



---

## TEXTS ADOPTED

---

### **P9\_TA(2023)0061**

### **Request for waiver of the immunity of Nicolaus Fest**

### **European Parliament decision of 14 March 2023 on the request for waiver of the immunity of Nicolaus Fest (2022/2056(IMM))**

*The European Parliament,*

- having regard to the request for waiver of the immunity of Nicolaus Fest submitted by the Chief Public Prosecutor of Berlin on 31 March 2022, forwarded by letter of 16 May 2022 from the German Federal Ministry of Justice and announced in Parliament on 8 June 2022,
  - having heard Nicolaus Fest 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 46(2), (3) and (4) of the Basic Law for the Federal Republic of Germany and guideline No. 192 b of the *Richtlinien für das Strafverfahren und das Bußgeldverfahren* (Guidelines for

---

<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.

- criminal proceedings and proceedings to impose a regulatory fine),
- 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 (A9-0055/2023),
- A. whereas the Chief Public Prosecutor of Berlin has requested the waiver of the parliamentary immunity of Nicolaus Fest, Member of the European Parliament, with a view to opening an investigation into alleged insult within the meaning of Section 185 of the German Criminal Code;
- B. whereas the complainant filed a complaint against Nicolaus Fest in accordance with Section 194 of the German Criminal Code by letter of 2 December 2021;
- C. whereas the complaint is based on declarations made and published by Nicolaus Fest on Twitter,
- D. whereas on 10 September 2021, Nicolaus Fest tweeted the following on his Twitter account: *'Dear Mr Beck, why do you call me a coward? I am calling you out in public as a notorious liar and paedophile whose pro-Jewish stance is merely a cover. Schalömchen!'*
- E. whereas the allegations against Nicolaus Fest, and the subsequent request for waiver of his immunity, are not related to an opinion expressed or vote cast by him in the performance of his duties as a Member of the European Parliament, in accordance with Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union, but to the fact that, in response to a tweet, he posted a tweet presenting allegations perceived by the targeted person as insulting;
- F. 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;
- G. whereas Article 46(2), (3) and (4) of the Basic Law for the Federal Republic of Germany states the following:
- '(2) A Member may not be called to account or arrested for a punishable offence 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 their person shall be suspended at the request of the Bundestag.’;
- H. whereas guideline No. 192 b of the *Richtlinien für das Strafverfahren und das Bußgeldverfahren* governs the waiver of immunity of a Member of the European Parliament, and whereas, in particular, paragraph 1 thereof states:
- ‘(1) A Member of the European Parliament from the Federal Republic of Germany shall benefit from the same immunity as granted to a Member of the German Bundestag. [...]’;
- I. whereas, pursuant to Rule 9(8) of the Rules of Procedure, the Committee on Legal Affairs shall not, under any circumstances, pronounce on the guilt, or otherwise, of the Member, nor shall it pronounce on whether or not the opinions or acts attributed to the Member justify prosecution, even if the committee, in considering the request, acquires detailed knowledge of the facts of the case;
- J. 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;
- K. whereas, in accordance with Rule 5(2) of the Rules of Procedure, parliamentary immunity is not a personal privilege of the Member but a guarantee of the independence of Parliament as a whole and of its Members;
- L. whereas, in the case at hand, Parliament has found no evidence of *fumus persecutionis*, i.e. factual elements which indicate that the intention underlying the potential legal proceedings may be to harm a Member’s political activity and thus the European Parliament;
1. Decides to waive the immunity of Nicolaus Fest;
  2. Instructs its President to forward this decision and the report of its committee responsible immediately to the competent authority of the Federal Republic of Germany and to Nicolaus Fest.