



*Council of Europe
Parliamentary Assembly*

The President

Strasbourg, 19 July 2024

Dear National Public Prosecutor, dear Mr Korneluk,

I thank you for your letter of 17 July 2024 and would ask you to convey my appreciation for the swift reaction and follow-up given by the Polish judicial system and your national authorities to my communication of 16 July 2024 to Mr Szymon Hołownia, Marshal of the Sejm.

I am informed that the district court has ruled on 16 July that Mr Romanowski should be released from detention in view of the immunity conferred upon him as a member of the Parliamentary Assembly of the Council of Europe.

I would like to highlight that the role of the President of the Assembly in this matter, under Rule 73.6 of the Assembly's Rules of Procedure, is to confirm the privileges and immunities of the member concerned.

I take this opportunity to stress that immunity is not a privilege conferred upon a person but rather aims at guaranteeing respect for democratic institutions. No one can invoke it to commit a crime, but no one can ignore it either.

As regards any further examination of the possible waiving of immunity conferred upon Mr Romanowski, this must be carried out by the competent bodies of the Assembly, in accordance with our Rules of Procedure. Indeed, the immunity conferred upon a member of the Assembly under Article 15 of the General Agreement on Privileges and Immunities of the Council of Europe of 1949 (ETS N° 2) applies unless "the Assembly has waived the immunity" and, for its waiver, a separate formal request should be lodged by a competent national authority.

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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 the Rules of 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.

As soon as you submit a request for a waiver of the immunity conferred upon Mr Romanowski by virtue of his membership of the Parliamentary Assembly, I can set in motion the necessary internal procedures for an examination of this request in line with Rule 73 which I enclose for your information.

This will involve verification by the Rules Committee of the Parliamentary Assembly that the conditions for a waiving of immunity are fulfilled, allowing for a decision by the Assembly at its next plenary part-session starting on 30 September 2024. According to our 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](#) (§ 9.6), and in view of the functional purpose underlying the concept of immunities conferred upon a member of the Parliamentary Assembly, when considering a request to waive the immunity, the Committee and - on the basis of its report - the Assembly, has to consider the following elements: legal proceedings initiated against the member do not jeopardize the proper functioning the Parliamentary Assembly, and the request must be serious, that is 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.

Dear National Public Prosecutor,

As the President of the Parliamentary Assembly, I can assure you that our body will treat the request impartially, independently and with all expediency, with a view to ensuring that the general principles of human rights, democracy and the rule of law are fully upheld.

I remain at your disposal for any further information you may require concerning the timeline foreseen for the Parliamentary Assembly's procedure in this respect.

Yours sincerely,



Theodoros Rousopoulos

Appendix

Rules of Procedure of the Parliamentary Assembly of the Council of Europe (Article 73)

Rule 73 – Waiver of the immunity of representatives and substitutes

73.1. The members of the Assembly enjoy the privileges and immunities provided for in the General Agreement on Privileges and Immunities of the Council of Europe (of 2 September 1949) and its Additional Protocol (of 6 November 1952). These immunities are granted in order to preserve the integrity of the Assembly and to safeguard the independence of its members in exercising their European office.

73.2. Any request addressed to the President by a competent authority of a member state for the waiver of immunity of a representative or substitute as guaranteed under Article 15 of the General Agreement shall be announced in a plenary sitting or Standing Committee meeting and then referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs.

73.3. The committee shall immediately consider the request. It may issue an opinion on the competence of the requesting authority and on the formal admissibility of this request. 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. At the earliest opportunity, it shall hear the member concerned by the request, or another member of the Assembly representing the former, who may submit any document which he or she deems relevant. It may ask the competent national authorities to provide it with any information and details it considers necessary to determine whether or not immunity should be waived. 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.

73.4. The report shall be the first item of business of the Assembly on the first sitting day after the report has been tabled. The debate on the report shall be confined to arguments for or against the waiver of immunity. In the event of the request to waive immunity relating to more than one accusation, each of these may be the subject of a separate decision.

73.5. The President shall immediately communicate the decision of the Assembly to the authority which submitted the request.

73.6. In the event of a member of the Assembly being arrested or deprived of freedom of movement in supposed violation of their privileges and immunities, the President of the Assembly may take the initiative of confirming the privileges and immunities of the member concerned, where applicable following consultation of the competent Assembly bodies. A member or former member may address a request to the President of the Assembly to defend his or her immunity and privileges. At the request of the President, the Bureau may, subject to ratification by the Assembly, refer the case to the relevant committee.

73.7.a. When dealing with requests for the waiver of the Council of Europe immunity, or with requests to defend that immunity of an Assembly member, the competent Assembly organs shall interpret Article 15.a of the General Agreement on Privileges and Immunities of the Council of Europe as follows. Assembly representatives or substitutes are immune from prosecution and arrest 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. If they are not active within this meaning or not travelling on Assembly business, the national regime shall apply within their country.

73.7.b. The terms “in the exercise of their functions” include all official duties discharged by Assembly representatives and substitutes in the member states on the basis of a decision by a competent Assembly body and with the consent of the appropriate national authorities.