

Thursday 27 April 2017

## II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN PARLIAMENT

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**Request for waiver of the immunity of António Marinho e Pinto****European Parliament decision of 27 April 2017 on the request for waiver of the immunity of António Marinho e Pinto (2016/2294(IMM))**

(2018/C 298/20)

*The European Parliament,*

- having regard to the request for the waiver of the immunity of António Marinho e Pinto, forwarded on 23 September 2016 by Miguel Pereira da Rosa, judge at the Lisbon West (Oeiras) District Court, (ref. 4759/15.2TDLSB) in connection with criminal proceedings initiated against him, and announced in plenary on 24 October 2016,
- having regard to the letter of 12 December 2016 from the Deputy Public Prosecutor responsible, containing a transcription of the remarks by António Marinho e Pinto,
- having heard António Marinho e Pinto on 22 March 2017 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 to 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, 6 September 2011 and 17 January 2013 <sup>(1)</sup>,
- having regard to Article 11(1), (2), (3) and (5) of Law No 7/93 of 1 March 1993 governing the statute of Members of the Portuguese Parliament and Circular No 3/2011 of the Public Prosecutor's Office of 10 October 2011,
- 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 (A8-0163/2017),

<sup>(1)</sup> Judgment of the Court of Justice of 12 May 1964, *Wagner v Fohrmann and Krier*, 101/63, ECLI:EU:C:1964:28; judgment of the Court of Justice of 10 July 1986, *Wybot v Faure and others*, 149/85, ECLI:EU:C:1986:310; judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440; 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.

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- A. whereas the judge of the Lisbon West (Oeiras) District Court has requested the waiver of the parliamentary immunity of António Marinho e Pinto, Member of the European Parliament, in connection with judicial proceedings concerning an alleged criminal offence;
- B. whereas the waiver of the immunity of António Marinho e Pinto concerns an alleged offence of aggravated defamation as defined in Articles 180(1) and 183(2) of the Portuguese Penal Code, punishable by up to two years' imprisonment, and an offence of undermining the reputation of an organisation, service or collective body as defined in Article 187(1) and (2)(a) of the Portuguese Penal Code, punishable by up to two years' imprisonment;
- C. whereas the charitable association Santa Casa de Misericórdia de Lisboa has lodged a complaint against António Marinho e Pinto;
- D. whereas the complaint relates to statements made by António Marinho e Pinto on 30 May 2015 during an interview on the TV programme 'A Propósito' on the Portuguese channel SIC Notícias, presented by António José Teixeira and broadcast at 21.00, during which he is alleged to have said: *'As far as social security is concerned, what I can say is that the solidarity aspect should be split off; that's a matter for the State, and shouldn't be paid for at the expense of workers' pensions, you see? It has to come from the State budget. Social solidarity must be provided through taxes and through that gigantic institution, Misericórdia de Lisboa, which handles millions and millions, and money is being wasted, more often than not for personal gain or out of personal interest.. [...] I think that Manuel Rebelo de Sousa would be better than Pedro Santana Lopes, given what we saw of Santana Lopes in government. It was actually good to see how the Superintendent of Santa Casa da Misericórdia de Lisboa worked in support of his candidacy and what means and resources he employed in order to do it.'*
- E. whereas Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union stipulates that Members of the European Parliament may 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;
- F. whereas the Court of Justice has held that, for a Member of the European Parliament to enjoy immunity, an opinion must be expressed by the Member in the performance of his duties, thus entailing the requirement of a link between the opinion expressed and the parliamentary duties; whereas such a link must be direct and obvious<sup>(1)</sup>;
- G. whereas, in accordance with Article 9 of the same Protocol, Members enjoy, in the territory of their own State, the immunities accorded to members of their parliament;
- H. whereas, under the terms of Article 11(1), (2), (3) and (5) of Law No 7/93 of 1 March 1993 governing the statute of Members of the Portuguese Parliament and Circular No 3/2011 of the Public Prosecutor's Office of 10 October 2011, António Marinho e Pinto may not be questioned or examined without the prior authorisation of the European Parliament;
- I. whereas the alleged acts have no obvious or direct connection with the performance of António Marinho e Pinto's duties as a Member of the European Parliament; whereas they relate rather to activities of a purely national nature, given that his remarks were made on a TV programme in Portugal on a specifically Portuguese subject relating to the management of an association incorporated under national law;
- J. whereas, therefore, the alleged acts do not concern opinions expressed or votes cast in the performance of his duties as a Member of the European Parliament for the purposes of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;
- K. whereas the accusation made is clearly unrelated to the status of António Marinho e Pinto as a Member of the European Parliament;
- L. whereas there is no reason to suspect *fumus persecutionis*, that is to say, a sufficiently serious and precise suspicion that the case has been brought with the intention of causing political damage to the Member;

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<sup>(1)</sup> Joined Cases T-346/11 and T-347/11, *Gollnisch v Parliament*, judgment cited above.

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1. Decides to waive the immunity of António Marinho e Pinto;
  2. Instructs its President to forward this decision and the report of its committee responsible immediately to the judge of the Lisbon West (Oeiras) District Court and to António Marinho e Pinto.
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