



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 139/19

Luxembourg, 12 November 2019

Advocate General's Opinion in Case C-502/19
Junqueras Vies

According to Advocate General Szpunar, MEPs' Parliamentary mandate is acquired solely from the electorate and this cannot be conditional on the completion of any subsequent formality

He considers that the European Parliament should be able to decide whether it is appropriate to waive or defend the immunity of one of its Members

Mr Oriol Junqueras Vies was Vice-President of the Gobierno autonómico de Cataluña (Autonomous Government of Catalonia) on 1 October 2017 when the referendum on self-determination was held, as provided for by a law the provisions of which were suspended as a result of a decision of the Tribunal Constitucional (Constitutional Court, Spain). Criminal proceedings were then brought against a number of people, including Mr Junqueras Vies, in which he was accused, inter alia, of having taken part in a process of secession. Mr Junqueras Vies has been held on remand since 2 November 2017. Mr Junqueras Vies was elected Member of the European Parliament in the elections of 26 May 2019, the result having been declared by the Spanish central electoral commission in a decision of 13 June 2019. On 14 June 2019, the Tribunal Supremo (Supreme Court, Spain) refused to allow Mr Junqueras Vies to leave prison in order to take the oath to respect the Spanish Constitution, as those elected to the European Parliament are required to do under national law. On 20 June 2019, as the oath was not taken, the central electoral commission declared the seat of Mr Junqueras Vies to be vacant and suspended all prerogatives deriving from his functions. It sent to the European Parliament a list of the MEPs elected in Spain, which did not include the name of Mr Junqueras Vies. Mr Junqueras Vies brought an action before the Tribunal Supremo against the order of 14 June 2019, claiming immunity under the Protocol on the privileges and immunities of the EU.¹

The Tribunal Supremo referred questions to the Court of Justice concerning that immunity. On 14 October 2019, the date when the hearing before the Court of Justice was held, the Tribunal Supremo handed down a judgment condemning Mr Junqueras Vies, among others, to 13 years in prison and as many years loss of civic rights, while maintaining its reference for a preliminary ruling.

In today's Opinion, **Advocate General Maciej Szpunar, first of all, highlights the constitutional importance of this case, which asks a question about the division of the respective remits of EU law and the law of the Member States in connection with the process of acquiring the status of a Member of the Parliament.**

In the first place, the Advocate General observes that, while the electoral process is governed by the national law of the Member States, the status of Members of the Parliament, as directly elected representatives of EU citizens and Members of a European institution, may be governed only by EU law, failing which the Parliament's independence and the autonomy of the EU's legal order overall would be called into question. According to Mr Szpunar, the Parliamentary mandate may be acquired solely from the electorate and may not be conditional on the completion of any subsequent formality. He considers that taking the oath to respect the Spanish Constitution is not a step in the process for election to the European Parliament in Spain, and that process must be regarded as being concluded with the official declaration of the results. Consequently, the status of

¹ Protocol (No 7) on the privileges and immunities of the European Union (OJ 2012, C 326, p. 266).

a Member of the Parliament must be deemed to have been acquired solely as a result, and from the moment of that declaration. The 1976 Act² does not allow a Member State to suspend the mandate of a Member of the Parliament or the prerogatives arising from that mandate for any reason whatsoever. The Advocate General therefore recommends that the Court of Justice declare that **a person whose election to the European Parliament has been officially declared by the relevant authority of the Member State in which that election took place acquires, solely as a result of that fact, and from that moment, the status of a Member of the Parliament, notwithstanding any subsequent formality which that person is required to complete, whether under EU law or the national law of the Member State in question. That person retains that status up to the end of his/her mandate, except in cases of resignation, death or withdrawal of the mandate.**

Mr Szpunar states that a person in Mr Junqueras Vies' situation must be regarded as having acquired the Parliamentary mandate, and thus the status, of a Member of the Parliament, and therefore as being capable of benefiting from immunity, as provided for in the protocol. That protocol stipulates that Members of the Parliament enjoy, on their national territory, immunities accorded to members of their own parliament. The Advocate General considers that, although the material content of the immunity arising from national law is subject to that law, the duration of the protection is governed by EU law in the same way for all Members of the Parliament. With regard to the moment when such a Member starts to enjoy that immunity, the Advocate General states that the immunity covers Members, as a rule, from the opening of the first session of the newly elected European Parliament, at which point the duration of their mandate starts to run. Given that the Parliament is permanently in session, the duration of the immunity cover in question coincides with the duration of the mandate. **In addition, no provision makes the start of the mandate subject to the Member actually attending the inaugural session of the newly elected Parliament, actually taking up his/her functions in general or any other circumstance. According to Mr Szpunar, the mandate of a European Member who has not actually taken up his/her duties for failure to complete all formalities required under national law also starts on the opening of the first session of the newly elected Parliament. From that very moment, the Member is therefore covered by Parliamentary immunity, as provided for in the protocol.**

Members of the European Parliament are also covered by Parliamentary immunity while they are travelling to and from the place of meeting of the European Parliament. Since that immunity may apply outside the period in which the Parliament is in session, that is to say, after the session has ended, the Advocate General sees no reason why it cannot apply before that period, including before the opening of the first session after the elections. **Consequently, according to Mr Szpunar, before the opening of the inaugural session of the European Parliament after the elections, the national authorities of the Member State in which the Member in question was elected are required to refrain from any measure which might obstruct the necessary steps of that Member to take up his/her duties and to suspend the measures which are already in force, unless immunity has been waived by the Parliament. That requirement applies only to measures covered by Parliamentary immunity under national law, to which the protocol refers in relation to the material content of the immunity.**

However, Mr Szpunar considers that, inasmuch as the judgment of 14 October 2019 brings to an end the mandate of Mr Junqueras Vies, the Court of Justice does not have jurisdiction to answer the questions referred for a preliminary ruling submitted by the Tribunal Supremo, because its reply would be hypothetical. He emphasises that the problem is not the basis of Mr Junqueras Vies' detention, but the ancillary punishment of loss of civic rights to which he was also sentenced. That punishment includes, in particular, the definitive loss of any public — including elective — office and the loss of eligibility. Since eligibility to stand as a candidate for the Parliament is subject to national law, it is also affected by the loss of civic rights. The exclusion of that eligibility must therefore lead to the withdrawal of the mandate for the purposes of the 1976 Act. Thus, although

² 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, as amended by Decision 2002/772/EC, Euratom (OJ 1976, L 278, p. 1).

Mr Junqueras Vies was elected as a Member of the European Parliament and had acquired that status without, however, being able to begin the effective exercise of the mandate, he was tried and convicted without the Parliament having had the opportunity to decide on the waiver or possible defence of his Parliamentary immunity. The Advocate General states that, on a literal interpretation of Article 9 of the protocol, the situation is in line with those provisions, because, in his Member State, the Member of the Parliament enjoys the immunity accorded to members of parliament of his country, as provided for under national law, and that that law may only be interpreted by national courts. Taking the view that the outcome of that literal interpretation is unsatisfactory, he proposes an interpretation which strengthens the powers of the Parliament in the area of the immunity of its Members. He therefore recommends that the Court should declare that, **from the moment when the national law of a Member State accords immunity to members of the national parliament, Article 9 of the protocol must be interpreted as meaning that it falls to the Parliament to decide whether it is appropriate to waive or defend the immunity of one of its Members.**

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: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion 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 Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106