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*Plenary sitting*

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**A9-0022/2021**

24.2.2021

# REPORT

on the request for waiver of the immunity of Clara Ponsatí Obiols  
(2020/2031(IMM))

Committee on Legal Affairs

Rapporteur: Angel Dzhambazki

## CONTENTS

	<b>Page</b>
PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....	3
INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE.....	7

## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for waiver of the immunity of Clara Ponsatí Obiols (2020/2031(IMM))

*The European Parliament,*

- having regard to the request for waiver of the immunity received on 10 February 2020 and transmitted by the President of the Spanish *Tribunal Supremo* (Supreme Court) and made by the President of the Second Chamber of the Spanish *Tribunal Supremo* in connection with special proceedings No 3/20907/2017 on 4 February 2020; having regard to the announcement of the said request for waiver of immunity in plenary on 13 February 2020,
- having heard Clara Ponsatí Obiols 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 the decision of the Spanish *Junta Electoral Central* (Central Electoral Board) of 23 January 2020<sup>2</sup>,
- having regard to European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament<sup>3</sup> and to European Council Decision (EU) 2019/1810 taken in agreement with the United Kingdom of 29 October 2019 extending the period under Article 50(3)TEU<sup>4</sup>,
- having regard to the announcement made in plenary on 10 February 2020 that in accordance with the European Council's decision of 28 June 2018 and following the United Kingdom's withdrawal from the European Union on 31 January 2020, Parliament took note of the election of Clara Ponsatí Obiols as Member of the European Parliament with effect from 1 February 2020,
- having regard to Article 71(1) and (2) of the Spanish Constitution,

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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.

<sup>2</sup> *Boletín Oficial del Estado*, No 21, 24 January 2020, pp. 7441-7442.

<sup>3</sup> OJ L 165 I, 2.7.2018, p. 1.

<sup>4</sup> OJ L 278 I, 30.10.2019, p. 1.

- 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 (A9-0022/2021),
- A. whereas the President of the Second Chamber of the Spanish *Tribunal Supremo* requested the waiver of the immunity of Clara Ponsatí Obiols, Member of the European Parliament, with regard to Article 9 subparagraph 1(b) of Protocol No 7 on the Privileges and Immunities of the European Union in connection with special proceedings No 3/20907/2017 – the criminal proceedings for an alleged offence of sedition, as laid down in Articles 544 and 545 of the Spanish Criminal Code, and of an offence of misuse of public funds, as laid down in Article 432 of the Spanish Criminal Code in conjunction with Article 252 thereof;
  - B. whereas the acts subject to prosecution were allegedly committed in 2017; whereas the order of prosecution in this case was issued on 21 March 2018 and confirmed by subsequent orders dismissing appeals; whereas the investigation was closed by order of 9 July 2018 and confirmed as final on 25 October 2018; whereas by order of 9 July 2018 Clara Ponsatí Obiols, among others, was declared to be in contempt of court and a decision was taken to stay proceedings in relation to her and other persons until they had been found;
  - C. whereas Clara Ponsatí Obiols was declared elected by the Spanish *Junta Electoral Central* (Central Electoral Board) on 23 January 2020; whereas following the United Kingdom’s withdrawal from the European Union on 31 January 2020, Parliament took note of the election of Clara Ponsatí Obiols as Member of the European Parliament with effect from 1 February 2020;
  - D. whereas the status as Member of the European Parliament was acquired with effect on 23 January 2020; whereas the request for the waiver of immunity therefore concerns facts and prosecution that pre-dates the acquisition of the status and thereby of the immunity as Member of the European Parliament;
  - E. whereas the Committee on Legal Affairs took note of the documents presented to Members of the Committee by Clara Ponsatí Obiols pursuant to Rule 9(6) of the Rules of Procedure and considered by her relevant to the procedure;
  - F. whereas Member States’ authorities decide on the appropriateness of the court proceedings;
  - G. whereas it is not for the European Parliament to query the merits of national legal and judicial systems;
  - H. whereas the European Parliament lacks any competence to assess or query the jurisdiction of the national judicial authorities in charge of the criminal proceedings under consideration;
  - I. whereas in accordance with Spanish law as interpreted by the national courts and as communicated to Parliament by the Member State, the Second Criminal Chamber of the Spanish *Tribunal Supremo* is the competent authority to request the waiver of immunity of a Member of the European Parliament;

- J. whereas the proceedings do not concern opinions expressed or votes cast in the performance of the duties of the 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 Article 9 subparagraph 1(a) of Protocol No 7 on the Privileges and Immunities of the European Union states that Members of the European Parliament enjoy, in the territory of their own state, the immunities accorded to members of the parliament of that state;
- L. whereas Article 71(1) and (2) of the Spanish Constitution provides that:
- ‘1. Deputies and senators shall enjoy absolute privilege in respect of opinions expressed in the performance of their duties.*
- 2. During their term of office, deputies and senators shall also have immunity and may only be arrested if they are found in the act of committing an offence. They cannot be charged or prosecuted without the prior authorisation of the relevant legislative chamber’;*
- M. whereas the request for the waiver of immunity informs, with regard to the application of Article 71 of the Spanish Constitution and, specifically, the stage of proceedings as of which it is not necessary to request parliamentary authorisation to carry out criminal proceedings against an accused person who acquires the status of member of parliament, that a waiver request is not necessary in cases where the status of member of parliament is acquired while a previously opened trial is ongoing or in cases where a member of parliament takes office after formally being prosecuted; whereas it is not therefore required to request a waiver of immunity under Article 9 subparagraph 1(a) of Protocol No 7 on the Privileges and Immunities of the European Union in order for measures to be taken in the territory of Spain;
- N. whereas it is not for the European Parliament to interpret the domestic rules on the privileges and immunities of Members of Parliament;
- O. whereas Article 9 subparagraph 1(b) of Protocol No 7 on the Privileges and Immunities of the European Union states that Members of the European Parliament enjoy, in the territory of any other Member State, immunity from any measure of detention and from legal proceedings;
- P. whereas on 4 November 2019 the Second Chamber of the Spanish *Tribunal Supremo* ordered to issue ‘(i)n order for criminal proceedings to take place [...] as appropriate: a national arrest warrant(s), European arrest warrant(s) or an international arrest warrant(s) for the purposes of extradition’ in respect of, among others, Clara Ponsatí Obiols, who was confirmed to be in contempt of court; whereas, as explained in the request for the waiver of immunity, on 3 February 2020 the decision with regard to the issuing of the national search, arrest and detention warrant as well as the European arrest warrant and the international search and arrest warrant against Clara Ponsatí Obiols for the purpose of her extradition was upheld and, at the same time, a request for the waiver of her immunity was made in order to proceed with the execution of the European arrest warrant that had been issued;
- Q. 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 on whether or not the opinions or acts attributed to the Member justify prosecution, even if, in considering the request, the Committee acquires detailed knowledge of the facts of the case;

- R. whereas in accordance with Rule 5(2) of the Rules of Procedure, parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members;
  - S. 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;
  - T. whereas the accusation clearly bears no relation to the position of Clara Ponsatí Obiols as Member of the European Parliament but to her former position as Regional Minister for Education of the *Govern* (Catalan regional government);
  - U. whereas Clara Ponsatí Obiols is one of the individuals among a group of individuals who find themselves in a similar situation of being prosecuted and charged with the offences in question, with the only difference being that she currently enjoys immunity as a Member of the European Parliament; whereas it should therefore be borne in mind that Clara Ponsatí Obiols is not the only prosecuted person in the case in question;
  - V. whereas the incriminated facts were committed in 2017 and the criminal proceedings in question were initiated against Clara Ponsatí Obiols in 2018; whereas on this basis, it cannot be claimed that the judicial proceedings were launched with the intention of hindering the future political activity of Clara Ponsatí Obiols as a Member of the European Parliament, when at that time her status as a Member of the European Parliament was still hypothetical and future;
  - W. whereas in this case, Parliament has thus 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 Clara Ponsatí Obiols under Article 9 subparagraph 1(b) of Protocol No 7 on the Privileges and Immunities of the European Union;
  2. Instructs its President to forward this decision and the report of its committee responsible immediately to the Spanish authorities and to Clara Ponsatí Obiols.

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	23.2.2021
<b>Result of final vote</b>	+ : 15 - : 8 0 : 2
<b>Members present for the final vote</b>	Manon Aubry, Gunnar Beck, Geoffroy Didier, Pascal Durand, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Franco Roberti, Marcos Ros Sempere, Ernő Schaller-Baross, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
<b>Substitutes present for the final vote</b>	Daniel Buda, Andrzej Halicki, Emil Radev, Kosma Złotowski