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REPORT

on the request for waiver of the immunity of Birgit Collin-Langen
(2012/2128(IMM))

Committee on Legal Affairs

Rapporteur: Francesco Enrico Speroni

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the request for waiver of the immunity of Birgit Collin-Langen

(2012/2128(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Birgit Collin-Langen, forwarded on 27 April 2012 by the Senior Prosecutor in Koblenz (Germany), in connection with legal action concerning an alleged offence and announced in plenary on 14 June 2012,
 - having heard Birgit Collin-Langen in accordance with Rule 7(3) 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 12 May 1964, 10 July 1986, 15 and 21 October 2008, 19 March 2010 and 6 September 2011¹,
 - having regard to Article 46 of the German Basic Law (*Grundgesetz*),
 - having regard to Rules 6(2) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0229/2012),
- A. whereas the Senior Prosecutor has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Birgit Collin-Langen, in connection with legal action concerning an alleged offence;
- B. whereas the request by the Senior Prosecutor relates to proceedings concerning an alleged offence under Section 331 of the German Criminal Code which states that “A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine”;
- C. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, Members shall enjoy, in the territory of their own State, the immunities accorded to members of their Parliament;
- D. whereas, under Article 46(2) of the German Basic Law (*Grundgesetz*), a Member may not

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, Case T-42/06 *Gollnisch v Parliament* (not yet published in the ECR) and Case C-163/10 *Patriciello* (not yet published in the ECR).

be called to account for a punishable offence without the permission of Parliament unless apprehended while committing the offence or in the course of the following day;

- E. whereas, consequently, Parliament must thus waive the parliamentary immunity of Birgit Collin-Langen if the proceedings against her are to go ahead;
 - F. whereas Birgit Collin-Langen has been heard by the Committee on Legal Affairs, where she asked for a quick conclusion of this issue and declared that her immunity should be waived;
 - G. whereas whether immunity is or is not to be waived in a given case is for Parliament alone to decide; whereas Parliament may reasonably take account of the Member's position in reaching its decision to waive or not to waive his/her immunity¹;
 - H. whereas Birgit Collin-Langen has been a Member of the European Parliament since 17 March 2012;
 - I. whereas the facts of the case date back to 2006-2008 and, as shown by the submissions to the Committee on Legal Affairs, the alleged activities do not have a direct, obvious connection with Birgit Collin-Langen's performance of her duties as a Member of the European Parliament;
 - J. whereas Birgit Collin-Langen was therefore not acting in the performance of her duties as a Member of the European Parliament;
 - K. whereas the facts set out in the explanatory statement do not constitute a case of *fumus persecutionis*;
- 1. Decides to waive the immunity of Birgit Collin-Langen;
 - 2. Instructs its President to forward this decision and the report of its competent committee immediately to the appropriate authorities of the Federal Republic of Germany and to Birgit Collin-Langen.

¹ Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, para. 28.

EXPLANATORY STATEMENT

1. Background

At the sitting of 14 June 2012, the President announced, under Rule 6(2) of the Rules of Procedure, that he had received a request dated 27 April 2012 from the Senior German Prosecutor in Koblenz concerning the waiver of the parliamentary immunity of Birgit Collin-Langen with reference to Articles 8 and 9 of the Protocol on the Privileges and Immunities of the European Union.

The President referred this request to the Committee on Legal Affairs under Rule 6(2). Birgit Collin-Langen was heard by the Committee on 10 July 2012, in accordance with Rule 7(3).

The background to the request for waiver is as follows:

Following a communication from the Court of Auditors of Rhineland-Palatinate of 11 October 2011, the Senior German Prosecutor in Koblenz is carrying out investigations concerning Birgit Collin-Langen in her capacity as mayor of the town of Bingen and chair of the board of the limited company “Landesgartenschau Bingen 2008” (LB2008).

For the year 2008, the Ministry of the Economy, Transport, Agriculture and Viticulture of Rhineland-Palatinate awarded the organisation of the state garden show to the town of Bingen on the Rhine. The planning and operation of the show were entrusted by the town of Bingen to LB2008. The limited company Gelsenrot-Spezialstoffe (GS) was one of the tenderers for the award of supply contracts for LB2008.

At its meeting of 25 October 2006, the board of LB2008 approved a freely negotiated supply contract with GS for an amount of EUR 137 235. On 13 November 2006, LB2008 issued an order to GS for the supply of substrate for an amount of EUR 162 713. On 19 July 2007, GS concluded, with an agency which had been given the marketing rights for LB2008, a sponsorship contract for an amount of EUR 20 000. The relevant payments were made by GS.

The senior prosecutor in Koblenz thus accuses Ms Collin-Langen, as chair of the board of LB2008, of approving on 25 October 2006 the conclusion of the contract with GS for an amount of EUR 137 235 (later EUR 162 713) because GS had shown itself willing to sponsor an amount of EUR 20 000 if it obtained the contract.

2. Law and procedure on the immunity of Members of the European Parliament

Articles 8 and 9 of the Protocol (No 7) to the TFEU on the Privileges and Immunities of the European Union read as follows (emphasis added):

Article 8

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.

Article 9

During the sessions of the European Parliament, its Members shall enjoy:

- a. in the territory of their own State, the immunities accorded to members of their parliament;*
- b. in the territory of other Member States, immunity from any measure or detention and from legal proceedings.*

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

The procedure in the European Parliament is governed by Rules 6 and 7 of the Rules of Procedure. The relevant provisions read as follows (emphasis added):

Rule 6 - Waiver of immunity

- 1. In the exercise of its powers in respect of privileges and immunities, Parliament shall seek primarily to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in performance of their duties.*
- 2. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived shall be announced in Parliament and referred to the committee responsible. (...)*

Rule 7 - Procedures on immunity

- 1. The committee responsible shall consider without delay and in the order in which they have been submitted requests for the waiver of immunity or requests for the defence of immunity and privileges.*
- 2. The committee shall make a proposal for a reasoned decision which recommends the adoption or rejection of the request for the waiver of immunity or for the defence of immunity and privileges.*
- 3. The committee may ask the authority concerned to provide any information or explanation which the committee deems necessary for it to form an opinion on whether immunity should be waived or defended. The Member concerned shall be given an opportunity to be heard, may present any documents or other written evidence deemed by that Member to be relevant and may be represented by another Member. (...)*
- 7. The committee may offer a reasoned opinion about the competence of the authority in question and the admissibility of the request, but 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 him or her justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case. (...)*

Article 46 of the German Basic Law (Grundgesetz) reads as follows (emphasis added):

Article 46 [Immunities]

- (1) At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag for a vote cast or for any speech or debate in the Bundestag or in any of its committees. This provision shall not apply to defamatory insults.*
- (2) A Member may not be called to account or arrested for a punishable offense without permission of the Bundestag, unless he is apprehended while committing the offense or in the course of the following day.*
- (3) The permission of the Bundestag shall also be required for any other restriction of a Member's freedom of the person or for the initiation of proceedings against a Member under Article 18.*
- (4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be suspended at the demand of the Bundestag.*

3. Justification for the proposed decision

Given that the actions of which Birgit Collin-Langen stands accused date back to 2006-2008, i.e. the time when she was mayor of Bingen (*Germany*), and that Birgit Collin-Langen has been Member of the European Parliament only since 17 March 2012, the Committee considers that Birgit Collin-Langen was not acting in the performance of her duties as Member of the European Parliament. The legal action concerning the alleged offence in question does not constitute a case of *fumus persecutionis*.

4. Conclusion

On the basis of the above considerations and pursuant to Rule 7(2) of the Rules of Procedure, the Committee on Legal Affairs recommends that the European Parliament should waive the parliamentary immunity of Birgit Collin-Langen.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	10.7.2012
Result of final vote	+ : 13 - : 0 0 : 0
Members present for the final vote	Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Marielle Gallo, Giuseppe Gargani, Klaus-Heiner Lehne, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eva Lichtenberger