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Request for waiver of the immunity of Antoni Comín i Oliveres

European Parliament decision of 9 March 2021 on the request for waiver of the immunity of Antoni Comín i Oliveres (2020/2025(IMM))

(2021/C 474/18)

The European Parliament,

— having regard to the request for waiver of the immunity received on 13 January 2020 and transmitted by the President of the Spanish *Tribunal Supremo* (Supreme Court) and made by the President of the Second Chamber of the Spanish *Tribunal Supremo* in connection with special proceedings No 3/20907/2017 on 10 January 2020; having regard to the announcement of the said request for waiver of immunity in plenary on 16 January 2020,

— having heard Antoni Comín i Oliveres 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 the decision of the Spanish *Junta Electoral Central* (Central Electoral Board) of 13 June 2019 [2],

— having regard to the announcement made in plenary on 13 January 2020 that following the judgment of the Court of Justice of the European Union of 19 December 2019, Parliament took note of the election of Antoni Comín i Oliveres as Member of the European Parliament with effect from 2 July 2019,

— having regard to Article 71(1) and (2) of the Spanish Constitution,

— 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 (A9-0021/2021),

A. whereas the President of the Second Chamber of the Spanish *Tribunal Supremo* requested the waiver of the immunity of Antoni Comín i Oliveres, Member of the European Parliament, with regard to Article 9, first paragraph, point (b), of Protocol No 7 on the Privileges and Immunities of the European Union in connection with special proceedings No 3/20907/2017 — the criminal proceedings for an alleged offence of sedition, as laid down in Articles 544 and 545 of the Spanish Criminal Code, and of an offence of misuse of public funds, as laid down in Article 432 of the Spanish Criminal Code in conjunction with Article 252 thereof;

B. whereas the acts subject to prosecution were allegedly committed in 2017; whereas the order of prosecution in this case was issued on 21 March 2018 and confirmed by subsequent orders dismissing appeals; whereas the investigation was closed by order of 9 July 2018 and confirmed as final on 25 October 2018; whereas by order of 9 July 2018 Antoni Comín i Oliveres, among others, was declared to be in contempt of court and a decision was taken to stay proceedings in relation to him and other persons until they had been found;

C. whereas following the judgment of the Court of Justice of the European Union of 19 December 2019, Parliament took note of the election of Antoni Comín i Oliveres as Member of the European Parliament with effect from 2 July 2019;

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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.

[2] *Boletín Oficial del Estado*, No 142, 14 June 2019, pp. 62477-62478.

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D. whereas the status as Member of the European Parliament was acquired with effect on 13 June 2019; whereas the request for the waiver of immunity therefore concerns facts and prosecution that pre-date the acquisition of the status and thereby of the immunity as Member of the European Parliament;

E. whereas the Committee on Legal Affairs took note of the documents presented to Members of the Committee by Antoni Comín i Oliveres pursuant to Rule 9(6) of the Rules of Procedure and considered by him relevant to the procedure;

F. whereas Member States' authorities decide on the appropriateness of the court proceedings;

G. whereas it is not for the European Parliament to query the merits of national legal and judicial systems;

H. whereas the European Parliament lacks any competence to assess or query the jurisdiction of the national judicial authorities in charge of the criminal proceedings under consideration;

I. whereas in accordance with Spanish law as interpreted by the national courts and as communicated to Parliament by the Member State in question, the Second Criminal Chamber of the Spanish *Tribunal Supremo* is the competent authority to request the waiver of immunity of a Member of the European Parliament;

J. whereas the proceedings do not concern opinions expressed or votes cast in the performance of the duties of the Member of the European Parliament for the purposes of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;

K. whereas Article 9, first paragraph, point (a), of Protocol No 7 on the Privileges and Immunities of the European Union states that Members of the European Parliament enjoy, in the territory of their own state, the immunities accorded to members of the parliament of that state;

L. whereas Article 71(1) and (2) of the Spanish Constitution provides that:

'1. *Deputies and senators shall enjoy absolute privilege in respect of opinions expressed in the performance of their duties.*

2. *During their term of office, deputies and senators shall also have immunity and may only be arrested if they are found in the act of committing an offence. They cannot be charged or prosecuted without the prior authorisation of the relevant legislative chamber';*

M. whereas the request for the waiver of immunity informs, with regard to the application of Article 71 of the Spanish Constitution and, specifically, the stage of proceedings as of which it is not necessary to request parliamentary authorisation to carry out criminal proceedings against an accused person who acquires the status of member of parliament, that a waiver request is not necessary in cases where the status of member of parliament is acquired while a previously opened trial is ongoing or in cases where a member of parliament takes office after formally being prosecuted; whereas it is not therefore required to request a waiver of immunity under Article 9, first paragraph, point (a), of Protocol No 7 on the Privileges and Immunities of the European Union in order for measures to be taken in the territory of Spain;

N. whereas it is not for the European Parliament to interpret the domestic rules on the privileges and immunities of Members of Parliament;

O. whereas Article 9, first paragraph, point (b), of Protocol No 7 on the Privileges and Immunities of the European Union states that Members of the European Parliament enjoy, in the territory of any other Member State, immunity from any measure of detention and from legal proceedings;

P. whereas on 4 November 2019 the Second Chamber of the Spanish *Tribunal Supremo* ordered to issue '(i)n order for criminal proceedings to take place […] as appropriate: a national arrest warrant(s), European arrest warrant(s) or an international arrest warrant(s) for the purposes of extradition' in respect of, among others, Antoni Comín i Oliveres, who was confirmed to be in contempt of court; whereas, as explained in the request for the waiver of immunity, on 10 January 2020 the appeal against this decision was dismissed with regard to the revocation of 'the relevant national search, arrest and detention warrants, as well as the international and European arrest warrants' and upheld 'against the order of 4 November 2019, pursuant to the interpretation given by the CJEU in its judgment of 19 December 2019 recognising the appellant(s)' privileges and immunities under Article 9 of Protocol No 7 to the Treaty on the Functioning of the European Union, in their capacity as Member(s) of the European Parliament', and it was also decided to request that the European Parliament waive the immunity of Antoni Comín i Oliveres 'in order to proceed with the execution of the European arrest warrant(s) that have been issued' and to inform the executing authority in Belgium thereof;

Q. whereas, pursuant to Rule 9(8) of the Rules of Procedure, the Committee on Legal Affairs shall not, under any circumstances, pronounce on the guilt or otherwise of the Member, nor on whether or not the opinions or acts attributed to the Member justify prosecution, even if, in considering the request, the Committee acquires detailed knowledge of the facts of the case;

R. whereas in accordance with Rule 5(2) of the Rules of Procedure, parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members;

S. 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;

T. whereas the accusation clearly bears no relation to the position of Antoni Comín i Oliveres as Member of the European Parliament but to his former position as Regional Minister for Health of the *Govern* (Catalan regional government);

U. whereas Antoni Comín i Oliveres is one of the individuals among a group of individuals who find themselves in a similar situation of being prosecuted and charged with the offences in question, with the only difference being that he currently enjoys immunity as a Member of the European Parliament; whereas it should therefore be borne in mind that Antoni Comín i Oliveres is not the only prosecuted person in the case in question;

V. whereas the incriminated facts were committed in 2017 and the criminal proceedings in question were initiated against Antoni Comín i Oliveres in 2018; whereas on this basis, it cannot be claimed that the judicial proceedings were launched with the intention of hindering the future political activity of Antoni Comín i Oliveres as a Member of the European Parliament, when at that time his status as a Member of the European Parliament was still hypothetical and future;

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

1. Decides to waive the immunity of Antoni Comín i Oliveres under Article 9, first paragraph, point (b), of Protocol No 7 on the Privileges and Immunities of the European Union;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the Spanish authorities and to Antoni Comín i Oliveres.