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Advocate General's Opinion in Case C-115/21 P | Junqueras i Vies

According to Advocate General Szpunar, the appeal brought by Mr Junqueras i Vies against the order of the General Court of the European Union delivered on 15 December 2020 must be dismissed

That order declared that his action – directed against, inter alia, the declaration by the President of the European Parliament that his seat had become vacant – was inadmissible

By judgment of the Tribunal Supremo (Supreme Court, Spain) delivered on 14 October 2019, Mr Oriol Junqueras i Vies was sentenced to 13 years' imprisonment and disqualified from holding any public office for the same period, entailing the loss of all his existing public posts and duties, including those to which he had been elected, and was barred from obtaining or performing any further such posts or duties. The charges brought against him included participation in a process of secession as Vice-President of the Gobierno autonómico de Cataluña (Autonomous Government of Catalonia, Spain) when a referendum on self-determination was held there. While the criminal proceedings leading to that judgment were still ongoing, Mr Junqueras i Vies was elected as a Member of the European Parliament on 26 May 2019, that result being announced by Spain's Central Electoral Board in a decision of 13 June 2019. However, since Mr Junqueras i Vies had not been granted authorisation to take the oath to abide by the Spanish Constitution as persons elected to the European Parliament are required to do under national law, his seat was declared vacant by the Central Electoral Board in a decision of 20 June 2019.¹

By judgment of 19 December 2019,² the Court of Justice answered questions referred to it by the Tribunal Supremo concerning the immunity provided for in the Protocol on the privileges and immunities of the European Union.^{3 4} On 20 December 2019, Ms Diana Riba i Giner, a Member of the European Parliament, requested that the President of the European Parliament take measures as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure of the European Parliament, to assert the immunity of Mr Junqueras i Vies.

By decision of 3 January 2020, Spain's Central Electoral Board declared Mr Junqueras i Vies ineligible to hold office, due to his having been sentenced to a term of imprisonment. Mr Junqueras i Vies applied to the Tribunal Supremo for suspension of operation of that decision, but his application was dismissed.

By order of 9 January 2020, the Tribunal Supremo ruled on the effects of the judgment of the Court of Justice of 19 December 2019 on the criminal proceedings concerning Mr Junqueras i Vies. It held that it was not appropriate to authorise Mr Junqueras i Vies to travel to the European Parliament, to authorise his release, to set aside the

¹ For a more detailed account of the facts, see Press Release [No 139/19](#).

² Judgment of 19 December 2019, *Junqueras Vies*, [C-502/19](#); see Press Release [No 161/19](#).

³ Protocol (No 7) on the privileges and immunities of the European Union, annexed to the EU and FEU Treaties (OJ 2012 C 326, p. 266) ('the Protocol').

⁴ The Court held that a person who had been officially declared elected to the European Parliament while subject to a measure of provisional detention in the context of proceedings in respect of serious criminal offences, but who had not been authorised to comply with certain requirements under national law following such a declaration and to travel to the European Parliament in order to take part in its first session, had to be regarded as enjoying an immunity under the Protocol. The Court added that that immunity entailed that the measure of provisional detention imposed on the person concerned had to be lifted in order to enable that person to travel to the European Parliament and complete the necessary formalities there. Lastly, the Court stated that if the competent national court considered that that measure should be maintained after the person concerned acquired the status of Member of the European Parliament, it had to request as soon as possible that that institution waive that immunity.

judgment of 14 October 2019 or to ask the European Parliament to waive parliamentary immunity. The Tribunal Supremo also decided to notify the Central Electoral Board and the European Parliament of that order. It considered that, given the stage that had been reached in the criminal proceedings against Mr Junqueras i Vies at the time of his election to the European Parliament, he was not covered by parliamentary immunity under Spanish law.

At the plenary sitting of 13 January 2020, the President of the European Parliament invited that institution to take note that Mr Junqueras i Vies had been elected to the European Parliament with effect from 2 July 2019 and that his seat had become vacant with effect from 3 January 2020.

Mr Junqueras i Vies then brought an action before the General Court of the European Union seeking annulment, first, of the declaration of 13 January 2020 and, secondly, of the alleged refusal by the President of the European Parliament to grant Ms Riba i Giner's request of 20 December 2019 that measures be taken as a matter of urgency to assert the immunity of Mr Junqueras i Vies.⁵

By its order of 15 December 2020, the General Court dismissed the action brought by Mr Junqueras i Vies as inadmissible.⁶ Mr Junqueras i Vies then brought an appeal against that order before the Court of Justice.

In his Opinion delivered today, **Advocate General Maciej Szpunar proposes that the Court of Justice should dismiss the appeal brought by Mr Junqueras i Vies.**

First, the Advocate General considers that **the General Court was right to hold that the President of the European Parliament could merely inform that institution of the cessation of Mr Junqueras i Vies's mandate following national decisions**, without that act producing legal effects of its own that would render it challengeable.

Secondly, as regards the fact that **Mr Junqueras i Vies alleges that the General Court erred in law in holding that the European Parliament had no power to review the ground of incompatibility which had resulted in the loss of his mandate**, the Advocate General points out that **that allegation is based on a non-existent legal rule.**

Thirdly, in Mr Szpunar's view, **the General Court acted correctly** in beginning from the premiss that **eligibility is a matter of electoral procedure governed by the law of the Member States**, with the consequence that **the European Parliament has no power to review national decisions which establish a loss of eligibility and thus lead to withdrawal of the mandate.**

Fourthly, concerning the General Court's dismissal, on the ground of inadmissibility, of the action against **the alleged decision of the President of the European Parliament to refuse to grant the request of 20 December 2019**, the Advocate General considers that **Mr Junqueras i Vies has not been able to raise any valid objection to the reasoning of the General Court as regards inadmissibility.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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⁵ He also made an application for interim relief, which was dismissed by order of the Vice-President of the General Court of 3 March 2020 (Case [T-24/20 R](#), *Junqueras i Vies v Parliament*; see Press Release [No 24/20](#)). On 8 October 2020, the Vice-President of the Court of Justice dismissed the appeal brought by Mr Junqueras i Vies against that order (order of 8 October 2020, *Junqueras i Vies v Parliament*, [C-201/20 P \(R\)](#); see Press Release [No 131/20](#)).

⁶ Order of the General Court of 15 December 2020, *Junqueras i Vies v Parliament*, T-24/20; see Press Release [No 158/20](#).

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