1. Decides in the light of the above not to defend the immunity and privileges of Bruno Gollnisch;

2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of the French Republic and to Bruno Gollnisch.

Waiver of the immunity of Bruno Gollnisch

P7_TA(2011)0190

European Parliament decision of 10 May 2011 on the request for waiver of the immunity of Bruno Gollnisch (2010/2284(IMM))

(2012/C 377 E/27)

The European Parliament,

— having regard to the request for waiver of the immunity of Bruno Gollnisch, forwarded by the French authorities on 3 November 2010 and announced in plenary sitting on 24 November 2010,

— having heard Bruno Gollnisch on 26 January 2011, in accordance with Rule 7(3) of its Rules of Procedure,

— having regard to Article 9 of the Protocol on the Privileges and Immunities of the European Union of 8 April 1965, and to 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 12 May 1964, 10 July 1986, 15 and 21 October 2008 and 19 March 2010 [1],

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

— having regard to Rules 6(2) and 7 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A7-0155/2011),

A. whereas a French public prosecutor has requested the waiver of the parliamentary immunity of Bruno Gollnisch, a Member of the European Parliament, so that a complaint alleging incitement to racial hatred can be investigated and so that, if appropriate, Bruno Gollnisch can be tried before the French Court of First Instance, the Appeal Court and the Court of Cassation,

B. whereas the waiver of the immunity of Bruno Gollnisch relates to an alleged offence of incitement to racial hatred as a result of a press release issued on 3 October 2008 by the Rhône-Alpes Region 'Front National' Group, of which Bruno Gollnisch was President,

C. whereas, in accordance with Article 9 of the Protocol on the Privileges and Immunities of the European Union, during the sessions of the European Parliament its Members enjoy in the territory of their own State the immunities accorded to members of their parliament; and whereas this does not prevent the European Parliament from exercising its right to waive the immunity of one of its Members,

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[1] Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot* v *Faure and Others* [1986] ECR 2391, Case T-345/05 *Mote* v *Parliament* [2008] ECR II-2849, Joined Cases C-200/07 and C-201/07 *Marra* v *De Gregorio and Clemente* [2008] ECR I-7929, and Case T-42/06 *Gollnisch* v *Parliament*.

D. whereas, in accordance with Article 26 of the Constitution of the French Republic, no Member of Parliament may be arrested or subject to any other measure depriving him or her of freedom or restricting that freedom as a result of criminal or minor offences without the authorisation of the Assembly to which he or she belongs, except if a serious crime has been committed, in the event of *flagrante delicto* or if a final judgment has been handed down,

E. whereas, in the present case, Parliament has found no evidence of *fumus persecutionis*, i.e. a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member,

F. whereas the request from the French authorities does not relate to Bruno Gollnisch's political activities as a Member of the European Parliament; whereas it concerns instead activities of a purely regional and local nature as a Rhône-Alpes regional councillor, a mandate to which Bruno Gollnisch was elected by direct universal suffrage and which is distinct from that of Member of the European Parliament,

G. whereas Bruno Gollnisch has given an explanation as to why the press release which has prompted the request for waiver of immunity was issued by his political group in the Rhône-Alpes Regional Council, stating that it had been written by the Front National team in that region, including its head of communications, who was 'empowered to speak on behalf of the Front National's elected officials'; whereas the application of parliamentary immunity to such a situation would constitute an undue extension of those rules, which are intended to prevent any interference with the functioning and independence of Parliament,

H. whereas it is not for Parliament but for the competent judicial authorities to decide, whilst respecting all democratic guarantees, to what extent French law on incitement to racial hatred has been broken and what the judicial consequences might be,

I. whereas it is therefore appropriate to recommend a waiver of parliamentary immunity in this instance,

1. Decides to waive the immunity of Bruno Gollnisch;

2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of the French Republic and to Bruno Gollnisch.