Tuesday 15 February 2022

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Request for the waiver of the immunity of Álvaro Amaro

European Parliament decision of 15 February 2022 on the request for waiver of the immunity of Álvaro Amaro (2021/2082(IMM))

(2022/C 342/27)

The European Parliament,

— having regard to the request for waiver of the immunity of Álvaro Amaro, submitted by the trial court judge at the Guarda District Court on 26 April 2021 in connection with criminal proceedings, and announced in plenary on 7 June 2021,

— having heard Álvaro Amaro 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 157(2) and (3) of the Constitution of the Portuguese Republic and Article 11 of Law No 7/93 of 1 March 1993 governing the Statute for Members of the Assembly of the Portuguese 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 (A9-0017/2022),

A. whereas the trial court judge at the Guarda District Court has submitted a request for waiver of the parliamentary immunity of Álvaro Amaro with a view to initiating criminal proceedings against him in connection with an offence of misappropriation of public funds as a holder of political office, allegedly committed between mid-2007 and mid-2013, pursuant to and punishable under Article 26 of the Portuguese Criminal Code, and Articles 3(i) and 11 of Portuguese Law No 34/87 of 16 July 1987;

B. whereas Álvaro Amaro was elected mayor of Gouveia on 9 October 2005 (for a term ending in 2009), and was re-elected on 11 October 2009 (for a term ending in 2013); whereas in his capacity as mayor, he allegedly acted, jointly and in concert with other persons, in breach of the rules on budgetary control and public procurement and the principles of non-discrimination, transparency and the proper management of public funds, thereby allegedly breaching the duties inherent in his role in public office, with the alleged intention of securing benefits for himself and for the other defendants; whereas, furthermore, he allegedly violated the rules and principles of administrative law, and in particular those of public procurement, with the aim of securing illegal financial benefits;

C. whereas Álvaro Amaro was elected to the European Parliament during the European Parliament elections held in May 2019;

D. whereas the alleged offence does not concern opinions expressed or votes cast by Álvaro Amaro in the performance of his duties within the meaning of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;

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

F. whereas Article 157(2)(3) of the Portuguese Constitution states:

'2. Members of the Assembly of the Republic may not appear as makers of declarations or accused persons without the Assembly's authorisation. In the latter case, the Assembly shall obligatorily decide in favour of authorisation when there are strong indications of the commission of a wilful crime punishable by imprisonment for a maximum term of more than three years.

3. No Member of the Assembly of the Republic may be detained, arrested or imprisoned without the Assembly's authorisation, save for a wilful crime punishable by the type of prison term referred to by the previous paragraph and in *flagrante delicto*.';

G. whereas it is for Parliament alone to decide, in a given case, whether or not to waive immunity; whereas Parliament may reasonably take account of the position of the Member in order to decide whether or not to waive his or her immunity ([2]); whereas at his hearing Álvaro Amaro stated that he had no objection to the waiver of his parliamentary immunity;

H. 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;

I. whereas the offences of which Álvaro Amaro is accused took place prior to his election to the European Parliament;

J. whereas, in this case, Parliament found no evidence of *fumus persecutionis*, i.e. factual elements which indicate that the intention underlying the legal proceedings in question may be to damage a Member's political activity and thus the European Parliament;

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 ([3]);

1. Decides to waive the immunity of Álvaro Amaro;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of the Republic of Portugal and to Álvaro Amaro.

([2]) Judgment of the General Court of 15 October 2008, *Mote* v *Parliament*, T-345/05, ECLI:EU:T:2008:440, point 28.
([3]) Judgment of the General Court of 30 April 2019, *Briois* v *Parliament*, T-214/18, ECLI:EU:T:2019:266.