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Advocate General's Opinion in Case C-572/23 P | Puigdemont i Casamajó and Others v Parliament
(Waiver of Parliamentary Immunity)

Advocate General Szpunar proposes that three grounds of appeal brought by Mr Antoni Comín against the judgment of the General Court dismissing his action against the waiver of his immunity by the European Parliament be rejected

Mr Carles Puigdemont and Ms Clara Ponsatí no longer have an interest in bringing proceedings because their mandates as Members of the Parliament have expired

Following the holding of the referendum on self-determination on 1 October 2017 in Catalonia (Spain), the Spanish Public Prosecutor's Office, the Spanish State Counsel and the VOX political party brought criminal proceedings against a number of individuals, including Mr Carles Puigdemont i Casamajó (then President of the Generality of Catalonia), Mr Antoni Comín i Oliveres and Ms Clara Ponsatí i Obiols (then members of that government).

In March 2018, the Spanish Supreme Court issued an order charging Mr Puigdemont, Mr Comín and Ms Ponsatí with the alleged offences of insurgency and misuse of public funds. In July 2018, that court declared that the accused had refused to appear following their flight from Spain and stayed the criminal proceedings instituted against them until such time as they are found.

Mr Puigdemont, Mr Comín and Ms Ponsatí subsequently applied to stand as candidates in the elections to the European Parliament held in Spain on 26 May 2019. Following those elections, Mr Puigdemont and Mr Comín were elected on 2 July 2019.

In October 2019, arrest warrants against Mr Puigdemont, Mr Comín and Ms Ponsatí were issued by the Spanish Supreme Court, so that they might be tried in the criminal proceedings at issue.

In January 2020, the Spanish Supreme Court asked the Parliament to waive the parliamentary immunity of Mr Puigdemont and Mr Comín.

Ms Ponsatí also became a Member of the Parliament on 1 February 2020. ¹ The Spanish Supreme Court requested the waiver of her immunity on 10 February 2020, the same day the Parliament took note of her election.

By decisions of 9 March 2021, the Parliament waived the immunity of the three Members of the Parliament. ² They then applied to the General Court of the European Union to annul those decisions.

By judgment of 5 July 2023, the General Court dismissed the action brought by Mr Puigdemont, Mr Comín and Ms Ponsatí against the decisions of the Parliament. ³ The Members challenged that judgment before the Court of Justice.

In accordance with the decision of the Court of Justice, Advocate General Maciej Szpunar focused his Opinion on

three of the ten grounds of appeal.

In his Opinion, Advocate General Szpunar considers first of all that, **following the expiry of their mandates as a Members of Parliament on 15 July 2024, Mr Puigdemont and Ms Ponsatí no longer have an interest in bringing proceedings.** Consequently, he proposes that the Court of Justice should declare that there is no need to adjudicate on the appeal brought by those Members. However, that interest in bringing proceedings continues to exist in the case of Mr Comín, who was re-elected as a Member of the Parliament on 9 June 2024 (despite the fact that his name was not included on the list of candidates elected in Spain and notified to the Parliament).

The Advocate General proposes that the Court of Justice reject all the arguments put forward against the judgment of the General Court in the three pleas analysed in his Opinion.

He considers that the General Court did **not err** in concluding that the Members' right to **impartial and fair treatment** of their affairs by the Parliament had not been infringed (in particular as regards the sole rapporteur appointed for the three cases – belonging to the same political group as the VOX party ⁴ – and the Chair of the JURI Committee). ⁵

According to the Advocate General, the General Court similarly did **not err in the interpretation and application of the rules** relating to the decision to waive parliamentary immunity **or in the assessment of the impact of the Parliament's decisions on the fundamental rights of the Members.** ⁶ The General Court correctly found that the Parliament had not committed a manifest error of assessment in concluding that the criminal proceedings did not have the purpose of damaging the Members' political activity in the Parliament, and therefore the Parliament's independence (**absence of *fumus persecutionis***). ⁷

Lastly, Mr Szpunar proposes that the argument concerning the lack of clarity of the Parliament's decisions be rejected. **It is apparent from those decisions that the immunity of Members was waived in the territory of all the Member States except Spanish territory** (and not only in Belgium and the United Kingdom).

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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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ Following the withdrawal of the United Kingdom from the European Union on 31 January 2020, the number and distribution of seats in the European Parliament changed.

² By order of 24 May 2022, [C-629/21 P\(R\)](#), the Vice-President of the Court of Justice ordered the suspension of the operation of those decisions.

³ Judgment of the General Court of 5 July 2023, *Puigdemont i Casamajó and Others v Parliament*, [T-272/21](#); see also Press Release [No 114/23](#).

⁴ The European Conservatives and Reformists (ECR) political group.

⁵ In particular, he considers that the General Court did not err in finding that the fact that the rapporteur belonged to the same political group as the party VOX was not in itself sufficient to conclude that there was a breach of the requirement for the rapporteur to be impartial.

⁶ In that regard in particular, he emphasises, as held by the General Court, first, that the waiver of parliamentary immunity as such does not result in the loss of the Member's mandate and does not affect his or her freedom of movement, since immunity in itself is not a fundamental right of a Member; second, the Parliament is not competent either to examine the legality of decisions adopted in national proceedings or to rule on the risk of infringement of fundamental rights arising from the execution of European arrest warrants, in the way that judicial authorities would do when called upon to rule on their execution.

⁷ In reaching that conclusion, the Parliament relied on a number of factors, considered together, namely the fact that the alleged offences were committed in 2017, whereas the applicants acquired the status of Members of the Parliament on 13 June 2019 and the facts that, first, they were charged on 21 March 2018, that is to say, at a time when the acquisition of the status of Member of the European Parliament was hypothetical, and, second, that that indictment also covered other persons who were not Members of the Parliament.