Thursday 2 February 2023

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN PARLIAMENT

P9_TA(2023)0020

Request for waiver of the immunity of Nadine Morano

European Parliament decision of 2 February 2023 on the request for waiver of the immunity of Nadine Morano (2022/2055(IMM))

(2023/C 267/03)

The European Parliament,

— having regard to the request for waiver of the immunity of Nadine Morano, transmitted by letter dated 16 May 2022 by the French Ministry of Justice in connection with civil proceedings pending before the examining magistrate at the Marseille Ordinary Court, and announced in plenary on 8 June 2022,

— having heard Nadine Morano in accordance with Rule 9(6) of its Rules of Procedure,

— having regard to Article 8 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 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 (A9-0011/2023),

A. whereas the French Ministry of Justice has transmitted a request from the public prosecutor of the Aix-en-Provence Court of Appeal for the waiver of the immunity of Nadine Morano, Member of the European Parliament, with the sole aim of being able to examine her in relation to a civil action brought against her on the grounds of alleged online public defamation;

B. whereas on 7 October 2018, during a television programme aired on France 3, Nadine Morano questioned the activity of a vessel chartered by the complainant and operating in the Mediterranean Sea; whereas Nadine Morano's team posted three messages of the same nature on Nadine Morano's Twitter account as 'live tweets';

C. whereas, in making the comments, Nadine Morano allegedly committed the offence of public defamation, which is punishable under Article 23, first paragraph, Article 29, first paragraph, Article 32, first paragraph, and Article 42 of the French Act of 29 July 1881 on Freedom of the Press and Article 93-3 of the French Act No 82-652 of 29 July 1982 on audiovisual communication;

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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.

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D. whereas on 5 April 2019, the prosecutor in Marseille opened a judicial investigation for public defamation further to a complaint by the association chartering the boat and, as a result, Nadine Morano was formally indicted on 3 June 2020; whereas the indictment was annulled by the competent court in April 2021 on the grounds that it was in breach of the parliamentary immunity that Nadine Morano enjoys in accordance with the provisions of the Protocol on Privileges and Immunities of the European Union;

E. 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 ([2]);

F. whereas Article 8 of Protocol (No 7) on the Privileges and Immunities of the European Union stipulates that Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties;

G. whereas, pursuant to Rule 5(2) of its Rules of Procedure, in exercising its powers on privileges and immunities, Parliament shall act to uphold its integrity as a democratic legislative assembly and to ensure the independence of its Members in the performance of their duties;

H. whereas a statement made by a Member outside the European Parliament may constitute an opinion expressed in the performance of his or her duties, within the meaning of Article 8 of the Protocol, where it contains a subjective assessment having a direct and obvious connection with the performance of that Member's duties in the European Parliament; whereas whether or not this is the case must therefore be determined by the nature and content of the statement and not to the place where it was made;

I. whereas Nadine Morano has been a Member of the European Parliament Delegation for relations with the Pan-African Parliament (DPAP), a substitute Member of the European Parliament Delegation to the ACP-EU Joint Parliamentary Assembly and a Member of the Committee on Civil Liberties, Justice and Home Affairs, which is responsible, inter alia, for:

'(…) the establishment and development of an area of freedom, security and justice while respecting the principles of subsidiarity and proportionality, in particular:

(a) measures concerning the entry and movement of persons, asylum and migration,

(b) measures concerning an integrated management of the common borders, (…)';

J. whereas nowadays the political debate in which Members of the European Parliament participate, in the exercise of their mandate, increasingly takes place also outside Parliament's premises, including on air and on the internet, through the use of social networking services such as Twitter;

K. whereas those statements were made in the wider context of the political debate, the topic of which is recurrent in the European Parliament's plenary;

L. whereas, against this background, the statements made by Nadine Morano were clearly made in her capacity as a Member of the European Parliament and whereas a direct and obvious connection between the statements under consideration and the parliamentary mandate of Nadine Morano can be deemed to exist;

1. Decides not to waive the immunity of Nadine Morano;

2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authorities of the French Republic and to Nadine Morano.

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