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## TEXTS ADOPTED

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### **P9\_TA(2023)0022**

### **Request for waiver of the immunity of Nicolas Bay**

### **European Parliament decision of 2 February 2023 on the request for waiver of the immunity of Nicolas Bay (2022/2054(IMM))**

*The European Parliament,*

- having regard to the request of the Public Prosecutor of the Court of Appeal in Rouen for waiver of the immunity of Nicolas Bay dated 18 November 2021 and transmitted by letter dated 16 May 2022 by the French Ministry of justice, in the framework of a preliminary investigation, and announced in plenary on 8 June 2022,
- having heard Nicolas Bay 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<sup>1</sup>,
- having regard to Article 26 of the Constitution of the French Republic, as amended by Constitutional Law No 95-880 of 4 August 1995,

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<sup>1</sup> 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.

- 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 (A9-0015/2023),
- A. whereas the Public Prosecutor of the Court of Appeal in Rouen (Normandy, France) requested the waiver of the immunity of Nicolas Bay, Member of the European Parliament for France, with a view to conducting a preliminary investigation in connection with criminal charges of alleged incitement to hatred or violence on the grounds of origin, ethnicity, nation, race or religion, by word, text, image or electronic public communication;
  - B. whereas on 5 May 2021, Nicolas Bay published a video on his Twitter account and on Facebook, filmed in front of the Guinchainville mosque construction site (Normandy, France), which allegedly contained assertions linking the construction of mosques to the dissemination of political Islam on French territory and the perpetration of terrorist acts; whereas, in the video, he referred in particular to the murder of a resident of Évreux as evidence of delinquency, crime and terrorism; whereas the video remained on social media over time and prompted hate comments by readers, accompanied by calls for the eradication of all followers of Islam, both on Facebook and Twitter;
  - C. whereas regional elections for the Normandy Regional Council were held on 20 June 2021; whereas at the time the comments in the video were recorded, Nicolas Bay was a candidate in these regional elections; whereas the video was recorded on the territory of Nicolas Bay's electoral district;
  - D. whereas Nicolas Bay was invited to be heard by the competent police authorities on 6 September 2021 and whereas he failed to attend without providing justification; whereas a second invitation was sent to him to appear on 29 September 2021 and whereas on 21 September 2021 Nicolas Bay informed the police authorities by letter of his refusal to appear for his hearing, invoking his parliamentary immunity;
  - 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<sup>1</sup>;
  - F. whereas the alleged offences do not concern opinions expressed or votes cast by Nicolas Bay in the performance of his duties as a Member of the European Parliament within the meaning of Article 8

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<sup>1</sup> Judgment of the General Court of 30 April 2019, *Briois v Parliament*, T-214/18, ECLI:EU:T:2019:266.

of Protocol No 7 on the Privileges and Immunities of the European Union and instead concern activities of a regional nature;

- G. 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;
  - H. whereas Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union provides that Members of the European Parliament enjoy, in the territory of their own State, the immunities accorded to members of their Parliament;
  - I. whereas Article 26 of the French Constitution provides that no member of Parliament may be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the performance of his or her official duties and that no member of Parliament may be arrested for a crime or be subjected to any other custodial or semi-custodial measure without the authorisation of Parliament;
  - J. whereas in this case, Parliament has 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 Nicolas Bay;
  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 Nicolas Bay.