity is sought are limited to events having occurred **after 1 January 2014**, the date on which Section 261/A of Act C of 2012 on the Hungarian Criminal Code entered into effect.

On the basis of the above considerations and pursuant to Rule 9(3) of the Rules of Procedure, the Committee on Legal Affairs recommended that the European Parliament should waive the parliamentary immunity of Mr Béla Kovács.