COURT OF JUSTICE
OF THE EUROPEAN UNION

1952 - 2022

PRESS RELEASE No 116/22
Luxembourg, 6 July 2022

Judgment of the General Court in Case T-388/19 | *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament*

The action brought by Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres against the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament and their associated rights is inadmissible

The applicants, Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres, stood as candidates in the elections for the European Parliament which were held in Spain on 26 May 2019. Following those elections, the list led by the applicants received 1 018 435 votes and won two seats in the Parliament.

On 29 May 2019, the then President of the Parliament issued an internal instruction to the Secretary-General of the institution, first, to refuse all the candidates elected in Spain access to the '*Welcome Village*' and to the assistance which the institution provided to candidates newly elected to the Parliament and, second, to suspend their accreditation until the Parliament had officially received confirmation of their election in accordance with Article 12 of the Electoral Act. [1]

On 13 June 2019, the Junta Electoral Central (Central Electoral Commission, Spain) adopted a decision in the form of a declaration of the Members elected to the European Parliament in the elections held on 26 May 2019. [2] That decision stated that, in accordance with Article 224(1) of the Spanish Electoral Law, [3] the Central Electoral Commission had issued the declaration of elected candidates mentioned by name, including the applicants. The declaration also stated that the session during which the elected candidates would take an oath to respect the Spanish Constitution, as required by Article 224(2) of the Spanish Electoral Law, would take place on 17 June 2019.

On 15 June 2019, the investigating judge of the Tribunal Supremo (Supreme Court, Spain) rejected the applicants' request for the withdrawal of the national arrest warrants issued against them by the Spanish criminal courts for them to be tried in the context of the criminal proceedings brought against them by the Spanish Public Prosecutor,

[1] Act concerning the election of the Members of the European Parliament by direct universal suffrage (OJ 1976 L 278, p. 5), annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 (OJ 2002 L 283, p. 1) ('the Electoral Act'). Article 12 of the Electoral Act provides as follows: 'The [Parliament] shall verify the credentials of members of the [Parliament]. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.'

[2] *Boletín Oficial del Estado* No 142 of 14 June 2019, p. 62477 ('the declaration of 13 June 2019').

[3] Ley orgánica 5/1985, del Régimen Electoral General (Institutional Law 5/1985 on the general electoral regime) of 19 June 1985 (*Boletín Oficial del Estado* No 147 of 20 June 1985, p. 19110; 'the Spanish Electoral Law').

the State Counsel and the political party VOX. [4]

On 17 June 2019, the Central Electoral Commission notified the Parliament of the list of candidates elected in Spain, which did not include the applicants' names. On 20 June 2019, the Central Electoral Commission, in essence, refused to allow the applicants to take the required oath or make the required promise to respect the Spanish Constitution by means of a written declaration made before a notary or through attorneys designated by a notarised deed, on the ground that that oath or promise is an act which must be made in person before the Central Electoral Commission. On the same day, the Central Electoral Commission notified the Parliament of a decision in which it noted that the applicants had not taken or made the abovementioned oath or promise and declared that the seats allocated to the applicants in the Parliament were vacant and that all the prerogatives to which they might be entitled by virtue of their duties were suspended until such time as they took that oath or made that promise.

On 27 June 2019, the former President of the Parliament sent a letter to the applicants informing them, in essence, that he was not able to treat them as future Members of the European Parliament because their names were not on the list of elected candidates officially communicated by the Spanish authorities.

Following that letter, the applicants brought an action for annulment before the General Court directed, in essence, against, first, the Instruction of 29 May 2019 of the former President of the Parliament refusing them access to the welcome and assistance service offered to incoming Members of the European Parliament and the grant of temporary accreditation and, second, the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament, contained in the letter of 27 June 2019.

The Parliament, supported by the Kingdom of Spain, relied, principally, on the inadmissibility of the action, on the grounds that the application does not clearly define certain acts which the General Court is asked to annul and that there are no challengeable acts.

The General Court, sitting in extended composition, dismisses the action as inadmissible in that it is not directed against acts that are challengeable under Article 263 TFEU.

Findings of the General Court

The General Court begins by referring to settled case-law according to which acts adopted by the institutions, whatever their nature or form, which are intended to have binding legal effects capable of affecting the interests of an applicant, by bringing about a distinct change in his or her legal position, are regarded as actionable measures for the purposes of Article 263 TFEU. [5] By contrast, any act not producing binding legal effects, such as preparatory acts, confirmatory measures, implementing measures, mere recommendations and opinions and, in principle, internal instructions, falls outside the scope of the judicial review provided for in Article 263 TFEU. [6] Finally, in order to determine whether an act is capable of having legal effects and, therefore, whether an action for annulment under Article 263 TFEU can be brought against it, it is necessary to examine the substance of that act and to assess those effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which that act was adopted and the powers of the EU institution which adopted it. [7]

In the first place, **examining whether the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament**, contained in the letter of 27 June 2019, **is a**

[4] Those criminal proceedings had been brought before the Spanish criminal courts in respect of acts coming within, inter alia, the offences of 'sedition' and 'misuse of public funds'.

[5] Judgments of 11 November 1981, *IBM* v *Commission* (60/81, paragraph 9), and of 26 January 2010, *Internationaler Hilfsfonds* v *Commission* (C-362/08 P, paragraph 51).

[6] See judgment of 12 September 2006, *Reynolds Tobacco and Others* v *Commission* (C-131/03 P, paragraph 55 and the case-law cited), and order of 14 May 2012, *Sepracor Pharmaceuticals (Ireland)* v *Commission* (C-477/11 P, paragraph 52 and the case-law cited); see also, to that effect, judgment of 23 November 1995, *Nutral* v *Commission* (C-476/93 P, paragraph 30).

[7] See judgment of 20 February 2018, *Belgium* v *Commission* (C-16/16 P, paragraph 32 and the case-law cited).

challengeable act, the General Court finds that that refusal is not an act producing binding legal effects capable of affecting the applicants' interests within the meaning of the settled case-law of the Court of Justice. [8] The action for annulment of that refusal is, therefore, inadmissible.

First, the General Court states that it is apparent from the wording of the letter of 27 June 2019 that the former President of the Parliament merely took note of the applicants' legal situation which had been officially notified to him by the Spanish authorities by way of their communications of 17 and 20 June 2019. Furthermore, that letter expressly indicated that the position expressed by the former President of the Parliament could have evolved on the basis of further information received from the Spanish authorities. Therefore, according to the General Court, that letter expressly demonstrated that the position of the former President of the Parliament in that letter was neither a decision nor definitive.

Second, the General Court examines whether the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament was the cause of the legal effects alleged by them, including the fact that they could not take office, exercise their mandate and sit in Parliament. To that end, the General Court assesses whether the former President of the Parliament had the power to call into question the communication of 17 June 2019, by which the Spanish authorities officially notified him of the list of the candidates elected at the elections of 26 May 2019, which did not mention the applicants' names even though their names featured in the official declaration of 13 June 2019.

In that regard, the General Court states that, as regards the election of Members of the European Parliament, the Electoral Act establishes a sharing of power between the Parliament and the Member States. First, subject to the provisions of the Electoral Act, the electoral procedure is governed in each Member State by its national provisions. [9] Second, after referring to the wording of Article 12 of the Electoral Act, [10] the General Court states that that article expressly excludes the Parliament's power to rule on disputes arising out of national law, even where the Electoral Act refers to that law, such as the requirement laid down in Article 224(2) of the Spanish Electoral Law. It follows that, in order to verify the credentials of its Members, the Parliament must rely on the list of elected candidates officially communicated by the national authorities, which, in theory, is established in the light of the officially declared results and after any disputes based on the application of national law have been dealt with by those authorities. The former President of the Parliament did not therefore have the power to review the validity of the exclusion of certain elected candidates from the list which was officially communicated by the Spanish authorities on 17 June 2019, since that list reflected the official results of the elections of 26 May 2019 as established, where necessary, after any disputes raised on the basis of national law had been dealt with.

In view of the foregoing, **the General Court concludes that the fact that the applicants could not take office, exercise their mandate and sit in Parliament is not a result of the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament, contained in the letter of 27 June 2019, but is a result of the application of Spanish law, as reflected in the communications of the Central Electoral Commission of 17 and 20 June 2019, in respect of which the former President of the Parliament and, more generally, the Parliament did not have any discretion.**

In the second place, **examining whether the Instruction of 29 May 2019 is a challengeable act, the General Court finds that, in view of its content, its provisional nature and the context in which it was adopted, that instruction did not produce binding legal effects capable of affecting the applicants' interests**, within the meaning of the settled case- law of the Court of Justice. [11] **The action for annulment of that instruction is, therefore, inadmissible**.

---

[8] See above, footnote 5.

[9] Pursuant to the first paragraph of Article 8 of the Electoral Act.

[10] See above, footnote 1.

[11] See above, footnote 5.

According to the General Court, **that instruction did not prevent the applicants from carrying out the administrative steps necessary for them to take office and exercise their mandate and, therefore, did not result in the applicants being unable to exercise the rights associated with their status as Members of the European Parliament from the opening of the first session following the elections, that is to say, from 2 July 2019.**

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

The full text of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ✆ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "Europe by Satellite" ✆ (+32) 2 2964106