ORDER OF THE PRESIDENT OF THE GENERAL COURT

1 July 2019 (1)

(Application for interim measures — European Parliament —Verification of the credentials — No prima facie case)

In Case T-388/19 R,

Carles Puigdemont i Casamajó, residing at Waterloo (Belgium),

Antoni Comín i Oliveres, residing at Waterloo,

represented by P. Bekaert, B. Emmerson, G. Boye and S. Bekaert, lawyers

applicants,

v

European Parliament,

defendant,

APPLICATION pursuant to Articles 278 and 279 TFEU seeking, first, the suspension of the operation of several decisions of the European Parliament said to prevent the applicants from taking their seats in the Parliament as elected members and, second, an order requiring the Parliament to take all the necessary measures, including the assertion of the privileges and immunities of the applicants, to enable them to take their seats in the Parliament as of 2 July 2019,

THE PRESIDENT OF THE GENERAL COURT

makes the following

Order

Background to the dispute, procedure and forms of order sought by the parties

The applicants, Mr Carles Puigdemont I Casamajó and Mr Antoni Comín i Oliveres, presented themselves as candidates for the election of the European Parliament of 26 May 2019.

On 22 April 2019, the coalition Lliures per Europa (Junts) registered with the Spanish Central Electoral Commission its list of candidates, led by the applicants.

Although the Spanish Central Electoral Commission decided on 29 April 2019 to exclude the applicants from the electoral lists of candidates, the applicants successfully challenged that decision.

On 26 May 2019, the coalition Lliures per Europa (Junts), led by the applicants, received 1 018 435 votes and obtained two seats in the European Parliament.

On 13 June 2019, the Spanish Central Electoral Commission adopted an act regarding the proclamation of the elected candidates. The document is entitled 'Agreement of 13 June 2019 of the Central Electoral Commission proclaiming the candidates elected to the European Parliament in the elections held on 26 May 2019'.

According to the first paragraph thereof:

'The Central Electoral Commission, in its meeting of 13 June 2019, in accordance with the provisions of Section 224.1 of the Organic Act on the General Electoral System [LOREG, "Representation of the People Institutional Act"], has proceeded, according to the data included in the aggregate count records forwarded by each of the Provincial Electoral Commissions, to recount the votes at the national level of the elections of Members of the European Parliament called by Royal Decree 206/2019 of 1 April 2019 and held on 26 May 2019, to the assignment of seats corresponding to each of the candidacies and to the proclamation of the following candidates as elected Members.'

In the following list, the applicants are mentioned at numbers 18 and 38.

The document concludes with the following paragraph:

'The Agreement of proclamation of elected candidates is subject to the lodging of contentious-electoral petitions, as provided for in Section 112 et seq. of the LOREG, with the Contentious-Administrative Chamber of the Supreme Court of Justice, pursuant to Section 225 of the LOREG. The petition must be lodged with the Central Electoral Commission within 3 days of the proclamation of elected candidates. Finally, the Commission has agreed that the session in which the elected candidates will swear or affirm allegiance to the Constitution before it, pursuant to Section 224.2 of the LOREG, shall take place in the Palace of the Congress of Deputies on 17 June at 12:00 hours.'

On 14 June 2019, this act was published in the Spanish Official Journal (*Boletín Oficial del Estado*).

On 15 June 2019, the Spanish Supreme Court Investigative Judge refused to withdraw the existing arrest warrants issued in respect of the applicants.

On 17 June 2019, the Spanish Central Electoral Commission refused to accept the applicants' pledge of allegiance to the Spanish Constitution through a written statement made before a public notary or through their legal representatives as designated in a notarised document.

According to the applicants, the Spanish Senate had accepted a written statement made before a public notary as a valid way of pledging allegiance to the Spanish Constitution on 21 May 2019.

On 17 June 2019, the Spanish Central Electoral Commission notified the European Parliament of a list of the candidates elected in Spain. This list did not include the applicants.

On 20 June 2019, the Spanish Central Electoral Commission sent a letter to the European Parliament. According to that letter:

'The Central Electoral Board, at its session on [20 June 2019], has adopted the resolution transcribed with regard to the matter in question.

File 561/73

Disclosure to the European Parliament on the candidates who have not acquired the status of Members of the European Parliament because they have failed to abide by the Spanish Constitution.

RESOLUTION

(1) Article 224.2 of the Organic Law on the General Electoral System, with regard to elections to the European Parliament, sets out as follows:

Within 5 days from such proclamation, the elected candidates must swear or affirm allegiance to the Constitution before the Central Electoral Commission. On expiry of said term, the Central Electoral Commission is to declare the vacancy of seats assigned to members of the European Parliament having failed to swear or affirm their allegiance to the Constitution, as well as

the suspension of any prerogatives to which they may be entitled on account of their mandate, as long as they do not make the aforesaid oath or affirmation.

(2) In compliance with said Article 224.2 of the LOREG, given that the [applicants] have not sworn or affirmed allegiance to the Constitution, their seats are declared vacant, and any prerogatives that might correspond to them by virtue of their position are suspended. The foregoing shall apply until compliance occurs.

(3) Accordingly, we inform the European Parliament that the [applicants] have not acquired the status of Members of the European Parliament, nor, therefore, any of the prerogatives which might correspond to them, until they swear or affirm allegiance to the Spanish Constitution.'

On 27 June 2019, the President of the European Parliament sent a letter to the applicants. That letter states the following:

'In reference to your letters dated 14 June, 20 June and 24 June 2019 sent by your legal counsellors, I would like to inform you that the Spanish authorities (*Junta Electoral Central*) communicated to me on 18 and 20 June 2019 the official results of the European elections in Spain. According to Article 12 of the Act concerning the election of the Members of the European Parliament by direct universal suffrage and the corresponding case-law of the Court of Justice, Parliament shall take note of the results declared officially by the Member States and it is for the national courts in the first place to rule on the lawfulness of the national electoral provisions and procedures.

It appears that your names are not on the list of elected members (*lista de diputados electos*) officially communicated to the European Parliament by the Spanish authorities. Consequently, and until further notice by the Spanish authorities, I am currently not in a position to treat you as future Members of the European Parliament as requested in your letter of 14 June 2019.'

By application lodged at the Court Registry on 28 June 2019, the applicants sought, in essence, annulment of several decisions of the European Parliament which they claim prevent the applicants from taking their seats in the European Parliament as elected members.

By a separate document, lodged at the Court Registry on the same date, the applicants brought an application for interim measures, pursuant to Articles 278 and 279 TFEU, in which they claim, essentially, that the President of the General Court should:

Pending a ruling on the main action, suspend, pursuant to Article 157(2) of the Rules of Procedure of the General Court, or in the alternative pursuant to Article 156 of said rules, the Parliament's decision not to take note of the results officially declared by Spain of the elections to the European Parliament of 26 May 2019, and the subsequent decision to take note of a different and incomplete list of elected Members notified on 17 June 2019 by the Spanish authorities, as confirmed by the letter, without legal basis, of the President of the Parliament of 27 June 2019, in so far as it does not include the applicants;

Pending a ruling on the main action, suspend, pursuant to Article 157(2) of the Rules of Procedure, … or in the alternative pursuant to Article 156 of those rules, the Parliament's decision to treat the communication of the Spanish Electoral Commission of 20 June 2019 as depriving of effect the declaration of the applicants as elected MEPs, as confirmed by the letter, without legal basis, of the President of the Parliament of 27 June 2019, which amounts to an unlawful declaration of a vacancy attributable to the Parliament;

Pending a ruling in the main action, suspend, pursuant to Article 157(2) of the Rules of Procedure, or in the alternative pursuant to Article 156 of such rules, the Parliament's decision, as confirmed by the letter, without legal basis, of the President of the Parliament of 27 June 2019, refusing to guarantee, pursuant to Rule 3(2) of its Rules of Procedure, the right of the applicants to take their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto from the date of the first sitting and until a ruling has been given on the disputes referred both to Parliament and to the judicial authorities of Spain;

Pending a ruling on the main action, order the European Parliament, pursuant to Article 157(2) of the Rules of Procedure, or in the alternative pursuant to Article 156 of such rules, to take all the necessary measures, including the assertion of their privileges and immunities under Article 9 of the Protocol, to enable [the applicants] to take their seats in the European Parliament from the opening of the first sitting following the elections, on 2 July 2019.

The application for interim measures was served on the European Parliament on the same day.

Law

It is apparent from reading Articles 278 and 279 TFEU together with Article 256(1) TFEU that the judge hearing an application for interim measures may, if he considers that the circumstances so require, order that the operation of a measure challenged before the General Court be suspended or prescribe any necessary interim measures, pursuant to Article 156 of the Rules of Procedure. Nevertheless, Article 278 TFEU establishes the principle that actions do not have suspensory effect, since acts adopted by the institutions of the European Union are presumed to be lawful. It is therefore only exceptionally that the judge hearing an application for interim measures may order the suspension of operation of an act challenged before the General Court or prescribe interim measures (order of 19 July 2016, *Belgium* v *Commission*, T-131/16 R, EU:T:2016:427, paragraph 12).

The first sentence of Article 156(4) of the Rules of Procedure provides that applications for interim measures must state 'the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for'.

Thus, the judge hearing an application for interim relief may order suspension of operation of an act and other interim measures if it is established that such an order is justified, prima facie, in fact and in law, and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action. Those conditions are cumulative, and consequently an application for interim measures must be dismissed if any one of them is not satisfied. The judge hearing an application for interim relief is also required to undertake, when necessary, a weighing of the competing interests (see order of 2 March 2016, *Evonik Degussa* v *Commission*, C-162/15 P-R, EU:C:2016:142, paragraph 21 and the case-law cited).

In the context of that overall examination, the judge hearing the application for interim measures has a wide discretion and remains free to determine, having regard to the specific circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of law imposing a pre-established scheme of analysis within which the need to order interim measures must be assessed (see order of 19 July 2012, *Akhras* v *Council*, C-110/12 P(R), not published, EU:C:2012:507, paragraph 23 and the case-law cited).

In addition, according to the second sentence of Article 156(4) of the Rules of Procedure, applications for interim measures 'shall contain all the evidence and offers of evidence available to justify the grant of interim measures'.

Thus, an application for interim measures must be sufficient in itself to enable the defendant to prepare its observations and the judge hearing the application to rule on it, as necessary, without any other supporting information, since the essential elements of fact and law on which the application is based must be found in the actual text of that application (see order of 6 September 2016, *Inclusion Alliance for Europe* v *Commission*, C-378/16 P-R, not published, EU:C:2016:668, paragraph 17 and the case-law cited).

Lastly, although the application for interim measures can be supplemented, on specific points, by references to documents annexed thereto, those documents cannot compensate for a failure to set out the essential elements in that application. It is not the task of the judge hearing the application for interim measures to seek, in place of the party concerned, those matters contained in the annexes to the application for interim measures, in the main application or in the annexes to the latter which might support the application for interim measures. Imposing such an obligation on the judge hearing the application for interim

measures would, moreover, render redundant Article 156(5) of the Rules of Procedure, which provides that the application for interim measures must be made by a separate document (see order of 20 June 2014, *Wilders* v *Parliament and Council*, T-410/14 R, not published, EU:T:2014:564, paragraph 16 and the case-law cited).

In the present circumstances, it is necessary to examine first of all whether the condition relating to a prima facie case is satisfied.

Having regard to the material in the case file, the President of the General Court considers that he has all the information necessary to rule on the present application for interim measures without there being any need to first hear the Parliament or the oral argument from the parties.

As regards the condition relating to the existence of a prima facie case, it should be recalled that that condition is satisfied where at least one of the pleas in law put forward by the applicant for interim measures in support of the main action appears, at first sight, to be not unfounded. This is the case where one of the pleas relied on reveals the existence of major legal or factual disagreement the solution to which is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the judge hearing the application for interim measures but must be the subject of the main proceedings (see, to that effect, orders of 3 December 2014, *Greece* v *Commission*, C-431/14 P-R, EU:C:2014:2418, paragraph 20 and the case-law cited, and of 1 March 2017, *EMA* v *MSD Animal Health Innovation and Intervet international*, C-512/16 P(R), not published, EU:C:2017:149, paragraph 59 and the case-law cited).

Article 12 of the Act concerning the election of representatives 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 amended and renumbered by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1; 'the 1976 Act') provides that, for the purposes of verifying the credentials of its members, the Parliament is to take note of the results declared officially by the Member States and rule on any disputes which may arise out of the provisions of that act other than those arising out of the national provisions to which the act refers.

The wording of Article 12 shows that the Parliament's power of verification is subject, pursuant to the first sentence of that article, to two significant restrictions which are set out in the second sentence thereof (judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 52).

The first part of the second sentence of Article 12 of the 1976 Act provides that the Parliament 'shall take note of the results declared officially by the Member States'. In addition, the Parliament's specific power to settle disputes brought before it, which is set out in the second part of the second sentence of that article, is also limited *ratione materiae* only to disputes 'which may arise out of the provisions of [the 1976 Act] other than those arising out of the national provisions to which the act refers' (judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 53).

First, it is clear from the very wording of Article 12 of the 1976 Act that that article does not confer on the Parliament the power to settle disputes which arise out of EU law as a whole. According to the clear wording of that article, it applies only to 'disputes which … arise out of the provisions of this act' (judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 54).

Second, 'tak[ing] note of the results declared officially' means that the Parliament is required, for the purposes of its own decision when verifying the credentials of its members, to rely on the declaration made by the national authorities. Such declaration is the result of a decision-making process which complies with the national procedures by which the legal issues pertaining to that declaration were definitively settled and therefore constitutes a pre-existing legal situation. The Court has already held that the use of the expression 'take note' in the context of the 1976 Act must be interpreted as indicating the Parliament's complete lack of discretion in the matter (judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 55).

It follows that the Parliament cannot call into question the validity itself of the declaration made by the national authorities. Nor does Article 12 of the 1976 Act allow the Parliament to refuse to take note of such declaration if it considers that there is an irregularity (judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 57).

The applicants do not call into question this interpretation of Article 12 of the 1976 Act.

Instead, the applicants, in their main plea, argue that the proclamation of the elected candidates, made on 13 June 2019 by the Spanish Central Electoral Commission and published the following day in the Spanish Official Journal, which includes their names, should be considered as 'the results declared officially' by the Kingdom of Spain within the meaning of Article 12 of the 1976 Act.

Accordingly, the applicants reproach the Parliament of having violated their rights by not having 'tak[en] note' of that proclamation for the purposes of verifying their credentials and having relied, instead, on the list of elected candidates as sent by the Spanish authorities on 17 June 2019.

Prima facie, this plea cannot succeed.

As is clear from the wording of the proclamation of 13 June 2019, it cannot be considered, prima facie, to be the act by which the Kingdom of Spain had officially declared the 'results' within the meaning of Article 12 of the 1976 Act.

It is expressly stated in that proclamation that it is subject to the lodging of contentious-electoral petitions. Furthermore, it is specified that the elected candidates are supposed to swear or affirm allegiance to the Spanish Constitution in a session to take place on 17 June 2019.

Accordingly, although that proclamation can be deemed to be an important and necessary step in the national procedure, it appears, prima facie, to be an intermediary step and not the final step concluding the national procedure leading to the official communication of the results for the purposes of Article 12 of the 1976 Act.

However, as it clearly follows, prima facie, from the case-law cited in paragraph 33 above, an intermediary step in the national procedure can hardly be deemed to be the act by which the Member State in question officially declares the results within the meaning of Article 12 of the 1976 Act.

Since it is undisputed that the names of the applicants were not included in the list sent by the Spanish authorities on 17 June 2019 to the Parliament, it must be held that, prima facie, the applicants were not officially declared as elected within the meaning of Article 12 of the 1976 Act.

As a matter of consequence, the applicants cannot successfully claim that the Parliament should have considered the proclamation of 13 June 2019 to be the official declaration within the meaning of Article 12 of the 1976 Act and that it should have disregarded the list sent by the Spanish authorities on 17 June 2019.

Inasmuch as the applicants argue that they should have been allowed to swear their allegiance to the Spanish Constitution before a public notary instead of being present themselves at the session convened for 17 June 2019 or that they were refused such a possibility in a discriminatory fashion, it must be held, prima facie, that such a line of argument is not pertinent.

In the absence of an official declaration of the Spanish authorities of the applicants as elected candidates within the meaning of Article 12 of the 1976 Act, and given the clear separation of powers between the Parliament and the national authorities (see, to this effect, judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 74), the question whether the applicants should have been allowed to swear or to affirm their allegiance to the Spanish Constitution without appearing in person at the session convened on 17 June 2019 is a matter to be settled by the national authorities.

In that respect, it is worth recalling that it is for the national courts, where appropriate after obtaining a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU, to rule on the lawfulness of the national electoral provisions and procedures (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, paragraph 70).

In the absence of EU law rules in this field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided, first, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see judgment of 30 April 2009, Italy and Donnici v Parliament, C-393/07 and C-9/08, EU:C:2009:275, paragraph 63 and the case-law cited).

In that respect, it should be pointed out that the applicants have sought a legal action against, inter alia, the requirement to swear allegiance to the Spanish Constitution in person. That case is pending.

Furthermore, the applicants claim that the letter of 20 June 2019 of the Spanish authorities to the Parliament concluding on the vacancy of the two corresponding seats is incompatible with Article 13 of the 1976 Act.

Again, this argument is not, prima facie, pertinent.

In the absence of an official declaration by the Spanish authorities within the meaning of Article 12 of the 1976 Act that the applicants were elected candidates, there was, prima facie, no scope for the Parliament to verify the applicants' credentials.

Accordingly, there was no scope for the Parliament to verify whether the fact that the applicants did not appear at the session on 17 June 2019 to swear or to affirm their allegiance to the Spanish Constitution results in the vacancy, within the meaning of Article 13 of the 1976 Act, of the corresponding seats in the Parliament.

Consequently, there was also no scope for the Parliament to accord to the applicants, on a provisional basis, a seat in Parliament until their credentials had been verified.

It follows from all of the foregoing that the application for interim measures must be dismissed since there is no prima facie case, without there being any need to examine the requirement of urgency, to proceed to the balancing of interests or to assert whether the action in the main proceedings is admissible.

It should be recalled that, according to Article 160 of the Rules of Procedure, the refusal of an application for interim measures shall not bar the party which brought the application from bringing a new application on the basis of new facts.

By virtue of Article 158(5) of the Rules of Procedure, it is appropriate to reserve the costs.

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

The application for interim measures is dismissed.

Costs are reserved.

Luxembourg, 1 July 2019.

E. Coulon M. Jaeger

Registrar President

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1 Language of the case: English.