Press and Information

General Court of the European Union

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Judgment in Cases T-770/16 and T-352/17
Janusz Korwin-Mikke v Parliament

The General Court annuls the decisions of the Bureau of the European Parliament to impose penalties on the European MEP Korwin-Mikke due to comments made on the floor of the Parliament

Despite the particularly shocking nature of Mr Korwin-Mikke's comments, in the absence of disorder or disruption of Parliament whilst in session, the relevant provisions of the Rules of Procedure of the Parliament did not justify an MEP being penalised for comments made in the exercise of his parliamentary functions

Mr Janusz Korwin-Mikke is a member of the European Parliament. At a plenary session of the Parliament of 7 June 2016 on the 'State of play of the external aspects of the European migration agenda: towards a new "Migration Compact"' and the plenary session of 1 March 2017 on the 'Gender pay gap', Mr Korwin-Mikke made particularly shocking comments in respect of migrants and women.

By decisions of 5 July 2016 and of 14 March 2017, the President of the Parliament imposed several penalties on the MEP, namely forfeiture of his entitlement to the daily subsistence allowance for a period of 10 and 30 days respectively, and temporary suspension from participation in all parliamentary activities, for a period of 5 and 10 consecutive days respectively, without prejudice to his right to vote in a plenary session. Moreover, in the decision of 14 March 2017, the President of the Parliament also prohibited the MEP from representing the Parliament for a period of one year.

Since the Bureau of the Parliament [1] upheld, by decisions of 1 August 2016 and of 3 April 2017, the penalties imposed by the President of the Parliament, on 2 November 2016 and on 2 June 2017 Mr Korwin-Mikke brought two actions before the General Court for annulment of those decisions and reparation for the pecuniary and non-pecuniary loss allegedly caused by those decisions.

In today's judgments, the General Court notes that freedom of expression plays a central role in democratic societies and that it is, on that basis, a fundamental right. However, the right to freedom of expression is not an absolute prerogative and its exercise may, under certain circumstances, be subject to restrictions. Such restrictions must be interpreted strictly and interference with freedom of expression is permissible only if it satisfies three conditions: any restriction must be 'prescribed by law', be intended to achieve a general-interest objective and not be excessive.

The Court considers that MEPs' freedom of expression must be afforded greater protection in view of the fundamental importance of the role played by Parliament in a democratic society. However, the exercise of that freedom within Parliament must, on occasion, yield to the legitimate interests of maintaining good order in the conduct of parliamentary business and protecting the rights of other MEPs. It follows that Rules of Procedure of a parliament can provide for the possibility of penalising MEPs for their comments only where those comments undermine its proceedings or pose a serious threat to society, such as incitement to violence or racial hatred.

[1] The Bureau of the Parliament is the body that lays down rules for the European Parliament.

In the present case, the Court notes, first of all, that Rule 166 of the Rules of Procedure of the Parliament provided, in the version of July 2014, which is applicable in Case T-770/16, that the President is to adopt a reasoned decision imposing the appropriate penalty 'in exceptionally serious cases of disorder or disruption of Parliament in violation of the principles set out in Rule 11 …'. In that version, the relevant provisions of the Rules of Procedure concerned only the actions of MEPs. Comments made by an MEP were not mentioned, as such, and no penalty could therefore be imposed in that respect.

In its amended version, which entered into force on 16 January 2017 and is applicable in Case T-352/17, Rule 166 of the Rules of Procedure of the Parliament allowed for the adoption of penalties 'in serious cases of disorder or disruption of Parliament [by an MEP] in violation of the principles laid down in Rule 11 …'. That amended version expressly referred to prohibition of any 'defamatory, racist or xenophobic language or behaviour' in the second paragraph of Rule 11(3) of the Rules of Procedure.

However, whether an incident concerns 'behaviour' or 'language', the Court notes that, on a literal interpretation of Rule 166 of the Rules of Procedure, which allows disciplinary sanctions to be imposed on an MEP, a breach of the principles and values set out in Rule 11 of those Rules (to which Rule 166 refers) does not amount to an independent ground for imposing a penalty, but is an additional condition, necessary in order for a disruption of Parliament to be penalised. It follows that a breach of the principles set out in Rule 11 of the Rules of Procedure, even if proved, cannot, of itself, be penalised as such, but only if it involves disruption of Parliament.

The Court finds, in the present case, that neither the decision of the Bureau nor the written submissions of the parties show that the comments made by Mr Korwin-Mikke in Parliament at the plenary sessions of 7 June 2016 and of 1 March 2017 caused any disorder in those sessions within the meaning of the Rules of Procedure. Furthermore, the Parliament acknowledged at the hearing that there had been neither disorder nor disruption of the parliamentary session. In that connection, the Court rejects the Parliament's argument that the 'disruption' which justified imposing disciplinary sanctions occurred outside Parliament through the harm caused to its reputation and institutional standing. Since there are no clearly defined criteria which could have led the Bureau of the Parliament to establish that the standing of Parliament had been undermined, such an interpretation would have the effect of arbitrarily restricting MEPs' freedom of expression.

In those circumstances, and despite the particularly shocking nature of the applicant's words, the Parliament was not, in the present case, entitled to impose any disciplinary sanctions under Rule 166 of its Rules of Procedure. The Court therefore annuls the decisions of the Bureau contested by Mr Korwin-Mikke.

Lastly, the Court examines Mr Korwin-Mikke's claims for compensation. As regards, in the first place, the claim for compensation for pecuniary loss due to forfeiture of the daily subsistence allowance, the Court notes that, in the light of the annulment of the decision of the Bureau, it will be for the Parliament to take the necessary measures to comply with the Court's judgment, which will entail reimbursing the amounts corresponding to the suspended subsistence allowance. The MEP has thus failed to explain how annulment of the decision would prevent him obtaining compensation for all of his loss. As regards, in the second place, the claim for compensation of the non-pecuniary loss allegedly sustained by the MEP, the Court draws attention to the fact that the annulment of an unlawful measure may, in itself, constitute adequate and, in principle, sufficient reparation for all non-pecuniary loss that the measure may have caused, unless the applicant can point to non-pecuniary loss that he has sustained which is separable from the unlawfulness that is the basis for the annulment and cannot be entirely remedied by the annulment. There is nothing in the case file to suggest that the decisions of the President and the decisions of the Bureau were adopted in circumstances which could have caused pain and suffering to Mr Korwin-Mikke independently of the annulled measures.

In those circumstances, the General Court rejects Mr Korwin-Mikke's claims for reparation in their entirety.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text T-770/16 & T-352/17 of the judgments are published on the CURIA website on the day of delivery

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