Thursday, March 25, 2021

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Request for waiver of the immunity of Jean-Francois Jalkh

European Parliament decision of 25 March 2021 on the request for waiver of the immunity of Jean-François Jalkh (2020/2110(IMM))

(2021/C 494/17)

The European Parliament,

— having regard to the request for waiver of the immunity of Jean-François Jalkh, dated 16 June 2020, forwarded by the Public Prosecutor at the Paris Court of Appeal in connection with a case pending before the Examining Magistrates pertaining to a judicial inquiry on grounds of the alleged offences of breach of trust, organised fraud, forgery and the use of forged documents, illicit employment involving non-declaration of an employee, misappropriation of public funds and knowingly concealing misappropriated public funds, and announced in plenary on 8 July 2020,

— having heard Thierry Mariani, replacing Jean-François Jalkh, 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 the judgments of the Court of Justice of the European Union of 21 October 2008, 19 March 2010, 6 September 2011, 17 January 2013 and 19 December 2019 [1],

— having regard to Article 26 of the Constitution of the French Republic,

— 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 (A9-0051/2021),

A. whereas the Examining Magistrates have requested the waiver of the parliamentary immunity of Jean-François Jalkh in order to hear him in connection with alleged criminal offences;

B. whereas the request for waiver of immunity of Jean-François Jalkh relates to alleged offences of breach of trust, forgery and the use of forged documents, organised fraud, illicit employment involving non-declaration of an employee, misappropriation of public funds and knowingly concealing misappropriated public funds, offences laid down and punished in accordance with Articles 314-1, 314-10, 321-2, 321-3, 321-4, 321-9, 321-10, 441-l, 441-10, 441-11, 313-1, 313-2, 313-3, 313-7, 313-8, 313-9, 432-15 and 432-17 of the French Criminal Code, and L8221-1, L8221-5, L8224-1, L8224-3, L8224-4 and L8224-5 of the French Employment Code;

C. whereas a judicial investigation was launched on 5 December 2016 following a preliminary investigation initiated after a denouncement by the then President of the European Parliament on 9 March 2015 regarding a certain number of parliamentary assistants of Members of the European Parliament affiliated to the Front National;

D. whereas the Front National's establishment plan, published in February 2015, listed only 15 MEPs (of a total of 23), 21 local parliamentary assistants and 5 accredited parliamentary assistants (of a total of 54 assistants); whereas a number of parliamentary assistants declared that their place of employment was the headquarters of the Front National in Nanterre, in some cases indicating that they were employed there full time, though residing between 120 and 945 km from the declared place of employment; whereas, at this stage in the investigation, it emerged that 8 parliamentary assistants carried out virtually no parliamentary assistance work, or did so only as a very small part of their overall duties;

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[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.

E. whereas the investigations also revealed circumstances that made it seem unlikely that the parliamentary assistants concerned were genuinely performing duties connected with the European Parliament, notably:

— European parliamentary assistants' employment contracts interspersed between two Front National employment contracts,

— European parliamentary assistants' employment contracts for the European Parliament and for the Front National running concurrently,

— employment contracts for the Front National concluded for periods immediately following periods covered by EU parliamentary assistants' employment contracts;

F. whereas the investigation revealed that Jean-François Jalkh was employed as a local parliamentary assistant to Jean-Marie Le Pen from July 2009 to April 2014 on a full-time basis, at a gross monthly salary of EUR 3 011,14; whereas at the same time he held several management posts within the Front National, either successively or concurrently, and received remuneration from two different companies for audits of campaign accounts; whereas on 29 January 2016, the Secretary-General of the European Parliament decided to recover from Jean-Marie Le Pen the sum of EUR 320 026,23 defrayed by Parliament in relation to Jean-François Jalkh's contract; whereas the various appeals lodged against this decision were dismissed, notably by judgment of the General Court of the European Union of 7 March 2018 ([2]) and by order of the Court of Justice of the European Union of 28 November 2018 ([3]);

G. whereas the investigation also revealed that in his capacity as Member of the European Parliament, Jean-François Jalkh employed a full-time local parliamentary assistant from 1 July 2014 to 4 January 2016, with the exception of the period from 24 August 2015 to 14 December 2015, at a gross monthly salary of EUR 2 950; whereas no emails or other evidence attesting to her work as a parliamentary assistant were found; whereas the parliamentary assistant in question was included in the establishment plan of the Front National published in February 2015 as an assistant to the Vice-President responsible for legal affairs, Jean-François Jalkh; whereas for the period of the campaign for the French elections in 2015, and of the 2014 municipal elections, emails by her were found signed 'Assistant to Jean-François Jalkh — Elections service'; whereas, for the period from June 2015 to 21 December 2015, emails were also found revealing her work for the electoral campaign of Wallerand de Saint-Just, who was the lead Front National candidate in the regional elections in Île de France, even though her contract as a parliamentary assistant was only suspended for that purpose from 24 August to 14 December 2015; whereas on 11 December 2019 she was indicted on the charge of knowingly concealing misappropriated public funds;

H. whereas the Examining Magistrates consider it necessary to hear Jean-François Jalkh;

I. whereas after being summoned on 18 December 2018 by the investigators, and after having indicated his availability, Jean-François Jalkh did not appear, following a request for postponement submitted by his legal counsel four days before the agreed date of appearance, stating that Jean-François Jalkh wished to avail of his right to remain silent; whereas notwithstanding a letter of 19 February 2019 from his lawyer confirming that he was willing to be heard voluntarily, Jean-François Jalkh again failed to appear when summoned by the investigators on 25 June 2019, and provided no justification for his failure to appear; whereas he then refused to appear before the investigating judges, who had summoned him to appear on 15 November 2019, invoking his parliamentary immunity;

J. whereas with a view to carrying out the questioning of Jean-François Jalkh in connection with the charges brought against him, the competent authority lodged an application for his immunity to be waived;

K. whereas Parliament cannot assume the role of a court, and whereas, in a waiver of immunity procedure, a Member cannot be regarded as a defendant ([4]);

([2]) Judgment of the General Court (Sixth Chamber) of 7 March 2018, *Jean-Marie Le Pen v European Parliament*, Case T-140/16, ECLI:EU:T:2018:122.

([3]) Order of the Court (Fourth Chamber) of 28 November 2018, *Jean-Marie Le Pen v European Parliament*, Case C-303/18 P, ECLI:EU:C:2018:962.

([4]) Judgment of the General Court of 30 April 2019, *Briois v Parliament*, Case T-214/18, ECLI:EU:T:2019:266.

L. whereas, pursuant to Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, Members of the European Parliament enjoy, in the territory of their own state, the immunities accorded to members of their national parliament;

M. whereas the second paragraph of Article 26 of the French Constitution states that 'No Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorisation of the Bureau of the House of which he is a member. Such authorisation shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or when a conviction has become final';

N. 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;

O. whereas, in this case, Parliament found no evidence of *fumus persecutionis*, i.e. factual elements which suggest that the intention underlying the legal proceedings in question is to undermine the Member's political activity as a Member of the European Parliament;

1. Decides to waive the immunity of Jean-François Jalkh;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the French authorities and to Jean-François Jalkh.