Request for waiver of the immunity of Hans-Peter Martin

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The Committee on Legal Affairs adopted by 17 votes for and 1 against the report drafted by Diana WALLIS (ALDE, UK) whereby it decided to waive the parliamentary immunity of the Austrian Member, Hans-Peter MARTIN (NI, AT).

To recap, a private prosecution was brought against Mr Hans-Peter MARTIN in the Vienna Regional Criminal Court in June 2007 by Merkur Treuhand Wirtschaftstreuhand- und Steuerberatungs Gesellschaft mit beschränkter Haftung for commercial defamation pursuant to the Austrian Criminal Code on the ground that, both on his website (www.hpmartin.net) and in APA-OTS press release in connection with the accusations against him (by the EU anti-fraud authority, OLAF) of improper use of the secretarial assistance allowance for staff, Mr MARTIN had claimed that it had been established after a comprehensive, detailed investigation that he had in no way improperly used EU monies and that fault had been found only with a formal error on the part of his accounts manager at the time, Mr Christoph Matznetter (a tax adviser now State Secretary for Finance in the Austrian Government).

The private plaintiff regards those claims as constituting commercial defamation, since the name Christoph Matznetter, who for years was a partner in, and managing director of, the plaintiff's predecessor in law, is inextricably linked with the plaintiff and both Mr Matznetter and the plaintiff are held up to be professionally incompetent in Mr MARTIN's remarks. Since, according to the plaintiff, Mr Martin is aware that, in reality, the plaintiff is not responsible for any errors in accounting for the secretarial assistance allowance, but, rather, that costs were charged as expressly instructed by Mr Martin himself, he has committed commercial defamation and should be punished accordingly.

At the same time, the private plaintiff has applied for Mr Martin as the owner of the website and the APA-OTS press release to be required to publish the judgment, pursuant to Section 34(1) (alternatively Section 34(3)) of the Austrian Media Act, and to withdraw (delete) the text constituting a criminal offence, pursuant to Section 33(1) (alternatively Section 33(2)) of the Austrian Media Act.

In a letter dated 7 February 2008 to the rapporteur and circulated to the members of the Legal Affairs Committee, Mr MARTIN stated that the private prosecution to which the request for waiver of immunity relates was preceded by a civil suit (still pending) 'on the same matter and with the same purpose' brought by the same company, which regards itself as the successor to Merkur Treuhand'.

Mr MARTIN stresses that he is not seeking immunity in the civil proceedings but asserts that 'it is unusual to file an additional private claim in the same matter before a criminal court'. He argues that the request to lift his immunity now based on a private claim is simply political.

The question to be answered is whether the alleged facts constituting the criminal offence with which Mr MARTIN is charged are 'manifestly linked with Mr MARTIN's political activity' within the meaning of Article 57(3) of the Bundes-Verfassungsgesetz.

The Legal Affairs Committee considers that the matter in dispute, namely who was responsible for an accounting error – the member or his paying agent – is not linked with Mr MARTIN's political activity. It is simply a dispute between a member and a service provider. As to whether there is sufficient evidence of *fumus persecutionis* to warrant Parliament's refusing to waive Mr MARTIN's immunity, even though it may be unusual for parallel criminal and civil proceedings to be brought on the same facts, this in itself

does not constitute a *fumus*. Moreover, the proceedings have been brought by a service provider which is the legal successor to the firm linked with Mr Matznetter who, Mr MARTIN suggests, is behind the litigation and not by that firm or the politician himself. Lastly, Mr MARTIN informed the Legal Affairs Committee that negotiations are under way to reach an out-of-court settlement, which strongly suggests that the dispute is a genuine one. Consequently, it is considered that the parliamentary immunity of Mr MARTIN should be waived.