

EC

v

European Parliament

Order of the General Court (Seventh Chamber) of 5 May 2025

(Action for annulment – Law governing the institutions – Member of Parliament – Privileges and immunities – Refusal of the Parliament to accede to a request for privileges and immunities to be defended – Member found in the act of committing an offence – Act not open to challenge – Inadmissibility)

Action for annulment – Actionable measures – Concept – Acts producing binding legal effects – Refusal of the European Parliament to accede to a request for the privileges and immunities of one of its Members to be defended – Member found in the act of committing an offence – Act not intended to produce binding legal effects – Inadmissibility

(Art. 263 TFEU; Protocol on the privileges and immunities of the European Union, Art. 9, first para., point (b), and third para.; Rules of Procedure of the European Parliament, Rules 7 to 9)

(see paragraphs 15-17, 21-26, 28-38)

Résumé

By its order, the General Court dismisses as inadmissible an action for annulment ([1](#)) brought by a Member of the European Parliament against the act by which the European Parliament refused to grant her request for her privileges and immunities to be defended. It thus holds that, where a Member is found in the act of committing an offence, such a refusal is not open to challenge by means of an action for annulment, since it does not produce binding legal effects.

The applicant was a Member of Parliament from 2014 to 2024. As she was not re-elected at the European elections in June 2024, her term of office ended on 16 July 2024. On 9 December 2022, the applicant was arrested in Belgium, where she was detained pending trial for five months, four months of which were spent in prison. Her residence was searched and preventative measures were taken against her without her immunity being waived.

On 1 June 2023, the applicant lodged with the President of the Parliament a request for the defence of her privileges and immunities on the basis of the Rules of Procedure of the Parliament ([2](#)) and Protocol No 7 on the Privileges and Immunities of the European Union. ([3](#)) In that request, she alleged infringement of her immunity as a result of her arrest on 9 December 2022 and the measures subsequently taken against her.

On 11 March 2024, the President of the Parliament announced in plenary session that the Committee on Legal Affairs, to which the applicant's request had been forwarded, had concluded that that request was inadmissible in direct application of Protocol No 7, under which immunity cannot be claimed when a Member is found in the act of committing an offence.

Findings of the Court

In order to determine whether the act of the Parliament, by which it refused to defend the privileges and immunities of the applicant, is a challengeable act for the purposes of Article 263 TFEU, the Court examines whether that act is capable of producing legal effects.

As a preliminary point, the Court notes that the applicant, who was elected in a Member State other than Belgium and was arrested, detained and prosecuted in Belgium, must be regarded as relying solely on the immunity, or inviolability, provided for in point (b) of the first paragraph of Article 9 of Protocol No 7. ([4](#)) In addition, the waiver of the applicant's immunity ([5](#)) had not been requested because the authorities argued that this was a case of a Member being found in the act of committing an offence.

In the first place, as regards the immunity provided for in Article 9 of Protocol No 7, the Court distinguishes between two situations.

On the one hand, the Parliament's power to defend immunity may derive from point (a) of the first paragraph of Article 9 of Protocol No 7, ([6](#)) in so far as that provision implies that the extent and scope of the immunity enjoyed by Members of the European Parliament in their national territory are determined by the various national laws to which it refers. That implies that, where the law of a Member State provides for a procedure for the defence of the immunity of members of the national parliament, enabling that parliament to intervene with the judicial or police authorities, the same powers are conferred on the Parliament in relation to Members of the European Parliament elected for that State.

On the other hand, point (b) of the first paragraph of Article 9 of Protocol No 7 does not refer to national law and, therefore, cannot be used to establish the Parliament's power to defend the immunity of a Member of the European Parliament. Moreover, the exclusive right of the Parliament to waive the immunity of one of its Members, provided for in the third paragraph of Article 9 of Protocol No 7, cannot be interpreted as conferring on the Parliament exclusive competence to decide, with binding effect, whether or not a Member of the European Parliament enjoyed the immunity provided for in Article 9 of Protocol No 7 in respect of the facts alleged against him or her. Indeed, the negative wording of the third paragraph of Article 9 of Protocol No 7 provides for only two limits to the immunity, or inviolability. First, when a Member is found in the act of committing an offence, that immunity cannot be invoked and thus can still less be defended. Second, that immunity cannot preclude the Parliament's right to waive it.

In the second place, the Court notes that the preservation of the effectiveness of Article 9 of Protocol No 7 cannot result in the division of powers between the European Union and its Member States under the Treaties being disregarded. Yet that would be the case if it were to be inferred from the third paragraph of Article 9 of Protocol No 7 that the Parliament has exclusive competence to determine, with binding effect, whether or not the judicial proceedings brought against a Member of the European Parliament calls his or her immunity into question, whereas that competence lies, in general, primarily with the authorities conducting legal proceedings.

If the authorities conducting legal proceedings find that the acts alleged against a Member of the European Parliament are covered by the immunity provided for in Article 9 of Protocol No 7, they are generally required, if they wish to continue those proceedings, to request the Parliament to waive that immunity. However, under the third paragraph of Article 9 of Protocol No 7, in the case of a Member being found in the act of committing an offence, those authorities are not obliged to request the waiver of immunity, since, in such a case, immunity cannot be invoked. The examination of compliance with the conditions for concluding that a Member was found in the act of committing an offence thus falls within the exclusive competence of those authorities and accordingly does not depend on the Parliament's opinion.

The Court also states that an interpretation of the third paragraph of Article 9 of Protocol No 7 to the effect that the Parliament has the power to decide whether or not legal proceedings brought against a Member of the European Parliament call into question his or her immunity in every case in which an offence is committed by a Member of the European Parliament without exception, including in the event of a Member being found in the act of committing an offence, would deprive the first part of that provision of its effectiveness.

Consequently, the provisions of point (b) of the first paragraph of Article 9 of Protocol No 7, even in conjunction with those of the third paragraph of Article 9 of that protocol, do not confer any power on the Parliament to adopt a decision to defend privileges and immunities. Thus, in the case of a Member being found in the act of committing an offence, a decision to defend privileges and immunities adopted on the basis of the Parliament's Rules of Procedure cannot produce binding effects vis-à-vis third parties. In those circumstances, the contested act, which refuses to defend the applicant's privileges and immunities, does not constitute an act producing binding legal effects either and cannot therefore be challenged by means of an action for annulment.

([1](#)) Article 263 TFEU.

([2](#)) Rule 5(2) and Rules 7, 8 and 9 of the Rules of Procedure of the Parliament applicable to the ninth parliamentary term (2019-2024) ([OJ 2019 L 302, p. 1](#); 'the Parliament's Rules of Procedure').

([3](#)) Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union ([OJ 2010 C 83, p. 266](#); ‘Protocol No 7’).

([4](#)) Under that provision, during the sessions of the Parliament, its Members are to be exempt, in the territory of any Member State other than their own, from any measure of detention and from legal proceedings.

([5](#)) The third paragraph of Article 9 of protocol No 7 provides that immunity cannot be claimed when a member is found in the act of committing an offence and cannot prevent the Parliament from exercising its right to waive the immunity of one of its Members.

([6](#)) Under that provision, Members of the European Parliament enjoy in their national territory the immunities accorded to members of their parliament.