Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

26 September 2024*

(Appeal – Law governing the institutions – Members of the European Parliament – Official communication, by the Member States, of the names of elected Members – Powers of the Parliament – Request for defence of immunity – Acts in respect of which an action for annulment cannot be brought)

In Case C-600/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 September 2022,

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

Antoni Comín i Oliveres, residing in Waterloo,

represented by P. Bekaert and S. Bekaert, advocaten, and by G. Boye, abogado,

appellants,

the other parties to the proceedings being:

European Parliament, represented by N. Görlitz, T. Lukácsi and J.-C. Puffer, acting as Agents,

defendant at first instance,

Kingdom of Spain, represented by A. Gavela Llopis, acting as Agent,

intervener at first instance,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot (Rapporteur), S. Rodin and L.S. Rossi, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: English.

after hearing the Opinion of the Advocate General at the sitting on 11 April 2024,

gives the following

Judgment

1 By their appeal, Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres ask the Court of Justice to set aside the judgment of the General Court of the European Union of 6 July 2022, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T-388/19, EU:T:2022:421; 'the judgment under appeal'), by which the General Court dismissed as inadmissible their action for annulment of the Instruction of 29 May 2019 of the President of the European Parliament refusing them access to the special welcome and assistance service offered to incoming Members of the European Parliament and the grant of temporary accreditation ('the Instruction of 29 May 2019)' and for annulment of the refusal of the President of that institution to recognise their status as Members of the European Parliament, contained in the letter of 27 June 2019 ('the letter of 27 June 2019') (together, 'the acts at issue').

Legal context

The Electoral Act

2 Article 5 of the Act concerning the election of the Members of the European Parliament by direct universal suffrage (OJ 1976 L 278, p. 5), annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1) ('the Electoral Act'), states:

'1. The five-year term for which members of the [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 [Parliament] shall begin and end at the same time as the period referred to in paragraph 1.'

3 Article 8 of the Electoral Act states:

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

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.'

4 According to Article 12 of that act:

'The [Parliament] shall verify the credentials of members of the [Parliament]. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.'

5 Article 13 of that act is worded as follows:

‘1. A seat shall fall vacant when the mandate of a member of the [Parliament] ends as a result of resignation, death or withdrawal of the mandate.

2. Subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 5 for the remainder of that period.

3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the [Parliament], that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the [Parliament] thereof.’

The Rules of Procedure

6 Rule 3 of the Rules of Procedure of the Parliament applicable to the 9th parliamentary term (2019-2024) (‘the Rules of Procedure’), entitled ‘Verification of credentials’, is worded as follows:

‘1. Following general elections to the [Parliament], the President [of the Parliament] shall invite the competent authorities of the Member States to notify Parliament without delay of the names of the elected Members so that all Members may take their seats in Parliament with effect from the opening of the first sitting following the elections.

At the same time, the President [of the Parliament] shall draw the attention of those authorities to the relevant provisions of the [Electoral Act] and invite them to take the necessary measures to avoid any incompatibility with the office of Member of the [Parliament].

2. Members whose election has been notified to Parliament shall declare in writing, before taking their seat in Parliament, that they do not hold any office incompatible with that of Member of the [Parliament] within the meaning of Article 7(1) or (2) of the [Electoral Act]. Following general elections, the declaration shall be made, where possible, no later than six days prior to Parliament’s first sitting following the elections. Until such time as Members’ credentials have been verified or a ruling has been given on any dispute, and provided that they have previously signed the abovementioned written declaration, they shall take their seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto.

Where it is established from facts verifiable from sources available to the public that a Member holds an office incompatible with that of Member of the [Parliament], within the meaning of Article 7(1) or (2) of the [Electoral Act], Parliament, on the basis of the information provided by its President, shall establish that there is a vacancy.

3. On the basis of a report by the committee responsible, Parliament shall verify credentials without delay and rule on the validity of the mandate of each of its newly elected Members and also on any disputes referred to it pursuant to the provisions of the [Electoral Act], other than those which, under that Act, fall exclusively under the national provisions to which that Act refers.

The committee’s report shall be based on the official notification by each Member State of the full results of the election, specifying the names of the candidates elected and those of any substitutes, together with their ranking in accordance with the results of the vote.

The validity of the mandate of a Member may not be confirmed unless the written declarations required under this Rule and Annex I to these Rules of Procedure have been made.

…'

7 According to Rule 5 of the Rules of Procedure, entitled 'Privileges and immunities':

'…

2. In exercising its powers on privileges and immunities, Parliament shall act to uphold its integrity as a democratic legislative assembly and to ensure the independence of its Members in the performance of their duties. Parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole, and of its Members.

…'

8 Rule 7 of the Rules of Procedure, entitled 'Defence of privileges and immunity', states:

'1. In cases where it is alleged that an infringement of the privileges and immunities of a Member or former Member by the authorities of a Member State has occurred or is about to occur, a request for a Parliament decision as to whether those privileges and immunities have been or are likely to be breached may be made in accordance with Rule 9(1).

2. In particular, such a request for the defence of privileges and immunities may be made if it is considered that the circumstances would constitute an administrative or other restriction on the free movement of Members travelling to or from the place of meeting of Parliament or an administrative or other restriction on an opinion expressed or a vote cast in the performance of their duties, or that the circumstances would fall within the scope of Article 9 of the Protocol No 7 on the Privileges and Immunities of the European Union.

3. A request for the defence of the privileges and immunities of a Member shall not be admissible if a request for the waiver or defence of that Member's immunity has already been received in respect of the same facts, whether or not that earlier request led to a decision.

4. No further consideration shall be given to a request for the defence of the privileges and immunities of a Member if a request for the waiver of that Member's immunity is received in respect of the same facts.

5. In cases where a decision has been taken not to defend the privileges and immunities of a Member, the Member may exceptionally make a request for reconsideration of the decision, by submitting new evidence in accordance with Rule 9(1). The request for reconsideration shall be inadmissible if proceedings have been instituted against the decision under Article 263 [TFEU], or if the President [of the Parliament] considers that the new evidence submitted is insufficiently substantiated to warrant reconsideration.'

9 Rule 8 of the Rules of Procedure, entitled 'Urgent action by the President [of the Parliament] to assert immunity', states:

'1. As a matter of urgency, in circumstances where a Member is arrested or has his or her freedom of movement curtailed in apparent breach of his or her privileges and immunities, the

President [of the Parliament] may, after consulting the Chair and rapporteur of the committee responsible, take an initiative to assert the privileges and immunities of the Member concerned. The President [of the Parliament] shall notify the committee of that initiative and inform Parliament.

2. When the President [of the Parliament] makes use of the powers conferred on him or her by paragraph 1, the committee shall take cognisance of the President's initiative at its next meeting. Where the committee deems it necessary, it may prepare a report for submission to Parliament.'

10 Rule 9 of the Rules of Procedure, entitled 'Procedures on immunity', provides:

'1. Any request addressed to the President [of the Parliament] by a competent authority of a Member State for the immunity of a Member to be waived, or by a Member or a former Member for privileges and immunities to be defended, shall be announced in Parliament and referred to the committee responsible.

2. With the agreement of the Member or the former Member concerned, the request may be made by another Member, who shall be permitted to represent the Member or former Member concerned at all stages of the procedure.

The Member representing the Member or the former Member concerned shall not be involved in the decisions taken by the committee.

3. The committee shall consider, without delay but having regard to their relative complexity, requests for the waiver of immunity or requests for the defence of privileges and immunities.

4. The committee shall make a proposal for a reasoned decision which recommends the adoption or rejection of the request for the waiver of immunity or for the defence of privileges and immunities. Amendments shall not be admissible. If a proposal is rejected, the contrary decision shall be deemed to have been adopted.

5. The committee may ask the authority concerned to provide any information or explanation which the committee deems necessary in order for it to form an opinion on whether immunity should be waived or defended.

6. The Member concerned shall be given an opportunity to be heard and may present any documents or other written evidence deemed by that Member to be relevant.

The Member concerned shall not be present during debates on the request for waiver or defence of his or her immunity, except for the hearing itself.

The Chair of the committee shall invite the Member to be heard, indicating a date and time. The Member concerned may renounce the right to be heard.

If the Member concerned fails to attend the hearing pursuant to that invitation, he or she shall be deemed to have renounced the right to be heard, unless he or she has asked to be excused from being heard on the date and at the time proposed, and has given his or her reasons. The Chair of the committee shall rule on whether such a request to be excused is to be accepted in view of the reasons given. The Member concerned shall not be permitted to appeal that ruling.

If the Chair of the committee grants the request to be excused, he or she shall invite the Member concerned to be heard at a new date and time. If the Member concerned fails to comply with the second invitation to be heard, the procedure shall continue without the Member being heard. No further requests to be excused, or to be heard, may then be accepted.

7. Where the request seeks the waiver or the defence of immunity on several counts, each of these may be the subject of a separate decision. The committee's report may, exceptionally, propose that the waiver or the defence of immunity should apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other measure which prevents that Member from performing the duties proper to the mandate.

8. The committee may offer a reasoned opinion as to the competence of the authority in question and the admissibility of the request, but shall not, under any circumstances, pronounce on the guilt, or otherwise, of the Member, nor shall it pronounce on whether or not the opinions or acts attributed to the Member justify prosecution, even if the committee, in considering the request, acquires detailed knowledge of the facts of the case.

9. The committee's proposal for a decision shall be placed on the agenda of the first sitting following the day on which it was tabled. No amendments may be tabled to such a proposal.

Discussion shall be confined to the reasons for and against each proposal to waive or uphold immunity, or to defend a privilege or immunity.

Without prejudice to Rule 173, the Member whose privileges or immunities are under consideration shall not speak in the debate.

The proposal or proposals for a decision contained in the report shall be put to the vote at the first voting time following the debate.

After Parliament has considered the matter, a separate vote shall be taken on each of the proposals contained in the report. If a proposal is rejected, the contrary decision shall be deemed to have been adopted.

10. The President [of the Parliament] shall immediately communicate Parliament's decision to the Member concerned and to the competent authority of the Member State concerned, with a request that the President be informed of any developments and judicial rulings in the relevant proceedings. When the President [of the Parliament] receives this information, he or she shall transmit it to Parliament in the way he or she considers most appropriate, if necessary after consulting the committee responsible.

11. The committee shall treat these matters, and handle any documents received with the utmost confidentiality. The committee shall always consider requests relating to procedures on immunity in camera.

12. Parliament shall only examine requests for the waiver of a Member's immunity that have been transmitted to it by the judicial authorities or by the Permanent Representations of the Member States.

13. The committee shall lay down principles for the application of this Rule.

14. Any inquiry as to the scope of Members' privileges or immunities made by a competent authority shall be dealt with in accordance with the above rules.'

11 Annex I to the Rules of Procedure, entitled 'Code of Conduct for Members of the [Parliament] with respect to financial interests and conflicts of interests', provides in Article 4(1):

'For reasons of transparency, Members of the [Parliament] shall be personally responsible for submitting a declaration of financial interests to the President by the end of the first part-session after elections to the [Parliament] (or within 30 days of taking up office with the Parliament in the course of a parliamentary term), in accordance with a form to be adopted by the Bureau pursuant to Article 9. They shall notify the President of any changes that have an influence on their declaration by the end of the month following each change occurring.'

Spanish Electoral Law

12 Article 224 of Ley Orgánica 5/1985 del Régimen Electoral General (Institutional Law 5/1985 on the general electoral regime) of 19 June 1985 (BOE No 147 of 20 June 1985, p. 19110; 'the Spanish Electoral Law') states as follows:

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

2. Within five days of their being declared the elected candidates, the latter shall take an oath or promise to respect the Constitución [española (Spanish Constitution)] before the [Central Electoral Commission]. Once that period has elapsed, the [Central Electoral Commission] shall declare the seats corresponding to Members of the [Parliament] who have not taken an oath or promised to respect the [Spanish] Constitution to be vacant and that all the prerogatives to which they may be entitled by reason of their office are suspended until such time as that oath or promise has taken place.

…'

Background to the dispute

13 The background to the dispute is set out in paragraphs 13 to 36 of the judgment under appeal. It may, for the purposes of the present judgment, be summarised as follows.

14 Mr Puigdemont i Casamajó was President of the Generalitat de Cataluña (Generalitat of Catalonia, Spain) and Mr Comín i Oliveres was a Member 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 Parliament of Catalonia 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 Parliament of Catalonia on legal and functional transition of the Republic) of 8 September 2017 (DOGC No 7451A of 8 September 2017, p. 1), and at the time of the holding, on

1 October 2017, of the referendum on self-determination provided for in the first of those laws, the provisions of which had in the meantime been suspended by a decision of the Tribunal Constitucional (Constitutional Court, Spain).

15 Following the adoption of those laws, and following the holding of that referendum, the Ministerio fiscal (Public Prosecutor's Office, Spain), the Abogado del Estado (State Counsel, Spain) and the political party VOX initiated criminal proceedings against, inter alia, the appellants, for 'sedition' and 'misuse of public funds'.

16 By order of 9 July 2018, the Tribunal Supremo (Supreme Court, Spain) declared that the appellants had absconded, following their departure from Spanish territory, and stayed those criminal proceedings until such time as they were found.

17 Subsequently, the appellants were elected in the elections to the Parliament which were held in Spain on 26 May 2019, on the list of the coalition Lliures per Europa (Junts) (Free for Europe (Together)) which they led. That list won two seats in Parliament.

18 By the Instruction of 29 May 2019, the President of the Parliament informed the Secretary-General of that institution that all the candidates elected in Spain should be refused access to the 'Welcome Village' and to the assistance provided to candidates newly elected to the Parliament ('the special welcome service') and that their accreditation should be suspended until the official confirmation of their election, in accordance with Article 12 of the Electoral Act. The appellants were therefore unable to benefit from the special welcome service and were denied access to the 'Welcome Village' as well as to temporary accreditation and a temporary badge.

19 On 13 June 2019, the Central Electoral Commission adopted a decision in the form of a 'declaration of the Members elected to the European Parliament in the elections held on 26 May 2019' ('the declaration of 13 June 2019'), which stated that, in accordance with Article 224(1) of the Spanish Electoral Law, and according to the data in the consolidated statements submitted by each of the provincial electoral commissions, the Central Electoral Commission had prepared a new statement of the votes at national level, had allocated the corresponding seats to each of the candidates and had issued the declaration of the names of the elected candidates, including the appellants. The declaration of 13 June 2019 also stated that the elected candidates would take an oath to respect the Spanish Constitution, as required in Article 224(2) of the Spanish Electoral Law, on 17 June 2019.

20 By letter of 14 June 2019, the appellants requested the President of the Parliament to take note of the results of the elections of 26 May 2019 as set out in the declaration of 13 June 2019, to withdraw the Instruction of 29 May 2019 so that they might have access to the premises of the Parliament and benefit from the special welcome service, and to allow them to take their seats and to enjoy the rights associated with their status as Members of the European Parliament with effect from 2 July 2019, the date of the first plenary session following the elections of 26 May 2019.

21 On 15 June 2019, the investigating judge of the Tribunal Supremo (Supreme Court) rejected the appellants' request for the withdrawal of the national arrest warrants that had been issued against them by the Spanish criminal courts for the purpose of having them tried in the context of the criminal proceedings referred to in paragraph 15 of the present judgment.

22 On 17 June 2019, the Central Electoral Commission sent the Parliament the list of Members elected in Spain ('the communication of 17 June 2019'). The appellants' names were not on that list.

23 On 20 June 2019, the Central Electoral Commission refused to allow the appellants to take the oath or promise to respect the Spanish Constitution, as required in Article 224(2) of the Spanish Electoral Law, by means of a written declaration made before a notary in Belgium or through attorneys designated by a notarised deed drawn up in Belgium, since, in its view, that oath or promise had to be made in person.

24 On the same day, the Central Electoral Commission informed the Parliament that the appellants had not taken the oath or promised to respect the Spanish Constitution and that, in accordance with Article 224(2) of the Spanish Electoral Law, it had declared that the seats allocated to the appellants in Parliament were vacant and that all the prerogatives relating to their duties were temporarily suspended until such time as they took that oath or made that promise ('the communication of 20 June 2019').

25 By letter of 20 June 2019, the appellants requested the President of the Parliament to adopt, as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure, any measure for the purpose of asserting their privileges and immunities and, in particular, to defend those privileges and immunities, to declare that the national arrest warrants issued against them breached those privileges and immunities, which they enjoyed under Article 9 of Protocol No 7 on the privileges and immunities of the European Union ('the Protocol on the privileges and immunities'), to declare that the second paragraph of Article 9 of that protocol protects Members of the European Parliament against any judicial restriction of their freedom of movement that might prevent them from completing the formalities necessary for them to take office and, last, to communicate his decision immediately to the competent Spanish authorities.

26 By letter of 24 June 2019, the appellants, in essence, reiterated all the requests previously submitted in their letters of 14 and 20 June 2019, which had gone unanswered.

27 By letter of 27 June 2019, the President of the Parliament replied to the appellants' letters of 14, 20 and 24 June 2019, informing them, in essence, that he was not in a position to treat them as future Members of the Parliament on the ground that their names were not on the list of elected candidates officially communicated by the Spanish authorities.

28 On 28 June 2019, by an action registered as Case T-388/19, the appellants requested that the General Court, first, annul the Instruction of 29 May 2019 and, second, annul the various acts which, in their view, were contained in the letter of 27 June 2019, namely (i) the refusal of the President of the Parliament to take note of the results of the elections of 26 May 2019; (ii) the declaration of the President of the Parliament that the seats allocated to each of the appellants were vacant; (iii) the refusal of the President of the Parliament to allow them to take office, to exercise the mandate of Member of the European Parliament and to sit in Parliament from the beginning of the first session following the elections of 26 May 2019; and (iv) the refusal of the President of the Parliament to take an initiative, as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure, in order to assert their privileges and immunities.

29 On the same day, the appellants submitted, alongside their action, an application for interim measures, registered as Case T-388/19 R, seeking suspension of operation (i) of the decision of the President of the Parliament not to take note of the results, officially declared by the Kingdom

of Spain, of the elections to the Parliament which had been held on 26 May 2019, and of the subsequent decision to take note of a different and incomplete list of elected Members, notified on 17 June 2019 by the Spanish authorities; (ii) of the decision of the President of the Parliament to treat the communication of 20 June 2019 as depriving of effect the declaration of the appellants as elected Members of the Parliament; and (iii) of the Parliament's decision refusing to guarantee, in accordance with Rule 3(2) of the Rules of Procedure, the appellants' right to take their seats in Parliament and on its bodies and to enjoy in full all their rights from the opening of the parliamentary session until such time as a ruling was given on the disputes referred to the Parliament and the Spanish judicial authorities. The appellants also requested that the Parliament be ordered to take all necessary measures, including the assertion of their privileges and immunities under Article 9 of the Protocol on the privileges and immunities, to enable them to take their seats in Parliament from the opening of the first session following the elections.

30 By email of 10 October 2019, Ms Riba i Giner, a Member of the European Parliament, acting on behalf of the appellants, submitted to the President of the Parliament elected on 3 July 2019 and to the President and Vice-President of the Legal Affairs Committee of that institution a request from 38 Members of the European Parliament of various nationalities and from various political parties, including herself, seeking, inter alia, that the Parliament defend, on the basis of Rule 9 of the Rules of Procedure, the appellants' parliamentary immunity, referred to in the first and second paragraphs of Article 9 of the Protocol on the privileges and immunities.

31 On 14 October 2019, the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) issued a national arrest warrant, a European arrest warrant and an international arrest warrant against Mr Puigdemont i Casamajó, so that he might be tried in the context of the criminal proceedings referred to in paragraph 15 of the present judgment. The same arrest warrants were issued against Mr Comín i Oliveres on 4 November 2019. The appellants were placed in detention in Belgium on 17 October and 7 November 2019 respectively and released, on the same dates, subject to conditions.

32 By two similarly worded letters of 10 December 2019, one addressed to Ms Riba i Giner and the other to all 38 Members of the Parliament referred to in paragraph 30 of the present judgment, the President of the Parliament stated that he could not regard the appellants as Members of the Parliament in the absence of official notification by the Spanish authorities of their election.

33 By judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115), the Court of Justice held, in particular, that a person who had been officially declared elected to the Parliament but who had not been authorised to comply with certain requirements under national law following such a declaration and to travel to the Parliament in order to take part in its first session had to be regarded as enjoying an immunity under the second paragraph of Article 9 of the Protocol on the privileges and immunities.

34 By order of 1 July 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T-388/19 R, EU:T:2019:467), the President of the General Court dismissed the application for interim measures referred to in paragraph 29 of the present judgment and reserved the costs.

35 By order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C-646/19 P(R), EU:C:2019:1149), the Vice-President of the Court of Justice set aside the order of the President of the General Court of 1 July 2019 (T-388/19 R, EU:T:2019:467), referred the case back to the General Court and reserved the costs.

36 At the plenary session of 13 January 2020, the President of the Parliament stated that that institution was taking note, following the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115), of the appellants' election to the Parliament with effect from 2 July 2019 ('the act of 13 January 2020').

37 On 20 February 2020, the appellants brought an action for annulment of the letter of 10 December 2019 addressed to Ms Riba i Giner by the President of the Parliament. That action was registered as Case T-115/20.

38 By order of 19 March 2020, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T-388/19 R-RENV, EU:T:2020:114), the President of the General Court, ruling after the case had been referred back to the General Court following the order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C-646/19 P(R), EU:C:2019:1149), held that, in view of the act of 13 January 2020, there was no longer any need to adjudicate on the application for interim measures and reserved the costs.

39 By the judgment under appeal, the General Court, in essence, dismissed the action referred to in paragraph 28 of the present judgment on the ground that it was directed against acts against which an action for annulment could not be brought on the basis of Article 263 TFEU.

Procedure before the Court of Justice and forms of order sought

40 By their appeal, the appellants claim that the Court should:

– set aside the judgment under appeal;

– refer the case back to the General Court or, in the alternative, annul the acts at issue; and

– order the Parliament and the Kingdom of Spain to pay the costs or, in the alternative, reserve the costs.

41 The Parliament contends that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs of the appeal proceedings.

42 The Kingdom of Spain contends that the Court should:

– dismiss the appeal as inadmissible or, failing that, as unfounded; and

– order the appellants to pay the costs.

The appeal

43 In support of their appeal, the appellants put forward four grounds of appeal. By their first ground of appeal, they challenge the grounds on which the General Court rejected their claims for annulment of the acts at issue as being inadmissible on the basis that those acts had not altered the appellants' legal position. By their second ground of appeal, they ask the Court of Justice, in the

alternative, to reconsider its case-law arising from the judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275), and, failing that, raise a plea of illegality in respect of Article 12 of the Electoral Act. By their third ground of appeal, the appellants criticise the grounds on which the General Court held that the failure by the President of the Parliament to adopt, as a matter of urgency, an initiative in order to assert their privileges and immunities, on the basis of Rule 8 of the Rules of Procedure, could not be the subject of an action for annulment. Lastly, by their fourth ground of appeal, they complain that the General Court held that their line of argument challenging the alleged refusal of the President of the Parliament to forward their request for the defence of their privileges and immunities to the competent committee of that institution was directed against a non-existent act, due to the persons concerned not having submitted such a request on the basis of Rules 7 and 9 of the Rules of Procedure.

Admissibility of the appeal

Arguments of the parties

44 The Kingdom of Spain submits, primarily, that the appeal is inadmissible in its entirety on the ground, in essence, that it does not satisfy the requirements laid down in the first subparagraph of Article 256(1) TFEU and in Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice, since it fails to identify in a sufficiently precise and clear manner the paragraphs of the grounds of the judgment under appeal which are being challenged and the legal arguments underlying their claim. The Kingdom of Spain also argues that the appeal merely reproduces the pleas in law and arguments already raised before the General Court, so that the appeal amounts in reality to a request for re-examination of the application submitted to the General Court, which is outside the jurisdiction of the Court of Justice in the context of an appeal.

45 In their arguments in response to the various grounds of appeal raised by the appellants, the Parliament and the Kingdom of Spain also contend that those grounds of appeal are, to a large extent, inadmissible.

Findings of the Court

46 Although it is true that the appellants' pleadings are in part akin to a request for re-examination of the application submitted before the General Court and, in several aspects, appear confusing and superfluous, it should nevertheless be noted that the appeal as a whole, as well as the main line of argument developed in support of each of the grounds of appeal, refers to the paragraphs of the grounds of the judgment under appeal which are criticised and sets out, in a sufficiently precise manner to enable the Court of Justice to give a ruling, the legal arguments by which the appellants seek to call them into question.

47 In those circumstances, it must be held that, contrary to what the Kingdom of Spain submits, the appeal, as a whole, does not disregard the requirements laid down in the first subparagraph of Article 256(1) TFEU and in Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice. That is also not the case with regard to the line of argument raised in support of each of the grounds of appeal.

48 It follows that the grounds of inadmissibility put forward by the Parliament and by the Kingdom of Spain must be rejected.

Substance

The first ground of appeal

– *Arguments of the parties*

49 By their first ground of appeal, the appellants submit, in essence, that the General Court vitiated the judgment under appeal by errors of law in the light of Article 263 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), by errors of legal classification and by various distortions in holding that the acts at issue could not be the subject of an action for annulment on the ground that they had not led to a change in the appellants' legal situation.

50 As regards, in the first place, the letter of 27 June 2019, the appellants primarily criticise the General Court for having held that the President of the Parliament was required to take note of the communications of 17 and 20 June 2019, which reflected the Spanish authorities' position that the appellants were not among the elected Members on the ground that they had not taken the oath or promise to respect the Spanish Constitution, laid down in Article 224(2) of the Spanish Electoral Law, and not take note of the results of 13 June 2019 which reflected the votes cast at the ballot of 26 May 2019. In that regard, the appellants argue that the judgment under appeal is vitiated by an error of law and by distortion in that it is based on the idea that the communications of 17 and 20 June 2019 reflected the results of the elections of 26 May 2019.

51 The appellants claim that, under Article 5(1) of the Electoral Act, they were in any event entitled to sit provisionally with the other Members of the Parliament from the opening session on 2 July 2019, even though their credentials had not yet been verified. The subsequent adoption of the act of 13 January 2020 confirmed that interpretation.

52 In the appellants' view, the General Court also erred in law with regard to Article 223 TFEU and vitiated the judgment under appeal, by distortion, by holding that the determination of the conditions or requirements prior to the entry into service of Members of the European Parliament fell within a competence shared with the Member States, even though it falls within the exclusive competence of the European Union. As follows from the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115), and from the order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C-646/19 P(R), EU:C:2019:1149), Spanish law infringes EU law in that it introduces requirements additional to those laid down by EU law, which do not fall within the scope of the national electoral procedure; according to the appellants, that procedure culminates in the declaration of the results. The appellants consider that it was for the Parliament, pursuant to Article 12 of the Electoral Act, to settle that point as coming under an electoral challenge brought before it on the basis of that act. The General Court also vitiated the judgment under appeal by failing to rule and by an error in law, and infringed Article 47 of the Charter, by rejecting as ineffective the argument that the Kingdom of Spain did not have the power to lay down the requirement to take the oath or promise to respect the Spanish Constitution laid down in Article 224(2) of the Spanish Electoral Law.

53 The appellants also submit that the General Court unlawfully substituted the grounds of the letter of 27 June 2019 and distorted the latter's wording by stating in several paragraphs of the judgment under appeal that that letter was not based on the finding that the appellants had not acquired the status of Members of the European Parliament, but only on the finding that they did not satisfy the formal conditions for the exercise of their mandates.

54 In addition, the appellants submit that the judgment under appeal is vitiated by distortion and by contradictory grounds and infringes Articles 8 and 12 of the Electoral Act, Article 39(2) of the Charter and the judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275), in so far as the General Court held that the Parliament could not take note of the results declared on 13 June 2019, even though that declaration had not been challenged and constituted the only legally binding act which it had to take into account, to the exclusion of the communications of 17 and 20 June 2019, which were not binding on it. The fact that the Kingdom of Spain failed to fulfil its obligation of sincere cooperation by not communicating to the Parliament the results officially declared on 13 June 2019 did not relieve that institution of its obligation to take note of those results.

55 Even if it were necessary to consider that notification of the results to the Parliament was necessary, which the appellants dispute, they submit that, contrary to what is apparent from the grounds of the judgment under appeal, the declaration of 13 June 2019 was in any event sufficient for the Parliament to be required to take note of the fact that they had been elected Members of the European Parliament.

56 The appellants also submit that the grounds of the judgment under appeal amount to holding that the Parliament should take note of any act emanating from the national authorities, even those which were adopted by those authorities without competence, which is contrary to the judgment of 9 March 1978, *Simmenthal* (106/77, EU:C:1978:49). The appellants consider that those grounds also disregard the fact that EU law, in particular Article 223(2) and Article 232 TFEU, does not allow Member States to suspend the mandate of a Member of the European Parliament, even temporarily, and thereby to alter the number of Members and therefore the composition of the Parliament. In that regard, they submit that the case which gave rise to the judgment of 3 December 1992, *Oleificio Borelli* v *Commission* (C-97/91, EU:C:1992:491), differs from the present case.

57 While stating that that point relates to the substance of the case and not to compliance with the conditions for admissibility of the action for annulment laid down in Article 263 TFEU, the appellants also claim that the decision taken, in their view, by the President of the Parliament, to prevent them from taking their seats in that institution resulted in a 'particularly serious and unprecedented' infringement of Article 39(2) of the Charter and of Article 1(3) of the Electoral Act, relating to their eligibility, contrary to the positions taken by the United Nations Human Rights Committee and by the European Commission for Democracy through Law, known as the 'Venice Commission'.

58 Lastly, the General Court also vitiated the judgment under appeal by distortion or, at the very least, misconstrued the scope of the pleadings submitted to it by holding that it was common ground that the appellants had not complied with Article 224(2) of the Spanish Electoral Law, even though an action in that regard was pending before the Tribunal Constitucional (Constitutional Court).

59 As regards, in the second place, the Instruction of 29 May 2019, the appellants submit that that act, which was of direct and individual concern to them, was inseparable from the letter of 27 June 2019 and that the General Court distorted or, at the very least, misrepresented the facts and vitiated the judgment under appeal by contradictory reasoning in holding that the effects of that instruction had ended on 17 June 2019. The grounds of that judgment are also vitiated by manifest errors of law in that they state that the Instruction of 29 May 2019 was not the cause of the appellants' inability to take up their duties.

60 The Parliament and the Kingdom of Spain submit that the arguments relied on by the appellants in support of their first ground of appeal must be rejected.

Findings of the Court

61 As regards, in the first place, the letter of 27 June 2019, it should be noted that, in accordance with Article 5(1) and (2) and Article 13(2) TEU, the Parliament acts within the limits of the powers conferred on it by the Treaties.

62 As regards the election of Members of the Parliament, where no uniform electoral procedure has been adopted, the procedure remains governed in each Member State by its national provisions, subject to the provisions of the Electoral Act, in accordance with Article 8 of that act (judgment of 22 December 2022, *Junqueras i Vies* v *Parliament*, C-115/21 P, EU:C:2022:1021, paragraph 60).

63 Article 12 of that act provides that the Parliament '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 [that act] other than those arising out of the national provisions to which [that act] refers'.

64 As the Court has already held, in the context of the Electoral Act, the expression 'take note' excludes any discretion on the part of the Parliament to appoint the elected Members, since the national authorities alone have the power to do so, in accordance with the procedure governed by national 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 and 56 and the case-law cited).

65 It is clear from the very wording of Article 12 of the Electoral Act that, in that context, it is for the Parliament alone to rule on disputes raised on the basis of the Electoral Act. However, that institution does not have any power to review the validity or conformity, in the light of EU law, of the national electoral procedure or the declaration of the results by the national authorities (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, 67 and 68). That is also true in cases where the Electoral Act itself refers to the national law.

66 The implementation of the division of powers between the European Union and the Member States provided for in the Electoral Act is ensured, inter alia, by Rule 3 of the Rules of Procedure, paragraph 1 of which provides that the competent authorities of the Member States are to notify Parliament of the names of the elected Members. Only Members whose names appear on the list communicated by the national authorities are then subject to the formalities laid down in Rule 3(2) and (3) of those rules of procedure, which include verification of the Members' credentials.

67 The fact that the list communicated to the Parliament by the national authorities does not correspond to the results officially declared by a Member State, contrary to what is laid down in Article 12 of the Electoral Act, or, more broadly, that that list is vitiated by errors or omissions, cannot allow that institution to disregard the names of elected Members which have been officially communicated to it by the national authorities.

68 Apart from the fact that verification of the accuracy of the list of elected Members communicated by the Member States is a task which is impossible, in practice, for the Parliament to carry out, it would amount to allowing that institution to review the conformity with EU law of the national electoral procedure, and therefore the results of the elections governed by that procedure, which would run counter to the division of powers between the European Union and the Member States provided for by the Electoral Act.

69 In the complete system of legal remedies established by EU law, such a review is a matter for the national courts alone, where appropriate after making a reference to the Court of Justice for a preliminary ruling on the basis of Article 267 TFEU, or it is for the Court of Justice, when hearing an action for failure to fulfil obligations on the basis of Article 258 TFEU (see, to that effect and by analogy, order of the Vice-President of the Court of 8 October 2020, *Junqueras i Vies* v *Parliament*, C-201/20 P(R), EU:C:2020:818, paragraph 66).

70 It is in the light of those considerations that the appellants' line of argument concerning the letter of 27 June 2019 must be examined.

71 By the judgment under appeal, the General Court held, in essence, that the letter of 27 June 2019 had not altered the appellants' legal situation and that, therefore, that letter could not be the subject of an action for annulment on the basis of Article 263 TFEU since, as the General Court held, in particular, in paragraphs 104, 114 and 117 to 119 of that judgment, the President of the Parliament had merely taken note, as he was required to do, of the list of elected Members which had been communicated to him by the Spanish authorities on 17 and 20 June 2019, which constituted a pre-existing situation for him.

72 The General Court stated, in paragraphs 130 and 131 of the judgment under appeal, that, even if the requirement to take the oath or promise to respect the Spanish Constitution laid down in Article 224(2) of the Spanish Electoral Law were contrary to EU law on the ground that it is not part of the national electoral procedure falling within the competence of the Member States, it was not for the Parliament or, consequently, for the General Court, in the context of the action before it, to rule on that point, since such a dispute must be decided by the national courts, if necessary after a reference to the Court of Justice for a preliminary ruling, or directly by the Court of Justice in the context of an action for failure to fulfil obligations on the basis of Article 258 TFEU.

73 The General Court also held, in paragraphs 142 to 144 of the judgment under appeal, that the appellants' line of argument that the necessary formalities for a Member to be able to take his or her seat in Parliament have to be completed exclusively before that institution was not confirmed in the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115).

74 In their appeal, the appellants complain, in essence, that the General Court made errors of law and vitiated the judgment under appeal by failing to rule and by various distortions in holding that the Parliament was required to take note of the list of elected Members that had been officially communicated to it by the Spanish authorities.

75 It follows, however, from the considerations set out in paragraphs 60 to 68 of the present judgment that the General Court, which did not vitiate the judgment under appeal by distortion as regards the content of the communications of 17 and 20 June 2019 or the content of the letter of 27 June 2019, did not err in law with regard to Articles 8 and 12 of the Electoral Act or infringe Article 39(2) of the Charter in holding that the President of the Parliament could not, without disregarding the division of powers between the European Union and the Member States established by the Electoral Act, depart from the list of elected Members which had been officially notified to him by the Spanish authorities, the accuracy of which he did not have the power to review.

76 Article 5(1) of the Electoral Act, which states that the five-year period for which Members of the Parliament are elected begins at the opening of the first session held after each election, is not such as to call into question that conclusion, since that provision merely defines the temporal limits of the mandate of Members of the Parliament and does not govern the division of powers between the European Union and the Member States in electoral matters.

77 That is also not the case with the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115). It should be noted that, in the case which gave rise to that judgment, the Court of Justice was asked by the Tribunal Supremo (Supreme Court) to give a preliminary ruling on the separate question of the point at which a person elected to the Parliament acquires the status of Member of that institution, in order to determine the date from which he or she enjoys the immunity provided for in the second paragraph of Article 9 of the Protocol on the privileges and immunities, attached to that status. In that context, the Court held that the status of Member of the Parliament was acquired from the date of the official declaration of the election results, which it noted had taken place on 13 June 2019 as regards the elections held in Spain on 26 May 2019. The Court did not, however, adopt a position on the consequences to be drawn, by the Parliament, from the national authorities' communication of the list of elected Members, and in particular did not adopt a position as to whether or not that institution was bound by such a communication, which was not the subject of the referring court's questions.

78 In fact, far from supporting the appellants' claims, the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115), on the contrary, supports the General Court's analysis, since the Court of Justice noted, in paragraph 69 of that judgment, that the Parliament has no power to call into question the lawfulness of the official declaration of the election results or to review its compliance with EU law, which, as is apparent from paragraph 64 of the present judgment, suggests that the Parliament is under an obligation to take note of the official communications of the results sent to it by the national authorities, such as, in the present case, the communication of 17 June 2019.

79 The General Court therefore did not disregard the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115), in holding, in paragraph 130 of the judgment under appeal, that the Parliament was required to take note of the list of elected candidates officially communicated by the national authorities, since that institution does not have the power to carry out any review of the content of that list.

80 Nor can it be alleged that the General Court disregarded the order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C-646/19 P(R), EU:C:2019:1149), by which the Vice-President of the Court of Justice held, before giving judgment, that it could not be ruled out that the national electoral procedure falling within the competence of the Member States must be regarded as ending with the declaration of the results, to the exclusion of any

subsequent formality. As the General Court held in paragraph 139 of the judgment under appeal, even if the Kingdom of Spain exceeded its powers by laying down the obligation to take the oath or promise to respect the Spanish Constitution provided for in Article 224(2) of the Spanish Electoral Law, that fact has no bearing on the obligation of the President of the Parliament to take note of the results of the elections which are officially communicated to him by the national authorities.

81 In that regard, it is apparent from the judgment under appeal that the General Court did not rule on the questions of whether the Kingdom of Spain had power, in the light of Article 223(2) TFEU and Article 8 of the Electoral Act, to lay down the requirement set out in Article 224(2) of the Spanish Electoral Law, or whether that requirement was contrary to EU law. After stating, in paragraph 117 of the judgment under appeal, on grounds which are not distorted, that the appellants had not taken the oath or promise to respect the Spanish Constitution provided for in Article 224(2), it held, on the contrary, in paragraph 131 of that judgment, without erring in law or vitiating that judgment by a failure to rule, that, just as the Parliament could not call into question the lawfulness of the list of elected candidates officially communicated by the Spanish authorities on 17 June 2019, the General Court itself lacked competence to decide such questions. The General Court was fully entitled to infer from this, in paragraph 135 of that judgment, that the appellants' line of argument that the Spanish authorities did not have the power to lay down the obligation set out in Article 224(2) of the Spanish Electoral Law had to be rejected as ineffective.

82 In the light of the foregoing, the appellants' line of argument directed against the grounds included by the General Court purely for the sake of completeness in paragraphs 132 to 134 of the judgment under appeal, by which it held that the Parliament did not have exclusive power to set out the conditions and requirements to be fulfilled prior to Members of Parliament taking up office, must be rejected as ineffective.

83 The fact that, subsequent to the letter of 27 June 2019, the Parliament adopted the act of 13 January 2020 authorising the appellants to take their seats without carrying out a prior verification of their credentials, thus drawing the conclusions which it believed it had to attach to the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115), is not in any event capable of altering the legal nature of the letter of 27 June 2019, as the General Court held in paragraphs 121 and 122 of the judgment under appeal.

84 It must also be stated that, contrary to what the appellants claim, the foregoing analysis does not amount to allowing the Member States to disregard the division of powers provided for in the Electoral Act or to infringe Article 223(2) and Article 232 TFEU, since any non-compliance with those provisions may be challenged before the national courts, if necessary after a reference to the Court of Justice for a preliminary ruling, or directly before the Court of Justice on the basis of Article 258 TFEU.

85 As regards, in the second place, the Instruction of 29 May 2019, the General Court, after describing and analysing its content, held, in paragraphs 184 and 185 of the judgment under appeal, that that instruction had not had the effect of preventing the appellants from carrying out the formalities that Members have to complete before taking office, namely the declaration of non-incompatibility and the declaration of financial interests, and, therefore, that that instruction was not the reason why they were unable to take their seats in Parliament as from the opening, on 2 July 2019, of the first session following the elections. In paragraphs 186 and 187 of that judgment, it held that that instruction had not altered the appellants' legal position and that their claims for annulment of that instruction therefore had to be rejected as inadmissible.

86 To reach that conclusion, the General Court held, in paragraphs 179 to 182 of the judgment under appeal, first, that that instruction, by which the President of the Parliament merely stated that it was appropriate to 'freeze' or suspend access to the 'Welcome Village' and not to carry out a temporary accreditation of Spanish Members pending the communication of the final results by the Spanish authorities, was akin to a measure of internal organisation and was provisional, its effects having come to an end on the date of that communication. Second, the General Court noted that it followed from the provisional nature of the Instruction of 29 May 2019 that the latter did not prejudge the possibility of the appellants subsequently obtaining definitive accreditation. Third, the General Court stated that it was the fact that the appellants did not appear on the official list of results communicated by the Spanish authorities that prevented the appellants from taking their seats, and not the failure to make their declarations of financial interests and non-incompatibility, since those declarations could, according to the Rules of Procedure, be made after the opening of the first parliamentary session following the elections.

87 Contrary to the appellants' submission, it is not apparent from the file submitted to the Court of Justice that the General Court vitiated the judgment under appeal by distortion or misrepresented the facts by analysing the Instruction of 29 May 2019 as an act that was separate from the letter of 27 June 2019, and in finding that the effects of that instruction had ended on the date of the official communication of the results by the Spanish authorities, on 17 June 2019. The line of argument alleging infringement of the rights of the defence resulting from the alleged distortions must, therefore, also be rejected.

88 As regards the possible contradiction between the grounds set out in paragraph 181 of the judgment under appeal, by which the General Court held that the fact that the appellants had not made their declarations of financial interests and non-incompatibility was not such as to prevent them from taking their seats as from the opening of the first session of the Parliament following the elections, and the grounds set out in paragraph 183 of that judgment, by which the General Court stated that the appellants did not claim that the Instruction of 29 May 2019 had prevented them from making such declarations, it must be stated that, as is shown by the use of the words 'in addition', paragraph 183 is for the sake of completeness in relation to the grounds not containing any error of law or distortion, set out in paragraphs 179 to 182 of that judgment. Consequently, the appellants' line of argument specifically directed against paragraph 183 of the judgment under appeal must be rejected as ineffective.

89 Lastly, the General Court did not err in law, in paragraphs 184 to 187 of the judgment under appeal, by inferring from the grounds set out, in particular, in paragraphs 179 to 182 of that judgment, that the Instruction of 29 May 2019 was not the reason why the appellants could not take their seats in Parliament and that that instruction had not altered their legal situation, with the result that the appellants' claim for annulment of that instruction had to be rejected as inadmissible.

90 It follows from all of the foregoing considerations that the first ground of appeal must be rejected.

The second ground of appeal

– *Arguments of the parties*

91 By their second ground of appeal, which they raise in the alternative, the appellants complain that the General Court misinterpreted the division of powers between the national authorities and the Parliament provided for in Article 12 of the Electoral Act. In so doing, they ask the Court of Justice to reconsider the case-law resulting from the judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275). They submit, in particular, that the Parliament did in any event have the power, as otherwise the principle of effectiveness would be disregarded, to rule on an electoral challenge based on Rule 3(1) of the Rules of Procedure and that the General Court vitiated the judgment under appeal by an error in law by holding, without reservation, that the Electoral Act excluded the Parliament's power to rule on disputes based on national law, including where the Electoral Act refers to that law. They add that the EU Courts should be in a position to review all acts depriving a Member of the European Parliament of his or her rights.

92 In the further alternative, the appellants submit that Article 12 of the Electoral Act or any other provision of that act, of the Statute for Members of the European Parliament or of EU law, from which it follows that that institution is bound by the communications made by the Member States in electoral matters, even where they exceed their power, is contrary to primary law, in particular to Articles 10 and 14 TEU and Article 39(2) of the Charter.

93 The Parliament and the Kingdom of Spain submit, in essence, that, in view of the response to the first ground of appeal, it is not necessary for the Court of Justice to examine the second ground of appeal in so far as it concerns the calling into question of the case-law arising from the judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275).

94 The Parliament also considers that the plea of illegality raised by the appellants must be rejected as inadmissible because it is raised for the first time in the appeal or, in the alternative, that it must be rejected as being, in any event, unfounded.

– *Findings of the Court*

95 By their second ground of appeal, the appellants submit that the General Court misinterpreted the division of powers between the European Union and the Member States in electoral matters, and, more specifically, misinterpreted Article 12 of the Electoral Act, by applying, in the judgment under appeal, the case-law resulting from the judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275). It is apparent from the grounds relied on in response to the first ground of appeal, in particular in paragraphs 59 to 67 of the present judgment, that that line of argument must be rejected.

96 As regards the plea of illegality raised in the alternative by the appellants, it should be noted that, according to settled case-law, the jurisdiction of the Court of Justice in an appeal is confined to a review of the assessment by the General Court of the pleas and arguments debated before it. To allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court would mean allowing that party to bring before the

Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court (see, to that effect, judgment of 29 February 2024, *Euranimi* v *Commission*, C-95/23 P, EU:C:2024:177, paragraph 53 and the case-law cited).

97 In the present case, as well as the fact that the plea of illegality raised by the appellants in the context of the second ground of appeal is not accompanied by details to enable its merits to be assessed, it is apparent from the file submitted to the Court of Justice that that plea of illegality was raised for the first time in the context of the appeal. It must, therefore, be rejected as inadmissible.

98 It follows from the foregoing that the second ground of appeal must be rejected in its entirety.

The third and fourth grounds of appeal

– *Arguments of the parties*

99 By their third ground of appeal, the appellants complain, in essence, that the General Court erred in law and gave insufficient reasons in the judgment under appeal in holding that the refusal of the President of the Parliament to take an initiative as a matter of urgency on the basis of Rule 8 of the Rules of Procedure did not constitute a challengeable act under Article 263 TFEU. They consider that, in the present case, the General Court was wrong to hold that such a refusal was not linked to the refusal to recognise their status as Members of the European Parliament. According to the appellants, by ruling as it did, the General Court disregarded the Parliament's duty to provide assistance to its Members under Rule 5(2) of the Rules of Procedure. They also state that, if the judgment under appeal is to be interpreted as meaning that the General Court considered that the contested refusal constituted a non-existent act, the judgment under appeal is vitiated by an error of law and by distortion.

100 By their fourth ground of appeal, the appellants submit, in essence, that the General Court distorted the judgment under appeal by holding that they had not submitted a request for defence of their immunity on the basis of Rules 7 and 9 of the Rules of Procedure. They also consider that the General Court erred in law and disregarded the case-law arising from the judgment of 21 October 2008, *Marra* (C-200/07 and C-201/07, EU:C:2008:579), in holding that the refusal to communicate such a request in plenary session did not produce actionable legal effects on the basis of Article 263 TFEU.

101 The Parliament and the Kingdom of Spain submit, in essence, that, if the third ground of appeal is not rejected as inadmissible, it must be rejected as unfounded. They submit that the fourth ground of appeal must, for its part, be rejected as ineffective or, failing that, as also being unfounded.

– *Findings of the Court*

102 The third and fourth grounds of appeal raise common questions relating to the relationship and content of the mechanisms for the defence of privileges and immunities provided for in Rules 7 and 9 and in Rule 8 of the Rules of Procedure, respectively. It is therefore necessary to deal with them together.

103 In paragraphs 155 to 158 of the judgment under appeal, the General Court held that the fact that the President of that institution refrained from taking an initiative as a matter of urgency in order to assert the privileges and immunities of Mr Puigdemont i Casamajó and Mr Comín i Oliveres on the basis of Rule 8 of the Rules of Procedure did not stem from any refusal of the President to recognise their status as Members of the European Parliament, but from the failure to exercise his discretion as to whether or not to take such an initiative. The General Court inferred from this that the failure to exercise such a power could not be the subject of an action for annulment under Article 263 TFEU. It also stated, for the sake of completeness, that, even if the President of the Parliament did not adopt such an initiative as a result of his alleged refusal to recognise their status as Members of the European Parliament, such a refusal would not in any event have had any binding effects vis-à-vis the Spanish authorities.

104 In paragraphs 160 to 167 of the judgment under appeal, the General Court then rejected as being directed against a non-existent act the line of argument by which the appellants challenged, in the light of Rule 9(1) of the Rules of Procedure, the refusal of the President of the Parliament to communicate to the competent committee their request for the defence of their privileges and immunities, on the ground that they had not submitted such a request on the basis of Rules 7 and 9 of the Rules of Procedure.

105 Rule 7 of the Rules of Procedure governs the defence of the privileges and immunities of Members of Parliament. It provides, inter alia, in paragraph 1 thereof, that, in cases where it is alleged that an infringement of the privileges and immunities of a Member or former Member by the authorities of a Member State has occurred or is about to occur, a request for a Parliament decision as to whether those privileges and immunities have been or are likely to be breached may be made in accordance with Rule 9(1) of those rules of procedure. The wording of Rule 7(5) thereof implies that the decision not to grant such a request may be the subject of an action for annulment on the basis of Article 263 TFEU.

106 Rule 9(1) and (2) of the Rules of Procedure, concerning procedures on immunity, states that the request for the defence of privileges and immunities referred to in Rule 7(1) thereof may be addressed to the Parliament by a Member or a former Member, or by another Member, who is permitted to represent the Member or former Member concerned. Rule 9(3) to (14) of the Rules of Procedure sets out the procedure applicable to such requests, which includes, in particular, an examination stage by the competent committee of the Parliament, the possibility for the Member or former Member concerned to be heard and to submit any evidence that he or she deems to be relevant, the Parliament's examination of the committee's proposal or proposals for a decision, and the communication of the measure adopted to the Member or former Member concerned and to the Member State concerned.

107 Rule 8 of the Rules of Procedure governs urgent action by the President of the Parliament in order to assert the immunity of a Member. That rule provides that, where a Member is arrested or has his or her freedom of movement curtailed in apparent breach of his or her privileges and immunities, the President may, after consulting the Chair and rapporteur of the committee responsible, take an initiative as a matter of urgency in order to assert the privileges and immunities of the Member concerned. When exercising that power, the President of Parliament is to notify that committee of his or her initiative; that committee is to take cognisance of it at its next meeting and is to inform that institution thereof.

108 It follows from those provisions that the Rules of Procedure provide for two distinct mechanisms for the protection of the privileges and immunities of Members of the European Parliament. One of those mechanisms, provided for in Rules 7 and 9 of the Rules of Procedure, is initiated by way of a request addressed to the President of the Parliament and is dealt with in accordance with the procedural rules laid down in Rule 9, which are intended in particular to safeguard the rights of the Member or former Member concerned. That request gives rise to a decision of the Parliament which, according to Rule 7(5) of the Rules of Procedure, may be the subject of an action for annulment on the basis of Article 263 TFEU. The other mechanism, provided for in Rule 8 of those rules of procedure, is, by contrast, a matter of individual initiative by the President of the Parliament, who alone decides; that initiative is not governed by any procedural formalities, since the President is required only subsequently to inform the competent committee of the Parliament and that institution itself in respect of that initiative.

109 Thus, contrary to Rules 7 and 9 of the Rules of Procedure, Rule 8 thereof confers on the President of the Parliament the power to take, as a matter of urgency, an initiative in order to assert the privileges and immunities of a Member, where the conditions laid down in Rule 8 are satisfied. It is also apparent from the scheme of Rule 8, read in the light of the remainder of the provisions of the Rules of Procedure, that the President of the Parliament is not required to take such an initiative but enjoys, in that regard, a broad discretion which means that the Members do not have the right to require him or her to take a specific position (see, by analogy, judgment of 9 December 2014, *Schönberger* v *Parliament*, C-261/13 P, EU:C:2014:2423, paragraph 24).

110 It follows that, as the General Court held in paragraphs 155 to 157 of the judgment under appeal, with an adequate statement of reasons and without erring in law with regard to Rule 5(2) of the Rules of Procedure, the failure by the President of the Parliament to implement the power conferred on him by Rule 8 of those rules of procedure, which follows not from his alleged refusal to recognise their status as Members of the European Parliament, but from his exercise of the broad discretion which he enjoys, does not constitute an act open to challenge for the purposes of Article 263 TFEU.

111 The line of argument put forward by the appellants against the grounds which the General Court relied on, for the sake of completeness, in paragraph 158 of the judgment under appeal, must be rejected as ineffective.

112 It is apparent, moreover, from the file submitted to the Court of Justice that the General Court did not vitiate the judgment under appeal by distortion when it held, in paragraphs 163 and 164 thereof, that the appellants' request for the defence of their privileges and immunities was based on Rule 8(1) of the Rules of Procedure and not on Rules 7 and 9 thereof, the latter two rules not being referred to in that request.

113 The General Court was also fully entitled to hold, in paragraphs 165 and 166 of the judgment under appeal, that the appellants' challenge to the alleged refusal of the President of the Parliament to communicate their request to the competent committee of that institution was directed against a materially non-existent act, in the absence of a request submitted on the basis of Rules 7 and 9 of the Rules of Procedure. Such a prior communication for examination by the competent committee concerns only requests for the defence of privileges and immunities submitted on the basis of Rules 7 and 9 of the Rules of Procedure, which, as has been held in paragraphs 107 and 108 of the present judgment, establish a mechanism distinct from that provided for in Rule 8 of the Rules of Procedure.

114 It should also be stated that the line of argument alleging that, in ruling as it did, the General Court disregarded the judgment of 21 October 2008, *Marra* (C-200/07 and C-201/07, EU:C:2008:579), cannot succeed since that judgment concerns the separate question of the consequences to be drawn, by a national court hearing an action against a Member of the European Parliament, from the existence of a request for the defence of privileges and immunities submitted to the Parliament by the person concerned. In any event, no conclusions can be drawn from it as regards the nature of the failure to adopt as a matter of urgency an initiative such as that provided for in Rule 8 of the Rules of Procedure.

115 It follows from all of the foregoing that the third and fourth grounds of appeal must be rejected and, therefore, that the appeal must be dismissed in its entirety.

Costs

116 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

117 In accordance with Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

118 Since the Parliament has applied for costs and the appellants have been unsuccessful, the appellants must be ordered to bear their own costs and to pay those incurred by the Parliament, including the costs relating to the proceedings for interim measures in Case C-600/22 P-R.

119 In accordance with Article 184(4) of the Rules of Procedure of the Court of Justice, the Court may decide that, where the appeal has not been brought by an intervener at first instance, that intervener may not be ordered to pay costs in the appeal proceedings unless that intervener participated in the written or oral part of the proceedings. In the present case, the Kingdom of Spain, intervener at first instance which participated in the written part of the procedure in the present appeal, must bear its own costs, including the costs relating to the proceedings for interim measures in Case C-600/22 P-R.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres to bear their own costs and to pay those incurred by the European Parliament;**

3. **Orders the Kingdom of Spain to bear its own costs.**

Lycourgos Spineanu-Matei Bonichot

Rodin Rossi

Delivered in open court in Luxembourg on 26 September 2024.

A. Calot Escobar
Registrar

C. Lycourgos
President of the Chamber