



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 December 2019\*

(Reference for a preliminary ruling – Expedited procedure – Institutional law – Citizen of the European Union elected to the European Parliament while being held in provisional detention in the context of criminal proceedings – Article 14 TEU – Concept of ‘Member of the European Parliament’ – Article 343 TFEU – Immunities necessary for the performance of the tasks of the European Union – Protocol (No 7) on the privileges and immunities of the European Union – Article 9 – Immunities enjoyed by Members of the European Parliament – Immunity as regards travel – Immunities as regards sessions – Personal, temporal and material scope of the various immunities – Waiver of immunity by the European Parliament – Request to waive immunity from a national court – Act concerning the election of Members of the European Parliament by direct universal suffrage – Article 5 – Term of office – Article 8 – Electoral procedure – Article 12 – Verification of the credentials of Members of the European Parliament following the official declaration of the election results – Charter of Fundamental Rights of the European Union – Article 39(2) – Election of Members of the European Parliament by direct universal suffrage in a free and secret ballot – Right to stand as a candidate at elections)

In Case C-502/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 1 July 2019, received at the Court on the same day, in the criminal proceedings against

**Oriol Junqueras Vies,**

other parties:

**Ministerio Fiscal,**

**Abogacía del Estado,**

**Partido político VOX,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, L.S. Rossi and I. Jarukaitis, Presidents of Chambers, E. Juhász, J. Malenovský (Rapporteur), L. Bay Larsen, C. Toader, N. Piçarra, A. Kumin, N. Jääskinen and N. Wahl, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

\* Language of the case: Spanish.

having regard to the written procedure and further to the hearing on 14 October 2019,

after considering the observations submitted on behalf of:

- Mr Junqueras Vies, by A. Van den Eynde Adroer, abogado,
- the Ministerio Fiscal, by F. Cadena Serrano, C. Martinez-Pereda, J. Moreno Verdejo and J. Zaragoza Aguado,
- Partido político VOX, by M. Castro Fuertes, abogada, and by M. Hidalgo López, procuradora,
- the Spanish Government, by S. Centeno Huerta and A. Rubio González, acting as Agents,
- the European Parliament, by C. Burgos and by F. Drexler and N. Görlitz, acting as Agents,
- the European Commission, by F. Erlbacher and I. Martínez del Peral, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 November 2019,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 9 of the Protocol (No 7) on the privileges and immunities of the European Union (OJ 2012 C 326, p. 266, ‘the Protocol on the privileges and immunities of the European Union’).
- 2 The request has been made in the context of an action brought by Mr Oriol Junqueras Vies, in an ancillary procedure to the criminal proceedings concerning him, against an order of the Tribunal Supremo (Supreme Court, Spain) whereby it refused, following the official declaration of the results of the elections to the European Parliament held on 26 May 2019, to lift a measure of provisional detention applied to Mr Junqueras Vies since November 2017, in order to allow him to discharge a formality which, under Spanish law, is a condition for acquiring the status of Member of the European Parliament.

### **Legal context**

#### ***EU law***

#### *The Protocol on the privileges and immunities of the European Union*

- 3 Chapter III of the Protocol on the privileges and immunities of the European Union, concerning ‘Members of the European Parliament’, contains inter alia Article 9, which provides:

‘During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.'

*The Electoral Act*

4 The Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as last amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 (OJ 2002 L 283, p. 1) ('the Electoral Act').

5 Article 1(3) of the Electoral Act provides that the election of Members of the European Parliament is to be by direct universal suffrage and is to be free and secret.

6 Article 5 of that act reads as follows:

'1. The five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election.

...

2. The term of office of each member of the European Parliament shall begin and end at the same time as the period referred to in paragraph 1.'

7 Article 6(2) of that act provides:

'Members of the European Parliament shall enjoy the privileges and immunities applicable to them by virtue of the [Protocol on the privileges and immunities of the European Union].'

8 The first paragraph of Article 8 of that act provides:

'Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.'

9 Under Article 11(3) and (4) of the Electoral Act:

'3. Without prejudice to Article [229 TFEU], the European Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the electoral period.

4. The powers of the outgoing European Parliament shall cease upon the opening of the first sitting of the new European Parliament.'

10 Article 12 of that act provides:

'The European Parliament shall verify the credentials of members of the European 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.'

## *Spanish law*

### *The Spanish Constitution*

11 Article 71 of the Spanish Constitution provides:

‘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.

3. The Criminal Division of the Tribunal Supremo [(Supreme Court)] shall have jurisdiction in criminal cases against deputies and senators.

...’

### *The Electoral Law*

12 Ley orgánica 5/1985 de Régimen Electoral General (Organic Law 5/1985 on the General Electoral System) of 19 June 1985 (BOE No 147 of 20 June 1985, p. 19110), in the version applicable to the facts in the main proceedings (‘the Electoral Law’), provides, in Article 224:

‘1. The Junta Electoral Central [(Central Electoral Board, Spain)] shall, at the latest by the 20th day following the elections, count the votes at national level, allocate the seat corresponding to each of the candidates, and declare the elected representatives.

2. Within five days of their declaration, the elected candidates shall swear or pledge to abide by the Constitution before the [Central Electoral Board]. Once that period has elapsed, the [Central Electoral Board] shall declare vacant the seats corresponding to Members of the European Parliament who have not sworn or pledged to abide by the Constitution and shall withdraw all the privileges to which they may be entitled by reason of their office until such time as that oath or pledge takes place.

...’

### *The Rules of Procedure of the Congress of Deputies*

13 The Reglamento del Congreso de los Diputados (Rules of Procedure of the Congress of Deputies) of 10 February 1982 (BOE No 55 of 5 March 1982, p. 5765), provides, in Article 20:

‘1. A deputy who has been declared elected shall acquire the full status of deputy by simultaneously fulfilling the following conditions:

(1) presenting to the Secretary General the credential issued by the relevant body of the electoral authorities;

(2) completing his declaration of activities within the periods laid down in the [Electoral Law];

(3) swearing or pledging, from the first plenary session that he attends, to abide by the Constitution.

2. The rights and prerogatives take effect as from the moment the deputy is declared elected. However, if three plenary sessions have been held without the deputy having acquired that status in accordance with the previous paragraph, he shall not enjoy those rights and prerogatives until he has acquired that status.'

*The Law on Criminal Procedure*

- 14 Under Article 384a of the Ley de Enjuiciamiento Criminal (Law on Criminal Procedure), in the version applicable to the facts at issue in the main proceedings:

'Where an indictment has become final and a provisional detention order has been made in respect of a criminal offence committed by a person who is a member of or who is linked to an armed group or individuals who are terrorists or insurgents, a defendant who is in public office will automatically be suspended from holding that office for as long as he remains in detention.'

- 15 The first paragraph of Article 503 of that law provides:

'1. A provisional detention order may be made only when the following conditions are satisfied:

- (1) There is evidence in the case of the existence of one or more acts corresponding to a criminal offence punishable by a maximum sentence of a term equal to or more than two years' imprisonment or a custodial sentence of a lesser term where the person under investigation or defendant has a criminal record as a result of a conviction for an intentional criminal offence, which has not been cancelled or cannot be cancelled.

...

- (2) There are sufficient grounds in the case for believing that the person against whom the detention order is to be made is criminally responsible for the offence.

- (3) Provisional detention is ordered in pursuit of one of the following aims:

- (a) ensuring that the person under investigation or defendant will attend the proceedings where there are reasons to believe that there is a risk of absconding.

...'

- 16 Articles 750 to 754 of that law are worded as follows:

'Article 750

A court which finds that there are grounds for prosecuting a senator or deputy of the Cortes [(Senate and Congress of Deputies, Spain)] for a criminal offence shall refrain from doing so if the [Senate and the Congress of Deputies] are in session until it obtains the relevant authorisation from the legislative chamber of which the person in question is a member.

Article 751

Where a senator or deputy is found in the act of committing an offence, he may be arrested and prosecuted without the authorisation referred to in the previous article; however, the relevant legislative chamber must be notified of this within 24 hours of the arrest or prosecution.

The legislative chamber concerned must also be notified of any criminal case pending against a person who, while being prosecuted, is elected a senator or deputy.

#### Article 752

If a senator or deputy is prosecuted during a period between parliamentary sessions, the court seised of the case must immediately bring this to the attention of the legislative chamber concerned.

The above shall also apply where a person who has been elected a senator or deputy is prosecuted before [the Senate or the Congress of Deputies] meets.

#### Article 753

At all events, the judicial officer shall stay the criminal proceedings from the date on which the [Senate and the Congress of Deputies] is informed, whether or not they are in session, and matters shall remain as they stand at that time until the relevant legislative chamber adopts the decision it considers appropriate.

#### Article 754

Should [the Senate or the Congress of Deputies] refuse to grant the authorisation requested, the proceedings shall be discontinued in respect of the senator or deputy but the case shall continue against the other defendants.'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 17 The applicant in the main proceedings, Mr Junqueras Vies, was Vice-President of the Gobierno autonómico de Cataluña (Autonomous Government of Catalonia, Spain) at the time of the adoption of Ley 19/2017 del Parlamento de Cataluña, reguladora del referéndum de autodeterminación (Law 19/2017 of the Catalan Parliament, regulating the referendum on self-determination) of 6 September 2017 (DOGC No 7449A of 6 September 2017, p. 1), and of Ley 20/2017 del Parlamento de Cataluña, de transitoriedad jurídica y fundacional de la República (Law 20/2017 of the Catalan Parliament on legal transition and founding the Republic) of 8 September 2017 (DOGC No 7451A of 8 September 2017, p. 1), and the holding, on 1 October 2017, of the referendum on self-determination provided for by the first of those two laws, the provisions of which had, in the interim, been suspended by a decision of the Tribunal Constitucional (Constitutional Court, Spain).
- 18 Following the adoption of those laws and the holding of that referendum, the Ministerio fiscal (Public Prosecutor's Office, Spain), the Abogado del Estado (Counsel for the State, Spain) and the Partido político VOX (VOX political party) brought criminal proceedings against several persons, including Mr Junqueras Vies, alleging that they had taken part in a secessionist process and committed, in that context, acts classified as three criminal offences, namely, first, 'rebellion' or 'sedition', secondly, 'civil disobedience', and, thirdly, 'misappropriation of funds'.
- 19 Mr Junqueras Vies was placed in provisional detention during the investigation stage of those criminal proceedings, pursuant to a decision adopted on 2 November 2017 on the basis of Article 503 of the Law on Criminal Procedure. That decision was subsequently renewed several times, with the result that Mr Junqueras Vies was still in provisional detention on the date that the request for a preliminary ruling which gave rise to the present judgment was lodged.
- 20 After the opening of the trial stage of those criminal proceedings, Mr Junqueras Vies stood as a candidate in the elections for the Congreso de los Diputados (Congress of Deputies, Spain) held on 28 April 2019, in which he was elected as a deputy.

- 21 By order of 14 May 2019, the Tribunal Supremo (Supreme Court) held that it was not necessary to request the Congress of Deputies to grant the prior authorisation referred to in Article 71(2) of the Spanish Constitution, since the election of Mr Junqueras Vies as a deputy had occurred after the opening of the trial stage of the criminal proceedings brought against him, amongst others. In accordance with the case-law of that court, the immunity provided for in that provision is granted to deputies and senators only in respect of criminal proceedings in which the trial stage has not yet been opened at the date on which they are elected or acquire the status of deputy or senator.
- 22 By the same order, the Tribunal Supremo (Supreme Court), in response to a request to that effect made by Mr Junqueras Vies, granted him a special authorisation to leave prison in order to take part, under police surveillance, in the first plenary session of the Congress of Deputies and to discharge, at that session, the formalities required in order to take his seat, as laid down in Article 20 of the Rules of Procedure of the Congress of Deputies.
- 23 After discharging those formalities and taking his seat, and then being returned to prison, Mr Junqueras Vies was suspended from his position as a deputy by a decision of the administrative board of the Congress of Deputies adopted on 24 May 2019, in accordance with Article 384a of the Law on Criminal Procedure.
- 24 During the trial stage of the criminal proceedings brought against him, amongst others, Mr Junqueras Vies also stood as a candidate in the elections to the European Parliament held on 26 May 2019. He was elected to the European Parliament in those elections, as noted in the official declaration of the election results made by the Central Electoral Board in a decision of 13 June 2019, entitled ‘Declaration of Members elected to the European Parliament in the elections held on 26 May 2019’ (BOE No 142 of 14 June 2019, p. 62477), in accordance with Article 224(1) of the Electoral Law. In that decision, the Central Electoral Board also, in accordance with that provision, attributed to the elected persons, including Mr Junqueras Vies, the seats in the European Parliament apportioned to the Kingdom of Spain.
- 25 By order of 14 June 2019, the Tribunal Supremo (Supreme Court) rejected a request made by Mr Junqueras Vies for special authorisation to leave prison, under police surveillance, in order to appear before the Central Electoral Board and swear or pledge to abide by the Spanish Constitution, as required by Article 224(2) of the Electoral Law.
- 26 On 20 June 2019, the Central Electoral Board adopted a decision in which it found that Mr Junqueras Vies had not taken the oath or pledge in question and, in accordance with Article 224(2) of the Electoral Law, declared vacant the seat attributed to Mr Junqueras Vies in the European Parliament and suspended all of the prerogatives that he might enjoy by virtue of his office.
- 27 On 2 July 2019, the President of the European Parliament opened the first session of the parliamentary term following the elections to the European Parliament held on 26 May 2019.
- 28 Mr Junqueras Vies brought an action before the Tribunal Supremo (Supreme Court) challenging the order referred to in paragraph 25 above, in which he invoked the immunities provided for in Article 9 of the Protocol on the privileges and immunities of the European Union.
- 29 In response to a request for observations in that request, the Public Prosecutor’s Office, the Counsel for the State and the VOX political party submitted that Mr Junqueras Vies was not protected by the immunities in question.
- 30 In its order for reference, the Tribunal Supremo (Supreme Court) indicated, as a preliminary point, that it was referring to the Court of Justice questions of interpretation of EU law which arose, not in the context of the preparation of its ruling on the merits in the criminal proceedings brought against Mr Junqueras Vies, but rather in the context of the latter’s action against the order referred to in

paragraph 25 above. The referring court considers, in addition, that the decision to be adopted on that action would not influence the substance of that court's ruling on the merits, without prejudice to any effect - which it describes as 'reflex or indirect' - that acts adopted following the grant or refusal of authorisation to leave prison might have on that ruling. Lastly, it underlines that it is required to refer to the Court the questions set out in the order for reference, since it is the court adjudicating, in accordance with Article 71(3) of the Spanish Constitution, at first and last instance on the action brought by Mr Junqueras Vies.

- 31 As regards those questions, the Tribunal Supremo (Supreme Court) states, in the first place, that the order challenged by that action is a refusal to grant – to a person who was elected Member of the European Parliament while in provisional detention, but after the trial stage of the criminal proceedings brought against him had been opened – a special authorisation to leave prison in order to swear or pledge to abide by the Spanish Constitution which, under Article 224 of the Electoral Law, is a requirement for a person elected to that office.
- 32 In the second place, the referring court presents the context in which that order was adopted and the factors taken into account in it, noting, first of all, that the acts which Mr Junqueras Vies is accused of committing are liable to constitute particularly serious criminal offences and to attract correspondingly severe punishment, in that they sought to undermine the constitutional order.
- 33 Next, that court explains that the placement of Mr Junqueras Vies in provisional detention was ordered because of the risk that he would abscond.
- 34 Lastly, that court states that, during the adoption of the order by which it refused to grant Mr Junqueras Vies a special authorisation to leave prison, it not only took into account the factors mentioned in the two foregoing paragraphs, having regard to Article 503 of the Law on Criminal Procedure, but also carried out a balancing exercise of the various rights and interests which, in its view, had to be taken into consideration in that context.
- 35 In that respect, it explains that it ultimately gave priority to the provisional deprivation of Mr Junqueras Vies' liberty over his right of political participation in the work of the European Parliament, in order to safeguard the objective of the criminal proceedings brought against him, amongst others, which would be irredeemably prejudiced if he were authorised to leave Spain. The Tribunal Supremo (Supreme Court) considers, in that respect, that a distinction must be made between, on the one hand, the election of Mr Junqueras Vies to the Congress of Deputies, following which there was no difficulty in authorising him to present himself at the seat of that legislative body before returning to prison, and, on the other hand, his election to the European Parliament. The participation of Mr Junqueras Vies in the first session of the new term of the European Parliament, and thus his travelling outside of Spain, would entail a loss of jurisdictional control over the measure of provisional detention imposed on him, in a context marked by the existence of limits on the judicial cooperation in criminal matters implemented within the European Union.
- 36 In the third place, the Tribunal Supremo (Supreme Court) justifies the first two questions referred by the need to ascertain the moment at which the status of Member of the European Parliament is acquired.
- 37 In that respect, it observes that, in the judgments of 12 May 1964, *Wagner* (101/63, EU:C:1964:28), and of 10 July 1986, *Wybot* (149/85, EU:C:1986:310), the Court interpreted the first paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union and held, first, that the term 'sessions' in that paragraph had to be defined autonomously, and not by reference to the national law of the Member States, in order to ensure immunities for the same period for all Members of the European Parliament, and secondly, that the temporal scope of those immunities had to be defined broadly, with the result that it covers the entire period that that institution sits in ordinary sessions.

38 However, the referring court notes that that case-law does not resolve the issue whether the immunities provided for in the first and second paragraphs of Article 9 of the Protocol on the privileges and immunities of the European Union are applicable during the period prior to the commencement of the first session held by the European Parliament following elections. That being said, that court adds that, in view of the wording of those provisions, their purpose and their legislative context, as interpreted by the Court in its judgments of 7 July 2005, *Le Pen v Parliament* (C-208/03 P, EU:C:2005:429), and of 30 April 2009, *Italy and Donnici v Parliament* (C-393/07 et C-9/08, EU:C:2009:275), it could be considered that the immunities laid down in those provisions apply only to Members of the European Parliament who have taken their seat within that institution or, at the very least, persons who were included, by the competent national authorities, on the list of those having complied with the requirements, under the national law of the Member States, to acquire the status of a Member of the European Parliament. Nevertheless, both that interpretation and the interpretation according to which those immunities apply to all persons elected as Members of the European Parliament raise questions, in the referring court's view, having regard to their practical consequences.

39 Finally, in the fourth place, in the event that the immunities provided for in the first and second paragraphs of Article 9 of the Protocol on the privileges and immunities of the European Union are applicable, the referring court has doubts regarding, in essence, the consequences that should follow from this with respect to the action brought by Mr Junqueras Vies against the order referred to in paragraph 25 above. More specifically, the referring court seeks to ascertain, by the third question referred, whether – and if so how and by whom – the protection attached to those immunities may be balanced against the other rights and interests to be taken into consideration in dealing with such an action, in the light of Article 39 of the Charter of Fundamental Rights of the European Union and the corresponding provisions of Article 3 of Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

40 In those circumstances the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Does Article 9 of [the Protocol on the privileges and immunities of the European Union] apply before the commencement of “sessions” to a person accused of serious criminal offences, who has been remanded in custody pursuant to a court order made in respect of acts preceding the commencement of an electoral process in which that person was declared elected to the European Parliament but who, by court order, has been refused a special authorisation to leave prison which would enable him to comply with the conditions laid down by the national electoral legislation referred to in Article 8 of the [Electoral Act]?
- (2) If the answer is in the affirmative, where, because the elected person has not complied with the conditions laid down in the electoral legislation (a failure resulting from the limitation of his freedom of movement owing to the fact that he has been remanded in custody in the context of proceedings relating to serious offences), the body designated in the national electoral legislation has notified the European Parliament that that person has not acquired the status of Member of the Parliament and will not do so until such time as he complies with those conditions, does the broad interpretation of the term “sessions” continue to apply notwithstanding the temporary interruption of his expectation of taking his seat?
- (3) If the answer is that the broad interpretation should continue to apply, where the newly elected member was in temporary custody in the context of proceedings relating to serious offences sufficiently in advance of the commencement of the electoral process, is the judicial authority which ordered that that person be remanded in custody obliged, in the light of the phrase “while they are travelling to and from the place of meeting of the European Parliament” in Article 9 of [the Protocol on the privileges and immunities of the European Union], to lift the custody measure absolutely, almost automatically, to enable compliance with the formalities and the requirement of

travel to the European Parliament, or should recourse be had to a balancing exercise, of a relative nature, in the specific case between, on the one hand, the rights and interests arising from the interests of justice and due process and, on the other, those relating to the concept of immunity, as regards the need to ensure the functioning and independence of the [European] Parliament and the elected representative's right to hold public office?

- 41 On 14 October 2019, the referring court delivered a judgment on the merits in the criminal proceedings brought against Mr Junqueras Vies, amongst others, ('the judgment of 14 October 2019'), in which it sentenced Mr Junqueras Vies to a 13-year term of imprisonment and to a 13-year disqualification from holding any public office, which entails the loss of all his current public offices and functions, including elective offices, and a ban on obtaining or exercising any new ones.
- 42 By a letter of the same day, the referring court notified that judgment to the Court, indicating that its request for a preliminary ruling was still relevant and useful, since the answers to the questions set out in its order for reference should be effective irrespective of whether the detention of Mr Junqueras Vies is provisional or results from a judgment passing sentence.

## The procedure before the Court

### *The expedited procedure*

- 43 In its order for reference, the Tribunal Supremo (Supreme Court) requested that the reference for a preliminary ruling which gave rise to the present judgment be dealt with under an expedited procedure, in accordance with Article 105 of the Rules of Procedure of the Court of Justice. In support of its request, that court submitted, in essence, that the questions referred concerned the status of Member of the European Parliament and the composition of that institution, that the Court's replies to those questions could lead, indirectly, to the suspension of the deprivation of Mr Junqueras Vies' liberty, and that that deprivation of liberty corresponded to the situation referred to in the fourth paragraph of Article 267 TFEU.
- 44 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or, exceptionally, of his own motion, the President of the Court may decide, after hearing the Judge-Rapporteur and the Advocate General, that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure where the nature of the case requires that it be dealt with within a short time.
- 45 In the present case, on 19 July 2019, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to grant the referring court's request mentioned in paragraph 43 above. That decision was motivated by the fact that, first, Mr Junqueras Vies was being held in provisional detention when the request for a preliminary ruling was lodged, with the result that the questions referred by the Tribunal Supremo (Supreme Court) had to be regarded as being raised in the context of a case having regard to a person in custody, within the meaning of the fourth paragraph of Article 267 TFEU and, secondly, those questions sought the interpretation of a provision of EU law liable, by its very nature, to have an effect on the continued detention of Mr Junqueras Vies, in the event that that provision were applicable to him (see, to that effect, order of the President of the Court of 30 September 2011, *Achughbadian*, C-329/11, not published, EU:C:2011:630, paragraphs 9 to 12, and, by analogy, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 29 to 31).

***The request that the oral part of the procedure be reopened***

- 46 By document lodged at the Court Registry on 12 November 2019, following the delivery of the Advocate General's Opinion, Mr Junqueras Vies requested the Court to order that the oral part of the procedure be reopened, submitting that a new fact had arisen in that the Tribunal Supremo (Supreme Court) had notified to him, on 30 October 2019, an order suspending the execution of the disqualification from holding any public office that had been imposed on him by the judgment of 14 October 2019.
- 47 In that respect, Article 83 of the Rules of Procedure provides that the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court or where the case must be decided on the basis of an argument which has not been debated between the interested persons.
- 48 In the present case, however, it must be noted that the new fact invoked in the request that the oral part of the procedure be reopened occurred, as is clear from the very wording of that request, in the context of the criminal proceedings referred to in paragraph 30 above and not in that of the action brought against the order mentioned in paragraph 25 above, which led the Tribunal Supremo (Supreme Court) to make a reference to the Court.
- 49 In the light of the foregoing, the Court considers, after hearing the Advocate General, that that new fact was not of such a nature as to be a decisive factor for the decision of the Court.
- 50 Accordingly, there is no need to order that the oral part of the procedure be reopened.

**Admissibility of the request for a preliminary ruling**

- 51 In response to questions put to it at the hearing before the Court, concerning the potential impact of the judgment of 14 October 2019 on the request for a preliminary ruling and on the actions that the Tribunal Supremo (Supreme Court) could take in the light of the Court's answers to its questions, the Public Prosecutor's Office replied that it would be for the referring court to give due effect to the judgment delivered in the present case and, in the event that it followed from that judgment that Mr Junqueras Vies enjoyed an immunity on the basis of Article 9 of the Protocol on the privileges and immunities of the European Union, to determine the effects of that immunity in the context of the action brought by Mr Junqueras Vies against the order referred to in paragraph 25 above.
- 52 As for the Spanish Government, it submitted, in essence, that, in the event that Mr Junqueras Vies enjoyed an immunity on the basis of subparagraph (a) of the first paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union, that immunity would have no effect.
- 53 In its view, the material content of that immunity is defined by reference to the national law of the Member States and the Tribunal Supremo (Supreme Court) noted, in its order referred to in paragraph 21 above, that Spanish law guarantees immunity to Spanish deputies and senators only with regard to criminal proceedings in which the trial stage had not yet been opened when they were elected or acquired the status of deputy or senator. In the present case, the order for reference highlighted that the trial stage of the criminal proceedings referred to in paragraph 30 above had been opened before the election of Mr Junqueras Vies to the European Parliament. Consequently, no immunity would prevent Mr Junqueras Vies' continued provisional detention. Moreover, he is no longer being held in provisional detention, but rather, as result of his conviction on 14 October 2019, serving a custodial sentence.

- 54 Thus, the Spanish Government appears to consider that, because the questions referred concern, in essence, the existence of an immunity, they are hypothetical, and that that is even more so since the delivery of the judgment of 14 October 2019, with the result that the admissibility of the request for a preliminary ruling is questionable.
- 55 According to the Court's settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26 and the case-law cited).
- 56 It follows that questions referred by the national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions (see, to that effect, judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27 and the case-law cited).
- 57 In the present case, first, it follows unambiguously from the letter of the Tribunal Supremo (Supreme Court) mentioned in paragraph 42 above that that court considers that a preliminary ruling remains necessary to enable it to deliver its judgment on the action which gave rise to the present case and that its questions remain fully relevant.
- 58 Secondly, it is clear from that letter and from the statements in the order for reference summarised in paragraphs 30, 31 and 36 to 39 above that the interpretation sought by the Tribunal Supremo (Supreme Court) relates directly to the purpose of the main action and that the problem raised by that action and by the request for a preliminary ruling is not hypothetical, but real, and, moreover, remains in full after the delivery of the judgment of 14 October 2019. The referring court was required, when it made the reference to the Court, and is still required at the date of delivery of the present judgment, irrespective of the judgment of 14 October 2019, to adjudicate, as the court of first and last instance, on the action brought by Mr Junqueras Vies against the order mentioned in paragraph 25 above, whereby that court refused to grant him a special authorisation to leave prison in order to enable him to comply with a requirement under Spanish law following his election to the European Parliament. In addition, that court seeks to ascertain, for that purpose, whether Mr Junqueras Vies enjoys an immunity under Article 9 of the Protocol on the privileges and immunities of the European Union and, if so, what the effects of that immunity are.
- 59 It follows that the request for a preliminary ruling is admissible and, accordingly, that it is necessary to reply to the questions raised by the referring court.

### **Consideration of the questions referred**

- 60 As a preliminary point, it should be noted that it follows from the order for reference, as summarised in paragraphs 24 and 25 above, that, after Mr Junqueras Vies had been officially declared elected to the European Parliament by the competent national authority, the Tribunal Supremo (Supreme Court) refused to grant him a special authorisation to leave prison that would have enabled him to complete a formality which, under Spanish law, is a requirement in order to acquire the status of Member of the European Parliament and, after completing that formality, to travel to the place of meeting of that institution in order to take part in the first session of the parliamentary term following the elections to the European Parliament held on 26 May 2019.

- 61 In that context, by its three questions, which should be examined together, the Tribunal Supremo (Supreme Court) asks, in essence, whether Article 9 of the Protocol on the privileges and immunities of the European Union must be interpreted as meaning that a person who was 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 was not 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, must be regarded as enjoying an immunity under that article. If so, the referring court asks, in addition, whether that immunity entails that the measure of provisional detention imposed on the person concerned must be lifted, in order to enable that person to travel to the European Parliament and to complete the necessary formalities there.
- 62 In that respect, Article 9 of the Protocol on the privileges and immunities of the European Union establishes, in its first and second paragraphs, immunities enjoyed by ‘Members of the European Parliament’. However, that article does not define the concept of a ‘Member of the European Parliament’, and it must therefore be interpreted in the light of its context and purpose.
- 63 As regards the context, it should be borne in mind, first, that Article 10(1) TEU provides that the functioning of the Union is to be founded on the principle of representative democracy, which gives concrete form to the value of democracy referred to in Article 2 TEU (see, to that effect, judgment delivered today, *Puppinck and Others v Commission*, C-418/18 P, paragraph 64).
- 64 Implementing that principle, Article 14(3) TEU provides that the Members of the European Parliament, an institution of the European Union, are to be elected for a term of five years by direct universal suffrage in a free and secret ballot.
- 65 It follows from that provision that the status of Member of the European Parliament arises from being elected by direct universal suffrage in a free and secret ballot, while the term of office of the Members of that institution constitutes the main attribute of that status.
- 66 Secondly, as regards the procedure for electing Members of the European Parliament, Article 223(1) TFEU provides, first, that it is for the European Parliament to draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all the Member States or in accordance with principles common to all Member States, and, secondly, that it is for the Council of the European Union to lay down those provisions.
- 67 On 20 September 1976, the Electoral Act was adopted, which sets out the common principles applicable to the election of the Members of the European Parliament by direct universal suffrage.
- 68 In that regard, first of all, the first paragraph of Article 8 of that act provides that, subject to the other provisions of that act, ‘the electoral procedure shall be governed in each Member State by its national provisions’. In addition, Article 12 of that act provides, inter alia, that the European Parliament ‘shall verify the credentials of [M]embers of the European Parliament’ and ‘take note of the [election] results declared officially by the Member States’.
- 69 It follows from those provisions, read together, that, as EU law currently stands, the Member States remain competent, in principle, to regulate the electoral procedure and, following that procedure, to declare officially the election results. The European Parliament has no general competence to call into question the validity of such a declaration or to review whether it complies with EU law (see, to that effect, judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraphs 55 to 57, 60 and 67).

- 70 In addition, it follows from those provisions that, by ‘tak[ing] note’ of the election results declared officially by the Member States, the European Parliament necessarily recognises that the persons who have been officially declared elected have, as a result of this, become Members of that institution, which is why it must exercise its competence as regards those Members by verifying their credentials.
- 71 As the Advocate General pointed out in point 70 of his Opinion, those provisions must therefore be understood as meaning that the acquisition of the status of Member of the European Parliament, for the purposes of Article 9 of the Protocol on the privileges and immunities of the European Union, occurs because of and at the time of the official declaration of the election results carried out by the Member States.
- 72 Next, the Electoral Act defines the temporal limits of the term of office for which Members of the European Parliament are elected by stipulating, in Article 5(1) and (2), that that term of office coincides with the five-year period which begins at the opening of the first session following each election, with the result that it begins and ends at the same time as that five-year period.
- 73 In that respect, it follows from Article 11(3) and (4) of the Electoral Act that the ‘new’ European Parliament is to meet, without needing to be convened, on the first Tuesday after expiry of an interval of one month from the end of the electoral period and that the powers of the ‘outgoing’ European Parliament are to cease upon the opening of the first sitting of that ‘new’ European Parliament. In addition, in accordance with Article 12 of that act, at that first sitting the ‘new’ European Parliament is to verify the credentials of its Members and to rule on any disputes which may arise out of the provisions of that act.
- 74 It follows that, unlike the status of Member of the European Parliament – which is acquired at the time a person is officially declared elected, as noted in paragraph 71 above, and establishes a link between that person and the institution of which he or she now forms part – the term of office of a Member of the European Parliament establishes a link between that person and the parliamentary term for which he or she was elected. That latter term does not begin until the opening of the first session of the ‘new’ European Parliament held after the election, which occurs, by definition, after the official declaration of the election results by the Member States.
- 75 Lastly, the Electoral Act provides, in Article 6(2), that the Members of the European Parliament are to enjoy the immunities established by the Protocol on the privileges and immunities of the European Union.
- 76 As regards the legal source of those immunities, Article 343 TFEU provides that the European Union is to enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union. Although that article therefore refers to that protocol as regards the determination of the conditions under which immunities are to be ensured, it nevertheless requires that the European Union and, in particular, the Members of its institutions, enjoy the immunities necessary for the performance of its tasks. It follows that those conditions, as determined by that protocol and – in so far as that protocol refers to the law of the Member States – by national legislation, must ensure that the European Parliament is fully able to perform the tasks entrusted to it.
- 77 In that connection, it follows from both the wording of Article 9 of the Protocol on the privileges and immunities of the European Union and the title of Chapter III, in which that article is contained, that those immunities are granted to ‘Members of the European Parliament’, and therefore to persons who have acquired that status as a result of the official declaration of the election results by the Member States, as indicated in paragraph 71 above.

- 78 As regards the immunities thus granted to Members of the European Parliament, the first paragraph of Article 9 of that protocol provides for immunities which are enjoyed by those Members equally, during the entire duration of the sessions of a given term of the European Parliament, even if it is not actually sitting (see, to that effect, judgment of 10 July 1986, *Wybot*, 149/85, EU:C:1986:310, paragraphs 12 and 27).
- 79 However, the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union has a different temporal scope.
- 80 That provision provides that the immunity also applies to the Members of the European Parliament while they are travelling to and from the place of meeting of the European Parliament, and therefore, inter alia, while they are travelling to the first sitting held after the official declaration of the election results, in order to allow the new parliament to hold its inaugural session and to verify the credentials of its Members, as noted in paragraph 73 above. Those Members therefore enjoy the immunity in question before their term of office has begun.
- 81 It follows from all of the foregoing that a person who has been officially declared elected to the European Parliament must be regarded as having acquired, as a result of this and from that time, the status of Member of that institution, for the purposes of Article 9 of the Protocol on the privileges and immunities of the European Union, and as enjoying, on that basis, the immunity provided for in the second paragraph of that article.
- 82 That interpretation is consistent with the objectives pursued by the Protocol on the privileges and immunities of the European Union, which consists – as follows from the Court’s case-law – in ensuring that the institutions of the European Union have full and effective protection against hindrances or risks to their proper functioning and independence (see, to that effect, judgment of 10 July 1986, *Wybot*, 149/85, EU:C:1986:310, paragraphs 12 and 22; order of 13 July 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:315, paragraph 19, and judgment of 22 March 2007, *Commission v Belgium*, C-437/04, EU:C:2007:178, paragraph 56).
- 83 In the case of the European Parliament, those objectives imply not only that, in accordance with the principle of representative democracy referred to in paragraph 63 above and with Article 14 TEU, its composition must reflect faithfully and completely the free expression of choices made by the citizens of the European Union, by direct universal suffrage, as regards the persons by whom they wish to be represented during a given term, but also that the European Parliament must be protected, in the exercise of its tasks, against hindrances or risks to its proper operation.
- 84 On that twofold basis, the immunities granted to Members of the European Parliament are intended to ensure the independence of that institution in the performance of its tasks, as the European Court of Human Rights noted as regards different forms of parliamentary immunity established in democratic political systems (see, to that effect, ECtHR, 17 May 2016, *Karácsony and Others v. Hungary*, CE:ECHR:2016:0517JUD004246113, § 138, and ECtHR, 20 December 2016, *Uspaskich v. Lithuania*, CE:ECHR:2016:1220JUD001473708, § 98).
- 85 In accordance with those objectives and with the requirement referred to in paragraph 76 above, the immunity provided for in the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union serves to protect the proper functioning and independence of the European Parliament, as the Advocate General pointed out in points 92 and 94 of his Opinion, by guaranteeing that each of its Members has, after the official declaration of the election results, the ability to travel unimpeded to the first sitting of the new term, in order to comply with the procedures set out in Article 12 of the Electoral Act, and to allow the new parliament to assemble.

- 86 That immunity thereby also serves to ensure the effectiveness of the right to stand as a candidate at elections guaranteed in Article 39(2) of the Charter of Fundamental Rights, which constitutes the expression in the Charter of the principle of direct universal suffrage in a free and secret ballot enshrined in Article 14(3) TEU and Article 1(3) of the Electoral Act (see, by analogy, judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 44), by allowing persons who have been elected Members of the European Parliament to complete the steps necessary to take their seats.
- 87 Accordingly, a person such as Mr Junqueras Vies, who was officially declared elected to the European Parliament while the subject of a measure of provisional detention in the context of proceedings in respect of serious criminal offences, but who was not 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 sitting, must be regarded as enjoying immunity under the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union.
- 88 In those circumstances, it is necessary to examine, as the referring court asks, whether that immunity entails lifting the measure of provisional detention imposed on that person, in order to allow that person to travel to the European Parliament and complete the necessary formalities.
- 89 In that respect, as indicated in paragraph 24 above, Mr Junqueras Vies became a Member of the European Parliament on 13 June 2019, when the competent Spanish authorities officially declared the results of the elections to the European Parliament held on 26 May 2019. On that date, he was being held in provisional detention.
- 90 It follows from the considerations set out in paragraphs 83 to 86 above that the immunity laid down in the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union precludes, inter alia, that a measure of provisional detention may impede the freedom of Members of the European Parliament to travel to the place where the first sitting of the new parliamentary term is to take place, in order to complete the formalities required by the Electoral Act.
- 91 In those circumstances, if the competent national authority considers that a measure of provisional detention should be maintained against a person who has acquired the status of Member of the European Parliament, it should, under the third paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union, as soon as possible request the European Parliament to waive the immunity granted by the second paragraph of that article.
- 92 In the light of the foregoing, it should be stated in reply to the referring court that the existence of the immunity provided for in the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union entails that the measure of provisional detention imposed on the person who enjoys that immunity must be lifted, in order to allow that person to travel to the European Parliament and complete the necessary formalities there. That being said, if the competent national court considers that that measure should be maintained after the person concerned acquires the status of Member of the European Parliament, it must as soon as possible request the European Parliament to waive that immunity, on the basis of the third paragraph of Article 9 of that protocol.
- 93 In addition, it is for the referring court to assess the effects that should be attached to the immunities enjoyed by Mr Junqueras Vies in any other proceedings, such as those referred to in paragraph 30 above, in compliance with EU law and, inter alia, the principle of sincere cooperation referred to in the first subparagraph of Article 4(3) TEU (see, to that effect, judgment of 21 October 2008, *Marra*, C-200/07 and C-201/07, EU:C:2008:579, paragraph 41). In that context, it must take into account, in particular, the elements referred to in paragraphs 64, 65, 76 and 82 to 86 above.

- 94 In the light of all the foregoing, the answer to the questions referred is that Article 9 of the Protocol on the privileges and immunities of the European Union must be interpreted as meaning that:
- a person who was 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 was not 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, must be regarded as enjoying an immunity under the second paragraph of that article;
  - that immunity entails that the measure of provisional detention imposed on the person concerned must be lifted, in order to enable that person to travel to the European Parliament and complete the necessary formalities there. That being said, if the competent national court considers that that measure should be maintained after the person concerned acquires the status of Member of the European Parliament, it must as soon as possible request the European Parliament to waive that immunity, on the basis of the third paragraph of Article 9 of that protocol.

### Costs

- 95 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 9 of the Protocol (No 7) on the privileges and immunities of the European Union must be interpreted as meaning that:**

- **a person who was 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 was not 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, must be regarded as enjoying an immunity under the second paragraph of that article;**
- **that immunity entails that the measure of provisional detention imposed on the person concerned must be lifted, in order to enable that person to travel to the European Parliament and complete the necessary formalities there. That being said, if the competent national court considers that that measure should be maintained after the person concerned acquires the status of Member of the European Parliament, it must as soon as possible request the European Parliament to waive that immunity, on the basis of the third paragraph of Article 9 of that protocol.**

[Signatures]