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REPORT

on the request for waiver of the immunity of Jürgen Creutzmann
(2013/2016(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 Jürgen Creutzmann

(2013/2016(IMM))

The European Parliament,

- having regard to the request for waiver of the immunity of Jürgen Creutzmann, forwarded on 15 January 2013 by the German Federal Ministry of Justice, in connection with a case pending before the Chief Public Prosecutor of Frankenthal (Germany), and announced in plenary on 17 January 2013,
 - having heard Jürgen Creutzmann in accordance with Rule 7(3) of its Rules of Procedure,
 - having regard to Article 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 (A7-0107/2013),
- A. whereas the Chief Public Prosecutor of Frankenthal (Germany) has requested the waiver of the parliamentary immunity of Jürgen Creutzmann, Member of the European Parliament, in connection with launching investigative proceedings concerning an alleged offence;
- B. whereas the request by the Chief Public Prosecutor relates to proceedings concerning an alleged offence of causing bodily harm by negligence under Section 229 of the German Criminal Code;
- 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 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;

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).

- E. whereas, consequently, Parliament must thus waive the parliamentary immunity of Jürgen Creutzmann if the proceedings against him are to go ahead;
- F. whereas Article 9 of the Protocol on the Privileges and Immunities of the European Union and Article 46(2) of the German *Grundgesetz* do not preclude the waiver of the immunity of Jürgen Creutzmann;
- G. whereas it is therefore advisable that parliamentary immunity be waived in the case in question,
 - 1. Decides to waive the immunity of Jürgen Creutzmann;
 - 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 Jürgen Creutzmann.

EXPLANATORY STATEMENT

1. Introduction

At the sitting of 17 January 2013, the President announced, under Rule 6(2) of the Rules of Procedure, that he had received from the competent German authorities a request for the parliamentary immunity of Jürgen Creutzmann to be waived in connection with proceedings being brought by the Frankenthal public prosecutor's office.

The President referred this request to the Committee on Legal Affairs under Rule 6(2). Jürgen Creutzmann was heard by the Committee on 18 March 2013, in accordance with Rule 7(3).

2. Background

The Frankenthal Chief Public Prosecutor intends to bring criminal proceedings against Jürgen Creutzmann on the basis of allegations that he has committed the criminal offence of causing bodily harm by negligence under Section 229 of the German Criminal Code.

In its letter of 5 November 2012, the Frankenthal public prosecutor states that Mr Creutzmann, as the driver of a vehicle, allegedly failed to give way to another vehicle at a junction, thus causing a collision between the two vehicles. The passenger of the other vehicle suffered serious injuries in the accident.

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

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

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.

Given that Article 9(a) of the Protocol refers to national law on immunities, it is necessary to refer to the German Basic Law (Grundgesetz) Article 46 of which reads as follows:

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.*

4. Justification for the proposed decision

The alleged activities on the grounds of which the Frankenthal Chief Public Prosecutor intends to carry out an investigation against Jürgen Creutzmann are manifestly not opinions expressed or votes cast by the Member in the performance of his duties within the meaning of Article 8 of the Protocol on Privileges and Immunities. Article 9 of the Protocol is therefore the relevant provision for assessing the request for waiver of Mr Creutzmann's immunity.

In the light of Article 9 of the Protocol and the relevant provisions of the European Parliament's Rules of Procedure and the German Basic Law (Grundgesetz), the Committee on Legal Affairs does not see any reason not to waive Jürgen Creutzmann's immunity.

5. 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 Jürgen Creutzmann.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	18.3.2013
Result of final vote	+ : 13 - : 0 0 : 0
Members present for the final vote	Luigi Berlinguer, Françoise Castex, Giuseppe Gargani, Klaus-Heiner Lehne, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eva Lichtenberger