



EUROPEAN PARLIAMENT

2009 - 2014

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*Plenary sitting*

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**A7-0188/2013**

3.6.2013

# REPORT

on the request for waiver of the immunity of Alexander Alvaro  
(2013/2106(IMM))

Committee on Legal Affairs

Rapporteur: Eva Lichtenberger

## CONTENTS

	<b>Page</b>
PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	3
EXPLANATORY STATEMENT .....	5
RESULT OF FINAL VOTE IN COMMITTEE.....	8

## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for waiver of the immunity of Alexander Alvaro

(2013/2106(IMM))

*The European Parliament,*

- having regard to the request for waiver of the immunity of Alexander Alvaro, forwarded on 8 May 2013 by the German Federal Ministry of Justice, in connection with a case pending before the Chief Public Prosecutor of Cologne (Germany), and announced in plenary on 23 May 2013,
  - having given Alexander Alvaro the opportunity to be heard 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 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 (A7-0188/2013),
- A. whereas the Chief Public Prosecutor of Cologne (Germany) has requested the waiver of the parliamentary immunity of Alexander Alvaro, Member and Vice-President of the European Parliament, in connection with the launch of investigative proceedings concerning an alleged offence;
- B. whereas the request by the Chief Public Prosecutor relates to investigations into a serious road traffic accident in which Alexander Alvaro was involved;
- 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;
- E. whereas, consequently, Parliament must waive the parliamentary immunity of Alexander Alvaro 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 Alexander Alvaro;

G. whereas it is therefore advisable that parliamentary immunity be waived in the case in question;

1. Decides to waive the immunity of Alexander Alvaro;
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 Alexander Alvaro.

## EXPLANATORY STATEMENT

### 1. Introduction

At the sitting of 23 May 2013, the President announced, under Rule 6(2) of the Rules of Procedure, that he had received a request from the competent German authorities for the parliamentary immunity of Alexander Alvaro to be waived in connection with proceedings being brought by the Cologne public prosecutor's office.

The President referred this request to the Committee on Legal Affairs under Rule 6(2). Alexander Alvaro was given an opportunity to be heard by the Committee, in accordance with Rule 7(3). He brought to the attention of the Committee a statement by his lawyer in which he *inter alia* declared that he renounced to appear in person before the Committee for a hearing due to his physical condition.

### 2. Background

The Public Prosecutor's office intends to initiate investigation proceedings against Alexander Alvaro as it considers that there are sufficient factual indications to suggest that Mr Alvaro is liable to prosecution for involuntary manslaughter under Section 222 of the German Criminal Code and for causing bodily harm by negligence under Section 229 of the German Criminal Code.

In its letter of 15 April 2013, the Cologne public prosecutor states that Mr Alvaro, as the driver of a vehicle, was involved in a serious road traffic accident on the A 1 motorway resulting in the death of one person and serious injuries sustained by three further people, including Mr Alvaro himself. Mr Alvaro, driving on the motorway, collided into the driver's door of a vehicle over which the driver had lost control and which was on its roof on the left-hand overtaking lane of the motorway.

The Cologne public prosecutor has requested the waiver of Mr Alvaro's immunity in order to conduct investigations related specifically to Mr Alvaro's involvement in the accident, in particular as regards the question whether it could have been avoided by Mr Alvaro. The public prosecutor explains that investigations in this respect have not yet been conducted in view of Mr Alvaro's immunity and cannot be conducted in the context of investigations against the other participants in the accident.

In the statement submitted to the Committee, Mr Alvaro's lawyer declared on his behalf that Mr Alvaro could not have avoided the accident and, consequently, did not even act negligently, as he found himself placed in a dynamic chain of events and visibility was limited. The lawyer further declares on Mr Alvaro's behalf that Mr Alvaro wishes the investigations to be carried out as quickly as possible, understands that a waiver of immunity has been requested, but at the same time wishes to see Parliament's rights and prerogatives respected. Some criticism as to how the case has been handled by the German authorities, in particular as regards communication with the press – it is felt that Mr Alvaro as Member and Vice-President of the European Parliament has been treated differently – also emerges from

the letter.

### **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 Cologne Chief Public Prosecutor intends to carry out an investigation against Alexander Alvaro 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 Alvaro'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 Constitution, the Committee on Legal Affairs does not see any reason not to waive Alexander Alvaro's immunity. In particular, in the present case, the Committee has found no evidence of *fumus persecutionis*, i.e. a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member. The proceedings clearly have not been brought with the sole aim of damaging the Member's reputation. To what extent the handling of the case in detail by the German authorities might be subject to criticism has no bearing on the question as to whether or not the Member's immunity should be waived.

## **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 Alexander Alvaro.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	29.5.2013
<b>Result of final vote</b>	+: 13 -: 0 0: 0
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Bernhard Rapkay, Dimitar Stoyanov, Cecilia Wikström, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Sergio Gaetano Cofferati, Mary Honeyball, Eva Lichtenberger