**Tuesday 9 February 2021**

II

*(Information)*

# JOINT DECLARATIONS

# EUROPEAN PARLIAMENT

P9_TA(2021)0030

## Request for the waiver of the immunity of Álvaro Amaro

**European Parliament decision of 9 February 2021 on the request for waiver of the immunity of Álvaro Amaro (2019/2150(IMM))**

(2021/C 465/18)

*The European Parliament,*

— having regard to the request for waiver of the immunity of Álvaro Amaro sent by the Second Chamber of the Local Criminal Division of Guarda District Court, dated 17 October 2019 and announced in plenary on 13 November 2019,

— 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 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 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 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 (A9-0009/2021),

A. whereas the judge of Guarda District Court has submitted a request for waiver of the parliamentary immunity of Álvaro Amaro in connection with a charge relating to the offence of corrupt practices (misappropriation of public funds) pursuant to, and punishable under, Article 11 of Portuguese Law 34/87 of 16 July 1987, as amended by Law 41/2010 of 3 September 2010 (apparently accompanied by unlawful financial gain, pursuant to, and punishable under, Article 23(1), and embezzlement, pursuant to, and punishable under, Article 20(1) of the same law), accompanied in fact by an offence involving the fraudulent receipt of a grant or subsidy, pursuant to, and punishable under, Article 36(1)(a) (1)(c), (2), (5)(a), (5)(b) and (8)(b) of Decree-Law 28/84 of 20 January 1984;

[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.

B. whereas Álvaro Amaro served as mayor of Guarda from 2013, a position to which he was re-elected in 2017 and which he occupied until 11 April 2019; whereas, in the performance of his duties as mayor, he was responsible for the political and administrative management of the municipality of Guarda; whereas the subject of the investigation is the preferential treatment that Guarda municipal council allegedly granted to a theatre company and cooperative in early 2014 in connection with the organisation of the carnival festivities that year;

C. whereas Álvaro Amaro was elected to the European Parliament 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;

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 parliament;

F. 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 immunity ([2]); whereas at his hearing Álvaro Amaro stated that he had no objection to the waiver of his parliamentary immunity;

G. 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;

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

I. 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, including his activity as a Member of the European Parliament;

J. 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 Portuguese authorities and to Álvaro Amaro.

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([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.