

TO THE GENERAL COURT OF THE EUROPEAN UNION

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LODGE

AN ACTION FOR ANNULMENT

Pursuant to Article 263 of the Treaty on the Functioning of the European Union (TFEU) against the following acts:

- The Parliament's decision to deny the applicants' access to the special reception service set up for elected Members of Parliament and the Instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declaration required by Rule 3(2) of the Rules of Procedure;
- The Parliament's decision not to take note of the results officially declared by Spain of the election 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, which does not include the applicants, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47);
- 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, which amounts to an unlawful declaration of a vacancy attributable to the Parliament;
- The Parliament's decision 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, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47)
- The President of the Parliament's decision refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, in accordance with Rule 8 of the Rules of Procedure (A.6);

The present application for annulment is addressed against the European Parliament.

INDEX

I. PRELIMINARY	Page 4
II. SUMMARY AND SUBJECT MATTER OF THE APPLICATION	Page 5
III. THE FACTS AND THE CONTESTED DECISIONS	Page 7
a) Facts relevant to the decision referred to the Court.....	Page 7
b) Legal disputes that fall outside the scope of this application....	Page 12
IV. PLEAS IN LAW	
(i) - Preliminary argument as to the admissibility of the action, common to all the pleas in law	Page 15
(ii) - Preliminary argument as to the main fundamental rights at stake, common to all the pleas in law	Page 18
- First plea in law	Page 21
- Second plea in law	Page 25
- Third plea in law	Page 29
- Fourth plea in law	Page 32
- Fifth plea in law	Page 38
V. EVIDENCES PRESENTED AND REQUESTED	Page 41
VI. FORM OF ORDER SOUGHT	Page 42
VII. LIST OF ANNEXES	Page 44

I. PRELIMINARY

The applicants choose English as the language of the procedure, according to Article 35 of the Rules of Procedure of the General Court of the European Union.

II. SUMMARY AND SUBJECT MATTER OF THE APPLICATION

Subject matter

Application under Article 263 TFEU for annulment of the decisions of the European Parliament, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47), to prevent the applicants, both elected MEPs in the elections held on 26 May 2019, from taking their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto from the date of the first sitting scheduled for 2 July 2019.

This decision is materialised and has binding effects on the applicants through a combination of formal, informal and/or implied actions and failures to act of the Parliament and/or its President, carried out in collusion with the leaders of the main Spanish delegation against the applicants, both members of the opposition and of a national minority.

The European Parliament has thus failed to uphold its integrity as a democratic legislative assembly and to ensure the ability of all its Members to exercise their rights as “representatives of the Union's citizens”. The applicants, duly elected and officially declared as Members of the European Parliament (MEPs) in the constituency of Spain, are the victims of an apparent plan to deny them any effective remedy against the unlawful deprivation of effect their election. Indeed, the Parliament and its President have failed to reply at all the numerous communications and request sent to them by the applicants, while accepting at face value the unlawful acts of the Spanish authorities.

Pursuant to Article 263 TFEU, the applicants claim that the General Court of the European Union should:

- Annul the Parliament's decision to deny the applicants' access to the special reception service set up for elected Members of Parliament and the Instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declarations required by Rule 3(2) of the Rules of Procedure;
- Annul the Parliament's decision not to take note of the results officially declared by Spain of the election 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, which does not include the applicants, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47);
- Annul 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, which amounts to an unlawful establishment of a vacancy attributable to the Parliament;
- Annul the Parliament's decision 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, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.46);

- Annul the President of the Parliament's decision refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, in accordance with Rule 8 of the Rules of Procedure;
- Order the defendant to pay all costs of these proceedings and in accordance with art. 340, second paragraph TFEU, order the defendant to pay compensation for the damages suffered: the loss of monthly salary granted to the members of the European Parliament, plus 1 symbolic € for the moral damages.

III. THE FACTS AND THE CONTESTED DECISIONS

a) *Facts relevant to the decision referred to the Court:*

1. The applicants are two political leaders who were ousted as President and Health Minister of the Catalan Government and as Members of the Parliament of Catalonia in October 2017, and have been since living in Belgium. In December 2017, they were re-elected as Members of the Catalan Parliament, and were able to take their seats and enjoy all the rights attaching thereto, despite being under a criminal investigation related to their political activities.
2. On 10 March 2019, the applicants announced that they would run as candidates for the European Parliament in the upcoming elections of 26 May 2019.¹
3. On 2 April 2019 the Spanish Official Gazette published the Decree calling elections to the European Parliament, to be celebrated on 26 May 2019 (A.7).
4. On 15 April 2019, at the request of Antonio Tajani (the outgoing President of the European Parliament), Mr. Freddy Drexler, the Jurisconsult of the European Parliament, produced a confidential report² specifically analysing the candidacy of the applicants and the legal implications of their becoming Members of the European Parliament.
5. On 17 April 2019 the said document was leaked to the press. This leak intended to generate the public impression that neither Mr. Puigdemont nor Mr. Comín were viable candidates, because they would never be able to exercise as Members of the European Parliament, even if elected. In fact, the report has been used by some European and Spanish authorities as a guide of action for the purposes of preventing the applicants from taking their seats in the Parliament as it was used, for example, by the Prosecutor Office (A.8). It has also cited it to back the lawfulness of the actions taken against the applicants and Mr. Oriol Junqueras,³ then leading candidate for another minority coalition similarly opposed to Mr. Tajani's allies in Spain. This legal report is also mentioned on several decisions taken by the Spanish authorities and also in Mr. Tajani's public statements (A.9).
6. On 22 April 2019 the coalition *Lliures per Europa (Junts)* registered before the Spanish Central Electoral Commission its list of candidates for the election to the

¹ "Former Catalan leader Puigdemont to run in European election"

[<https://www.politico.eu/article/puigdemont-carles-former-catalan-leader-to-run-in-eu-election-may/>]

² The said document is referred by the author as SJ-0214/19 NL/NG/SAL/gr D2019)1257

³ Mr. Junqueras is the Vice President of the Catalan Government ousted in October 2017 and has been in prison on remand in prison ever since. He was allowed to stand as a candidate and was also reelected to the Catalan Parliament in December 2017. In April 2019 he was elected Member of the Spanish Parliament, and he was briefly released in order to allow him to take his seat.

European Parliament of 26 May 2019, led by Mr. Carles Puigdemont and Mr. Antoni Comín as first and second candidates of the said ticket.

7. On 24 April 2019, the Spanish Official Gazette published all the lists of candidates for the elections to the European Parliament registered before the Spanish Central Electoral Commission (A.10).
8. On 25 April 2019 two political parties (*Partido Popular* and *Ciudadanos*, the Spanish members of the European People's Party [EPP] and the Alliance of Liberals and Democrats for Europe [ALDE]) filed a complaint against the inclusion of Mr. Puigdemont and Mr. Comín and a third candidate -also living outside the country (Ms. Clara Ponsatí)- on the list of *Lliures per Europa (Junts)* (A.11).
9. On 29 April 2019 the lawyers for Mr. Puigdemont and Mr. Comín sent a letter and requested Mr. Antonio Tajani (EP President) with regard to the above mentioned "report" signed by Mr. Drexler.⁴ This letter has never been answered by Mr. Tajani even when it requested the EP President to clarify if it was issued by the EP Legal Department or not and if this was the EP President and the Parliament legal position.
10. On 29 April 2019 the Spanish Central Electoral Commission (by a majority of 7 to 4 of its members) decided to exclude Mr. Puigdemont, Mr. Comín and Ms. Ponsatí from the electoral list of candidates presented by the coalition *Lliures per Europa-Junts* (A.12).
11. On 2 May 2019 that decision was challenged by the applicants Mr. Puigdemont and Mr. Comín (as well as Ms. Ponsatí), as well as their coalition's representatives (A.13)
12. On 3 May 2019 the Spanish Prosecutor's Office produced an opinion in favour of the appeal stating, as had been argued by the applicants, that Mr Puigdemont and Mr Comín were eligible to run for a seat in the European Parliament (A.14).
13. On 5 May 2019 the Spanish Supreme Court issued a decision referring the case to Administrative Courts (A.15). However, on the substance it anticipated a decision in favour of the appeal stating, as had been argued by the applicants, that Mr Puigdemont and Mr Comín were eligible to be candidates for the European Parliament.

⁴ This party assumes that the document elaborated by Mr. Freddy Drexler cannot be taken as an "act of the Parliament" but the relevance of this action is important with regards to the decisions taken by the EP President as well as the previous decisions taken by the Spanish national authorities as it is the Drexler's Document the one that has been used to infringe the rights and immunities of the applicants as it is been shown in the Spanish Prosecutor's report as well as the decisions taken by the Spanish Supreme Court. In other words this document is not an act but an action that has been created and released to create confusion and to damage the position of the applicants and it has been used by the national authorities as if this was a proper act from the Parliament.

14. On 6 May 2019 the Administrative Courts Numbers 2, 9 and 21 from Madrid ruled in favour of the appeals stating, as had been argued by the applicants, that Mr Puigdemont and Mr Comín were eligible to run for a seat in the European Parliament (A.16).
15. Both Partido Popular (EPP) and Ciudadanos (ALDE) lodged appeals against the Administrative Courts' decision before the Spanish Constitutional Court on the 8th of May 2019.
16. On 9 May 2019 the Spanish Constitutional Court confirmed the decisions by declining to even hear the said appeals (A.17).
17. On 26 May 2019, the coalition Lliures per Europa (Junts), led by Mr. Puigdemont and Mr Comín received 1.018.435 votes and obtained 2 seats in the European Parliament.⁵
18. On 29 May 2019 Mr. Puigdemont and Mr. Comin, in accordance with the information provided by The Quaestors of the European Parliament, went to the Welcome Village in Brussels in order to take up their duties and make their administrative arrangements with the Parliament as newly elected MEPs. However, Mr. Puigdemont and Mr Comín were prevented from entering the European Parliament premises in Brussels and from fulfilling their administrative duties with the Parliament, including the submission of written declaration required by Rule 3(2) of the Rules of Procedure⁶. On order of the President and/or the Secretary General of the Parliament (Klaus Welle), Mr. Puigdemont and Mr. Comín were denied access to the building.
19. On the same day, at around 19:25 one of the lawyers of the applicants sent by email notices of default to Secretary General Welle and to President Tajani as well as a fax with the same notices to them later that evening.
20. On the same day, newly elected MEPs from Spain were granted access to the Parliament and given their preliminary accreditations, assigned offices, official email addresses, etc. After doing so, some of these Spanish MEPs sent a letter to Mr .Tajani asking him to deny the same treatment to Mr. Puigdemont and Mr. Comín. President Tajani fulfilled their request but without having followed any procedure and without having heard the other parties involved, granted the request of the Spanish MEP's which infringed the rights of our clients.
21. Also on the 29th of May 2019, the lawyers for Mr. Puigdemont and Mr. Comín wrote a letter to Mr. Tajani, and the Parliament's Secretary General, demanding an

⁵ This result will give the coalition a third seat when, and if, the United Kingdom effectively leaves the European Union and the Kingdom of Spain gains 5 new seats in the European Parliament. The seat shall be taken by Ms Ponsatí, who was number 3 on the list.

⁶ "The European Parliament denies provisional accreditations to Puigdemont and Comín"
[<https://www.tellerreport.com/news/2019-05-30---the-european-parliament-denies-provisional-accreditations-to-puigdemont-and-comin-.BybpxnhpE.html>]

explanation of what had happened and the impediments created to both of them. This letter has never been answered by Mr. Tajani (A.18).

22. As a result of the controversy, the leaders of the three main Spanish political parties in the European Parliament (PSOE, PP and Cs) sent a letter to Mr. Tajani asking him to suspend the issuance of preliminary accreditations for MEPs elected in the constituency of Spain.
23. After the above mentioned impediment and letters, on 29 May 2019, the President of the Parliament, Mr. Tajani, issued an instruction ("Instruction of the President of the Parliament of 29 May 2019") ordering the Parliament services to suspend the provision of preliminary accreditations and to withdraw and/or deprive of effects those given to new MEPs elected in Spain until the official results had been declared. This measure was not enforced against all MEPs elected in Spain as the political allies of Mr. Tajani continued the registration process. In fact, it has apparently affected only 3 MEPs elected in Spain who represent opposition parties and belong to the Catalan national minority.
24. On 30 May 2019 the lawyers of Mr. Puigdemont and Mr. Comín sent a new letter to Mr. Tajani (EP President) urging him to acknowledge and respect their rights as elected MEPs. This letter has also not been answered (A.19).
25. On 31 May 2019, eleven of the outgoing Members of Parliament sent a letter to its President and the Vice-Presidents asking to rectify the decision to prevent the applicants from getting access to the so-called "Welcome Village" and to respect the results of the European elections. Several Vice-Presidents replied explaining that they had nothing to do with the decision, and asked Mr. Tajani to give an explanation (A.20)
26. On 13 June 2019 the Spanish Electoral Commission declared officially the results of the elections held on May 26th. Such decision included the proclamation of Mr. Puigdemont and Mr. Comín, among others, as elected Members of the European Parliament (MEP) (A.21).
27. The official results and the official list of elected and declared MEPs was published in the Spanish Official Gazette on 14 June 2019 (A.22).
28. On 14 June 2019 Mr. Puigdemont and Mr. Comín sent a letter to Mr. Tajani with the official results as declared and published in the Spanish Official Gazette and demanded to be recognized as elected MEPs (A.23). The said letter has never been acknowledged or replied by the Parliament.
29. On the same day, Mr. Puigdemont and Mr. Comín were again denied their preliminary accreditation as well as the possibility to complete the administrative

- arrangements to take their seats in the European Parliament from the day of the first sitting.
30. On 14 June 2019 the Supreme Court of Spain refused to allow another newly elected MEP, Mr. Oriol Junqueras, who has been in pretrial detention for more than 1.5 years, to attend the session in which all MEPs elected in Spain were invited to swear allegiance to the Spanish Constitution, as required by the Spanish Electoral Law (A.24). The Court argued that if he had been allowed to attend that ceremony then he would have obtained parliamentary immunity.
 31. On 15 June 2019 the Spanish Supreme Court Investigative Judge Mr. Pablo Llarena refused to withdraw the existing national arrest warrants issued against Mr. Puigdemont and Mr. Comín as part of the same proceedings (A.25).
 32. On 17 June 2019 the Spanish Central Electoral Commission refused to accept Mr. Puigdemont and Mr. Comín's pledge of allegiance to the Spanish Constitution through a written statement done in front of a public notary or through their legal representatives as designated in a notarized document (A. 26 - 27 - 28). The Spanish Senate had accepted a written statement done in front of a notary public as a valid way of pledging allegiance to the Spanish Constitution less than a month before, on 21 May 2019 (A.29)
 33. On the same day there was a meeting of the Bureau of the European Parliament in which several Vice-Presidents asked Mr. Tajani what was the basis of his decision to ban elected MEPs from entering into the building and taking part in the special reception service set up for elected Members of Parliament, as well as the Instruction of the President of the Parliament of 29 May 2019 suspending the provision of preliminary accreditations for incoming MEPs. Although the minutes of the meeting are not yet available, the applicants understand that the President of the Parliament shared the reasons for his decision and refused to withdraw the Instruction.⁷
 34. On 17 June 2019 the Spanish Electoral Commission sent to the European Parliament a list of the MEPs elected in Spain which did not include either Mr. Puigdemont nor Mr. Comín. The said list also omitted the name of Mr. Junqueras, who was Mr. Puigdemont's Vice President between January 2016 and October 2017 and remains in custody in Spain even when the United Nations Working Group on Arbitrary Detention (WGAD) (A.30) issued on 24 April 2019 an opinion concluding that his imprisonment is an arbitrary detention under international law. It is important to notice that the report from the UN WGAD asserts that the situation of Mr. Junqueras, as well as the of the other co-defendants, is part of a political persecution and this is extendable to both Mr. Puigdemont and Mr. Comín.

⁷ In this regard, we propose the Court to request - as evidence- the minutes and/or transcriptions of the meeting of the Bureau, which is at the moment still unavailable.

35. On the same day, the “Unité Administration des Députés” took note of that list of elected MEPs in the constituency of Spain and issued a general communication with their names for public knowledge (A.31).
36. On 20 June 2019 Mr. Puigdemont and Mr Comín sent a new request to Mr Tajani based on Rule 8 of the 1976 Electoral Act, asking the European Parliament, as a matter of urgency, to assert their privileges and immunities. So far, no response to that request has been received (A.32),
37. On 23 June 2019 the applicants found out that, on 20 June 2019, the Spanish Central Electoral Commission had sent two additional communications to the European Parliament. The first, informed the Parliament that Mr. Josep Borrell (the current Spanish Minister for Foreign Affairs) had also been elected MEP. The second communication claimed, without legal basis whatsoever, that our clients’ privileges and immunities had been suspended and their seats (and that of Mr. Oriol Junqueras) had been left vacant (A.33).
38. The letter sent by the Spanish Central Electoral Commission to the Parliament on 20 June 2019 was different from the document released to the press. As to its content, it has clear contradictions in its own text between paragraphs 2 (declaring the seats vacant and suspending the prerogatives corresponding to elected and declared MEP) and 3 (stating that neither of the applicants have acquired the condition of MEP as declared in the Spanish Official Gazette on the 14th of June 2019).
39. On 24 June 2019, the legal counsel of Mr. Puigdemont and Mr. Comin lodged a formal dispute before the European Parliament and asked that they be allowed to take their seats pending verification of their credentials and resolution of the dispute in accordance with Article 12 of the 1976 Electoral Act and Rule 3 of the European Parliament’s Rules of Procedure (A.34).
40. Just today, 28 June 2019, less than six days prior to Parliament's first sitting, the President of the European Parliament has acknowledged and responded to the applicants’ letters and requests, albeit with a complete lack of legal reasoning (A.41). This late reply confirms the decisions that are the object of this application, and it is clearly intended to leave them without effective and timely remedies, and hence further proves the decision of the Parliament to prevent the applicants from taking their seats from the date of the first sitting scheduled for 2 July 2019. In any case the EP President recognized in the said letter that the only valid results are those declared officially by Spain, which we have always sustained, and those were officially declared on the 13.6.2019 (published in the Spanish Official Gazette on 14.6.2019) and they include the applicants as elected MEPs.

b) Legal disputes that fall outside the scope of this application for annulment:

41. By way of context, the applicants submit that the decisions of the Parliament and its President are aimed at the enforcement of acts that, while they fall outside the scope of this application because they are not decisions directly adopted by an EU institution, are known to infringe European Law. In particular, decisions adopted by the Spanish authorities not authorized by art. 12 of the Act, art. 14.2. and 14.3 TEU, art. 223 TFEU, Art. 1.3 of the Act, art. 6 (1) of the Act, 2 (1) and art. 3 (1) of the Statute for Members of the European Parliament.
42. The decisions referred to the Court in this application are carried out in collusion with the leaders of the main Spanish delegation and the Spanish authorities, and following the legal advice of Mr. Drexler. Their collective objective is best met by enforcing the unlawful decision of the Spanish Electoral Commission to require Mr. Puigdemont and Mr. Comín to go personally to Madrid in order to take an oath of allegiance to the Spanish constitution, while the Spanish law enforcement agents make all the necessary efforts to prevent that from happening.
43. For this plan to succeed, the President of the Parliament has given the instruction not to take note or reply to any of the letters and requests of the applicants, alleging that it is entirely for the Member State to resolve the dispute. This position has been confirmed by Mr. Tajani both in public statements and in the meeting of the Bureau on 17 June 2019.
44. By pretending that the decision to prevent the applicants from taking their seats is exclusively made by the Spanish authorities, Parliament intends to deny the applicants an effective remedy against the decision, and in particular the right they have under Rule 3(2) of the Rules of Procedure to take their seats while the dispute is dealt with by the competent authorities.
45. The applicants have submitted to the Spanish courts that imposing them the additional condition of taking an oath in the Member State after being elected, before taking their seats in the European Parliament, is contrary to EU law.
46. The applicants' case is that the decisions and failures to act of the European Parliament are actively helping the Spanish authorities' enforce a notoriously unlawful attempt to deprive of any effect the applicants' election as MEPs on 26 May 2019. If they do not travel to Spain to take the oath in person, the Spanish authorities will maintain the refusal to include their names on the list communicated to the Parliament. However, if Mr. Puigdemont and Mr. Comín attempt to travel to Spain to take the oath, they will be arrested and imprisoned, and thus prevented from taking the oath or attending the European Parliament in any event.
47. In these circumstances, the requirement imposed by Spain that an elected and declared MEP must pledge allegiance to the Constitution before being able to take the

seat in the European Parliament, is contrary to the Treaties, the Charter of Fundamental Rights and the 1976 Electoral Act. As provided for in Article 12 of the 1976 Electoral Act and Rule 3(3) of the Rules of Procedure of the European Parliament, in accordance with the case-law of the Court of Justice, the settlement of the infringements which fall under the 1976 Electoral Act other than those which, under that Act, fall exclusively under the national provisions to which that Act refers falls within the powers of Parliament.

48. In particular, the intent of the Spanish authorities to suspend Mr. Carles Puigdemont and Mr. Antoni Comín as Members of the Parliament would render meaningless the right to stand for election, which, as provided by the case-law of the European Court of Human Rights, includes the right to sit as a Member. Such right is also protected under Article 39(2) of the Charter of Fundamental Rights of the European Union, pursuant to which Members of the European Parliament “shall be elected by direct universal suffrage in a free and secret ballot”.
49. Such requirement also endangers the very functioning of the Union as a representative democracy in accordance with Article 10(2) TEU, and is contrary to the fact that the Members of the European Parliament are not appointed by the Member States, but are elected by direct universal suffrage pursuant to Article 14(3) TEU, Article 223 TFEU, and Article 1(3) of the 1976 Electoral Act. Also to the fact that, after the entry into force of the Treaty of Lisbon, it is clear that Members directly represent the Union’s citizens, and not the Member States, in accordance with Article 14(2) and (3) TEU.
50. Moreover, Members must exercise their mandate personally, must be free and independent, and must not be bound by any instructions, in accordance with Article 6(1) of the 1976 Electoral Act and Articles 2(1) and 3(1) of the Statute for Members of the European Parliament.
51. As noted in the draft report on the verification of credentials (2014/2165(REG)) submitted to the Committee on Legal Affairs following the previous elections, “it is, therefore, questionable whether the requirement of an oath of fidelity to the national Constitution, failing which the vacancy of the seat may be established, is compatible with a parliamentary mandate, such as the mandate of Members of the European Parliament, which is to be exercised freely and independently”. The Rapporteur even went as far as to recommend calling on the Commission to check whether the Spanish legislation (among others) is compatible with the Act of 1976 and the Statute for Members.
52. The combined actions of the Spanish authorities, first in imposing an unlawful and disproportionate condition -in the form of an oath- to become MEP, and then actively preventing the applicants from fulfilling it, are proof of an undemocratic effort to change the results of the elections and the composition of the European Parliament, thus violating the fundamental rights of our clients and the million voters that

supported them in the elections. And it is important to note that the applicants are not only opponents to the central authority but also represent a national minority.

53. In addition to the provisions cited above, these actions also contravene:
- Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, second paragraph, pursuant to which "immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament". The requirement to attend in person to take an oath of allegiance, coupled with the threat of arrest and arbitrary detention if they do so, amount to a restriction on our clients' ability to travel to the European Parliament in breach of Article 9.
 - Article 9 of Protocol (No 7), first paragraph, pursuant to which Members shall enjoy "in the territory of their own State, the immunities accorded to members of their parliament", such immunity applying also and in particular while Members are travelling to and from the European Parliament. Under Article 71(2) of the Spanish Constitution, members of the Spanish parliament may only be arrested in the event of *delicto flagrante*.
54. Parliament is unduly and unlawfully aiding the Spanish authorities to deprive of all effects the mandate of the applicants as elected representatives just a few days after the publication of the results of the election, on the basis that they do not go to Madrid to swear allegiance to the Spanish constitution. It is not for the European Parliament to participate in this Spanish construction and enforce the decisions taken by the Electoral Commission outside their powers under EU law.

IV. PLEAS IN LAW

- Preliminary argument as to the admissibility of the action, common to all the pleas in law

55. Pursuant to Article 263(1) TFEU, the Court shall review the legality of acts of the European Parliament "*intended to produce legal effects vis-à-vis third parties.*" The grounds upon which an action against such acts may be brought are "*lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers*": Article 263(2).
56. Pursuant to Article 263(4) TFEU, "*any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them.*"
57. The action of annulment is directed against a combination of express acts, both formal and informal, and implicit decisions by the outgoing Parliament, including its President, in collusion with his Spanish political allies, aimed at preventing the

applicants from taking their seats in Parliament with effect from the opening of the first sitting following the elections, scheduled for 2 July 2019.

58. All of the acts against which this action of annulment is directed, including the acts of the President, are attributable to the European Parliament, in accordance with the case-law of the General Court (see, to that effect, order of 5 September 2012, T-564/11, *Farage v European Parliament and Buzek*, EU:T:2012:403, paragraph 18.)
59. Certainly, Parliament has made an effort in order not to document its own decisions as regards the applicants. However, in accordance with the case-law of the Court of Justice, *“the form in which such acts or decisions are cast is, in principle, immaterial as regards the question of whether they are open to challenge”* (see, to this effect, judgment of 11 November 1981, C-60/81, *IBM*, EU:C:1981:264, paragraph 9.)
60. The General Court held that *“the fact that the existence of a measure intended to produce legal effects vis-à-vis third parties was revealed by means of a press release or that it took the form of a statement does not preclude the possibility of finding that such a measure exists or, therefore, the jurisdiction of the European Union Courts to review the legality of such a measure pursuant to Article 263 TFEU, provided that it emanates from an institution, body, office or agency of the European Union”* (see, to this effect, order of the General Court of 28 February 2017, *NM v European Council*, T-257/16, EU:T:2017:130, paragraph 41, and judgment of 30 June 1993, *Parliament v Council and Commission*, C-181/91 and C-248/91, EU:C:1993:271, paragraph 14).
61. In this case, the acts against which this action for annulment is directed are:
- Parliament’s decision to deny the applicants’ access to the special reception service set up for elected Members of Parliament and the Instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declaration required by Rule 3(2) of the Rules of Procedure;
 - Parliament’s decision not to take note of the results officially declared by Spain of the election 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, which does not include the applicants;
 - 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, which amounts to an unlawful declaration of a vacancy attributable to the Parliament;

- Parliament's decision 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; and
- President of the Parliament's decision refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, in accordance with Rule 8 of the Rules of Procedure.

62. The documents of the European Parliament that show the existence of the contested decisions are:

- a) An answer to a citizen by the Citizens' Enquiries Unit of 13 June 2019 (A.35);
- b) A "communication" of 17 June 2019 on the Members of the European Parliament elected in Spain issued by the Directorate-General for the Presidency of the European Parliament (A.36);
- c) An undated document on the line-to-take instructions as regards the situation of the applicants issued by the by Spokesperson's Unit of the European Parliament (A.37).
- d) A letter without legal basis of the President of the Parliament 27 June 2019 (A.47).

63. In the answer to a citizen of 13 June 2019 by the Citizens' Enquiries Unit, the European Parliament reveals the existence of the Parliament's decision to deny the applicants' access to the special reception service set up for elected Members of Parliament of 28 May 2019 and the Instruction of the President of the Parliament of 29 May 2019.

64. The "communication" of 17 June 2019 on the Members of the European Parliament elected in Spain issued by the Directorate-General for the Presidency of the European Parliament reveals the existence of a Parliament's decision not to take note of the results officially declared by Spain of the election to the European Parliament of 26 May 2019, and to take note of a different and incomplete list of elected Members notified on 17 June 2019 by the Spanish authorities, which does not include the applicants.

65. The undated document with instructions on the line-to-take as regards the situation of the applicants issued by the Spokesperson's Unit of the European Parliament is of

particular importance, as is an evidence of the existence of most of the decisions contested.

66. Regardless of the position of the Parliament in the above-mentioned undated document with instructions on the line-to-take issued by the Spokesperson's Unit, which pretends that the legal situation of the applicants as elected Members of the European Parliament has nothing to do with the European Parliament, and tries to cover the Parliament's own acts, the contested acts have all been adopted by the European Parliament, even if in collusion with the Spanish political allies of its outgoing President.
67. Parliament's failure to react to the applicants' letters of 29 and 30 May 2019, and 14, 20 and 24 June 2010 is to be read as the result of the contested acts. Parliament's remarkable silence (even though it has a line-to-take is at odds with the swift response that the President of the European Parliament gave to the letter sent by his Spanish political allies on 28 May 2019 requesting the applicants not to be granted access to the Parliament and denied their preliminary accreditation.
68. All of the contested acts of direct an individual concern to the applicants, since they are aimed at preventing the applicants from taking their seats in Parliament with effect from the opening of the first sitting following the elections, scheduled for 2 July 2019.
69. The Court of Justice has defined the concept of 'individual concern' as follows:
"Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed" (see, to that effect, judgment of 15 July 1963, C-25/62, EU:C:1963:17). How each of the contested acts are of direct an individual concern to the applicants will be developed in each of the pleas.
70. Furthermore, all of the contested acts are intended to produce binding legal effects *vis-à-vis* the applicants, namely to prevent them from taking their seats as Members of the European Parliament in accordance with the results of the election to the European Parliament and the democratic will of the people that voted for them, as it will be developed in each of the pleas.

- Preliminary argument as to the main fundamental rights at stake, common to all the pleas in law

71. For a better understanding of all the pleas in law in this application, it is fundamental to take into account that all of the reviewable acts against which this application for annulment is directed, and therefore **all of the pleas in law, have a common nexus:**

the infringement by Parliament, including by its outgoing President, of the applicants' right to up their duties as elected Members of the European Parliament, together with the rights of the sovereign power of the electorate that elected them as Members of the European Parliament, and therefore as representatives of the Union's citizens.

72. The right to stand for election, which includes the right to sit in Parliament once elected, is protected both under Article 39(2) of the Charter of Fundamental Rights of the European Union and Article 14(3) of the Treaty of the European Union. It is also protected under Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
73. To this effect, Article 6(3) of the Treaty of the European Union provides that *"fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."* Furthermore, Article 52(3) of the Charter provides that *"in so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention."*
74. Under the case-law of the Court of Justice, *"according to the explanations relating to the Charter (...) Article 39(2) takes over the basic principles of the electoral system in a democratic State"* (see, to that effect, judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 41.) These explanations shall be given due regard in accordance with Article 52(7) of the Charter.
75. Under the case-law of the European Court of Human Rights, the right to stand for election *"is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, [which] would only be illusory if one could be arbitrarily deprived of it at any moment."* (see, to that effect, judgment of 9 April 2002, *Podkolzina v Latvia*, 46726/99, paragraph 35.)
76. A necessary corollary of the right to stand for election is the right to take one's seat once elected. Thus, the European Commission of Human Rights recognised that *"it is not enough that an individual has the right to stand for election, he must also have a right to sit as a member once he has been elected by the people. To take the opposite view would render the right to stand for election meaningless"* (see, to that effect, decision of 7 March 1984, *M. v United Kingdom*) This view has since then been assumed by the European Court of Human Rights.
77. On several occasions, the European Court of Human Rights has also examined the lack of an effective remedy in the context of the electoral process under Article 13 of the Convention, which provides that *"everyone whose rights and*

freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” In particular, the ECtHR has addressed the issue of authorities which, *“through deliberate actions and omissions, prevent a parliamentary candidate from running.”*

78. In such a situation, according to the ECtHR, **if States were allowed not to put in place “effective procedures ensuring the proper unfolding of the democratic process, it would be possible in some cases for the authorities to arbitrarily deprive candidates of their electoral rights (see, by way of example, Podkolzina; Melnychenko; and Krasnov and Skuratov, §§ 18-34, 42 and 52-67, all cited above) and even to rig elections. Were that to be the case, the right to stand for Parliament, which along with the other rights guaranteed by Article 3 of Protocol No. 1 is crucial to establishing and preserving the foundations of a meaningful democracy (see, as a recent authority, The Georgian Labour Party v. Georgia, no. 9103/04, § 101, 8 July 2008), would be ineffective in practice.”**
79. Article 47 of the Charter of Fundamental Rights provides that *“everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.”* In accordance with Article 52(3), *“the meaning and scope of those rights shall be the same as those laid down by the said Convention.”*
80. Therefore, Article 47 of the Charter of Fundamental Rights shall be construed in accordance with Article 13 of the European Court of Human Rights (hereinafter, ECtHR). When a violation of a right that is *“crucial to establishing and preserving the foundations of a meaningful democracy”* under Article 39(2) of the Charter of Fundamental Rights such as the right to sit in Parliament is the direct result of the decisions of the European Parliament as regards the relevant provisions of the 1976 Electoral Act and of the Rules of Procedure of the European Parliament, not having an effective remedy would amount to a violation of Article 47 of the Charter too.
81. Certainly, Article 52(1) of the Charter authorizes limitations on the exercise of the rights and freedoms recognised by this Charter, as long as those limitations are *“provided for by law and respect the essence of those rights and freedoms.”* Pursuant to Article 52(1), such restrictions must be subject to the principle of proportionality. Finally, limitations *“may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”*
82. None of the decisions adopted by the Parliament which have restricted the right of the applicants to sit as Members of the European Parliament meet any of the requirements under Article 52(1) of the Charter.

83. In this context, Article 2 and Articles 10(1), (2) and (3) of the Treaty of the European Union shall also be given due regard.
84. In accordance with Article 2 of the Treaty, *“the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”*
85. Under Article 10(1) of the Treaty, *“the functioning of the Union shall be founded on representative democracy.”* In accordance with Article 10(2), *“Citizens are directly represented at Union level in the European Parliament.”* Finally, Article 10(3) provides that *“every citizen shall have the right to participate in the democratic life of the Union.”* These shall not be empty principles, but enforceable provisions directed at all the institutions of the European Union, particularly its Parliament.
86. As established in article 45(1) of the EU Charter of Fundamental Rights *“Every citizen of the Union has the right to move and reside freely within the territory of the Member States”*. The decision of the Parliament affect also the right of the applicants to circulate within the territory of the Union as elected and declared MEP as one of the prerogatives of any MEP and, moreover, freedom of movement also imply the right not to move or not to go to a specific place if the said person does not want it or may risk an arbitrary detention⁸ as it is the case of the applicant in the event they are forced, as pretended by the Parliament, to go to Madrid.

1. First plea in law, alleging that Parliament’s decision to deny the applicants’ access to the special reception service set up for elected Members of Parliament and the Instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declarations required by Rule 3(2) of the Rules of Procedure, infringe Articles 20, 21 and 39(2) of the Charter

87. Notice of 31 January 2006 from the Director-General of the Directorate-General for the Presidency to the Chairman of the Committee on Constitutional Affairs provides that *“whenever there is a European election, a special reception service is set up in Brussels and Strasbourg —from election day until the end of the constituent part-session week— to assist MEPs with their initial contacts with Parliament before their term of office begins. MEPs are informed in their own language of the formalities to be completed and the documents to be submitted so that the process of taking up their duties runs as smoothly as possible.” (A.38)*
88. According to that Notice from the Directorate-General for the Presidency, *“all MEPs receive a documentation folder containing Parliament’s Rules of Procedure, rules on expenses and allowances, the Handbook for Members, etc. and explaining how to*

⁸ We should remind that the UN Working Group on Arbitrary Detention have informed in the sens that the imprisonment of Mr. Junqueras is an arbitrary detention

access the various sources of parliamentary information.” Moreover, “after every election, Parliament’s Secretariat holds an information seminar for all new MEPs to explain how Parliament works.” Furthermore, according to the Notice, “the seminar takes place either in Brussels during the period set aside for political group meetings before the constituent part-session or in Strasbourg during the constituent part-session week.”

89. The explanatory statement of the Report of the Committee on Constitutional Affairs on the amendment of Rules 3 and 4 of Parliament’s Rules of Procedure (2005/2036(REG)) defined this Notice as *“best practice as developed by Parliament’s administration.”* (A.39-40)
90. On 22 May 2019, Karol Karski, Chair-in-Office of the Quaestors of the European Parliament, issued Notice 21/2019 as regards the *“Welcome Village for Members elected in the European elections 23-26 May 2019.”* It reads as follows: *“Further to the European elections taking place between Thursday 23 and Sunday 26 May 2019, welcome facilities shall be provided in a designated area called «Welcome Village» to help elected Members take up their duties. These will be organised as follows: In Brussels, 27 May - 28 June 2019”.* (A.41)
91. On 29 May 2019 Mr. Puigdemont and Mr. Comín went to the premises of the European Parliament in Brussels to attend the special reception service that under Notice 21/2019 shall be provided to help elected Members take up their duties. Mr. Puigdemont and Mr. Comín were prevented from entering the premises on the basis that they, together with the elected Member of the European Parliament Mr. Junqueras (also an opposition member belonging to the Catalan minority) were included in a list of people that were not allowed to enter into the premises or fulfil their obligations as elected MEPs.⁹ At the entrance, in the presence of one of Mr. Puigdemont and Mr. Comín’s lawyers, the personnel declared that this decision was made by the Secretary-General Mr. Welle.
92. On the same date, the leaders of Spanish Popular Party, Socialist Party and Ciudadanos requested the EP President to cancel all the provisional accreditations issued to the MEP elected in the circumscription of Spain and not to allow the applicants to enter into the premisses of the Parliament.
93. In an effort to conceal the discrimination, the President, at the request of his Spanish political allies who have requested him to do so, on his Instruction of 29 May 2019, decided to extend the refusal to all Members elected in Spain. Both the initial refusal and the President’s Instruction were express acts that were addressed to, or were at least of direct and individual concern to the applicants.

⁹ This situation was seen, at least, by MEPs Mrs. Diana Riba and Fernando Barrera

94. The contested acts had the binding legal effect of preventing the applicants from taking up their seats, and denying the applicants the information and services typically offered to newly elected Members.
95. By preventing the applicants from entering the premises of the Parliament and attending the special reception service set up for elected Members of Parliament, the contested acts prevented the applicants from, among other consequences:
- Preparing to assume their duties as elected MEPs
 - Submit the written declarations pursuant to Rule 3(2)
 - Fulfilling financial and administrative duties
 - Participating in the distribution of offices,
 - Obtaining their official email addresses so as to officially communicate with the institution and third parties,
 - Participating in the formation of parliamentary groups,
 - Developing the necessary political contacts for the purpose of their new position as elected Members of the European Parliament.
96. Parliament's decision, and President's subsequent Instruction of 29 May 2019, formed part of the creeping erosion of the rights of the applicants, including their political rights, and the rights of the electorate which elected them as Members of Parliament.
97. Parliament's decision to deny the applicants' access to the special reception service set up for elected Members of Parliament and the Instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declaration required by Rule 3(2) of the Rules of Procedure, are reviewable acts under Article 263 TFEU.
98. As explained above, Parliament denied the applicants' access at the special reception service set up for elected Members of Parliament on 28 May 2019 and even prevented them from entering the premises of the European Parliament. This amounted to discrimination against the applicants on the grounds of political affiliation and national origin, since all other new Members of the European Parliament elected in the constituency of Spain were welcomed to the special reception service, and have managed to fulfill all the necessary administrative duties, have obtained preliminary accreditations, assigned offices, official emails and have been able to participate in the political meetings of the different parliamentary groups.
99. Parliament's decision, and the President's subsequent Instruction satisfy the requirements of Article 263 TFEU, as interpreted by the Court of Justice, so as to constitute reviewable acts of the European Parliament. It is clear that as the Court has said in *Les Verts* – that “*any act of a Community body intended to produce legal effects vis-à-vis third parties must be open to judicial review*” and this was such an act. This doctrine has been ratified in *Sogelma v EAR* [2008] ECR II-2771 (Case

C-411/06) when the Court stated that *“The situation of Community bodies endowed with power to take measures intended to produce legal effects is identical to the situation which led to the Les Verts judgment; it cannot be acceptable, in a Community based on the rule of law, that such acts escape judicial review.”* And in this case it is clear that the instruction of the 29th of May 2019 was intended to deprive the applicants of their rights as elected MEP and should not escape the judicial review as pretended by the Parliament.

100. An immediate complaint was lodged with the Secretary-General Mr. Welle and the EP President Mr. Tajani which has not been answered until now. Just after the complaint was lodged, three Spanish MEP's reacted though, and demanded President Mr. Tajani to withdraw the provisional accreditation of all Spanish MEP's, with the motivation that they should take an oath first, before they would get granted any provisional accreditation. Mr. Tajani complied with this request, which didn't even come from the Spanish authorities but from these 3 MEP's.
101. In its letter of 29 May 2019 to Mr. González Pons, Ms. García Pérez and Mr. Nart, the President of the European Parliament defines preliminary accreditation process as a *“purely administrative practice offered by Parliament to incoming Members with a view to enabling them to take up their duties and be operational well in time for Parliament's constitutive session at the beginning of July. Welcoming new Members -as discussed by the Bureau and Quaestors on several occasions- comprises granting access to some initial facilities, such as a temporary badge and a welcome information package, and handing out administrative forms.”*
102. President Tajani further adds in its letter that *“as it has always been the case in the past, the administration grants these facilities provisionally, on the basis of unofficial information coming from Member States. However, as it follows from the communication of the Quaestors of 22 May 2019, accreditation only becomes definitive when the national authorities notify the European Parliament the list of elected Members.”*
103. The President of the Parliament, fearing an action for annulment, notes in its letter that *“this administrative practice has no legal effect and does not give rise to any of the rights belonging to a Member. Indeed, as you know, it is up to national authorities, not the European Parliament, to determine and declare final election results.”*
104. However, until now neither Mr. Puigdemont nor Mr. Comín have been able to obtain their preliminary accreditation nor to fulfil their obligations as elected and declared MEP nor receive the treatment they deserve as elected and declared MEP.
105. Both the initial decision not to allow the applicants into the special reception service, and the President's subsequent Instruction of 29 May 2019 not to allow other

new Members of Parliament elected in Spain into the Parliament premises for such special reception service, except for those belonging to certain political parties, are clear acts of discrimination on political grounds, as the President itself concedes, and national grounds, against the applicants, in breach of Articles 20, 21 and 39(2) of the Charter, which are attributable to the European Parliament, and in particular to its President.

106. These decisions had the binding effect, among others, of preventing the applicants from submitting the written declarations pursuant to Rule 3(2) of the Rules of Procedure. This shall have the subsequent effect of preventing from sitting at the first session of 2 July 2019.

2. Second plea in law, alleging that Parliament's decision not to take note of the results officially declared by Spain of the election 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, which does not include the applicants, infringes Article 12 of the 1976 Electoral Act, in connection with Article 39(2) of the Charter

107. As recalled above, Article 10(1) of the Treaty of the European Union (TEU) provides as follows: ***"The functioning of the Union shall be founded on representative democracy."*** Article 10(2) TEU provides that ***"citizens are directly represented at Union level in the European Parliament."***

108. Under Article 14(3) TEU, ***"the members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot."*** Moreover, Article 5(1) of the 1976 Electoral Act concerning the election of the Members of the European Parliament by direct universal suffrage specifies the following: ***"The five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election."***

109. Furthermore, Article 3(2) of the European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament provides that ***"the number of representatives in the European Parliament per Member State taking up office shall be the one provided for in Article 3 of the European Council Decision 2013/312/EU until the withdrawal of the United Kingdom from the Union becomes legally effective."***

110. As per Article 12 of the 1976 Electoral Act, ***"the European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers."***

111. When shall Parliament take note of the results declared officially by the Member States is not explicitly defined in Article 12 of the 1976 Electoral Act. However, in the light of Article 5(1) of the 1976 Electoral Act, it follows that Parliament must take note of the results declared officially by the Member States before the first session following each election.
112. Any other interpretation would either make impossible that the five-year term for which Members of the European Parliament begins at the opening of the first session following each election in accordance with Article 5(1) of the 1976 Electoral Act, or result in a complete lack of legal certainty as to which representatives may take their seats at the Parliament's first sitting.
113. In two relevant precedents to this case, the Court of Justice set forth that *"the use of the expression 'take note' in the context of the 1976 [Electoral] Act must be interpreted as indicating the Parliament's complete lack of discretion in the matter"* (see, to this effect, judgment of 7 July 2005, *Le Pen v Parliament*, C-208/03 P, EU:C:2005:429, paragraph 50, and judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 55.)
114. In *Donnici*, the Court of Justice established that *"by virtue of Article 12 of the 1976 [Electoral] Act, the Parliament was required to take note of the declaration made by the National Electoral Office and did not have the power to depart from it on account of the alleged irregularities affecting that national measure."* (see, to that effect, judgment of 7 July 2005, *Le Pen v Parliament*, C-208/03 P, EU:C:2005:429, paragraph 50, and judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 75.)
115. On 13 June 2019, the competent authorities of Spain declared the official results of the elections to the European Parliament of 26 May 2019, including the names of the elected Members of the European Parliament. Such results, including the declaration of the applicants as elected Members of the European Parliament, were published in the Spanish Official Gazette on 14 June 2019. The applicants delivered a copy of such declaration to the President of the European Parliament attached to their letter of 14 June 2019.
116. As provided in *Donnici*, *"that declaration is the result of a decision-making process which complies with the national procedures (...) and therefore constitutes a pre-existing legal situation."* (see, to this effect, judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 55.)
117. The applicants are aware that Rule 3(1) of the Rules of Procedure of the European Parliament (*"the President shall invite the competent authorities of the Member States to notify Parliament without delay of the names of the elected Members"*), Rule 3(2) (*"Members whose election has been notified to Parliament"*), and Rule 3(4) (*"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") refer to the notification of the results made by the Member States (A.42).

118. Nevertheless, pursuant to Article 12 of the 1976 Electoral Act, and in accordance with the case-law of the Court of Justice, Parliament shall take note of the results officially declared by the Member States.
119. While the notification provided for in Rule 3(1), (2) and (4) of the Rules of Procedure of the European Parliament can be read as an expression of the principle of sincere cooperation between the Union and the Member States, in case of a discrepancy between such notification and the results declared officially by a Member State, the latter shall prevail, since in accordance with the case-law of the Court of Justice, *"pursuant to the principle of hierarchy of norms, the Parliament may not rely on a provision of its Rules of Procedure and its alleged practice in this area to interpret (...) the 1976 [Electoral] Act in a manner which is contra legem"* (see, to that effect, the judgment in *Italy and Donnici v Parliament*, paragraph 47.)
120. Holding otherwise would amount to a breach of the political rights of applicants and the voters that elected them as Members of the European Parliament (Articles 10(2) TEU and 39(2) of the Charter), and would undermine one of the most precious values on which the Union is founded: representative democracy (Articles 2 and 10(1) TEU.)
121. The procedure by which the European Parliament takes note of the results of the election declared officially by Member States, as well as the process of verification of credentials, has often been conducted by Parliament in an informal way.
122. As regards the verification of credentials, Parliament only conducts complete proceedings in accordance with Rule 3 of the Rules of Procedure at the beginning of each parliamentary term. The verification of credentials of Members which take their duties as a consequence of a vacancy is generally conducted expeditiously. In practice, it takes place without a written report by the committee responsible.
123. Even less formal and transparent is the act of Parliament of taking note of the results declared officially by the Member States in accordance with Article 12 of the 1976 Electoral Act. In practice, the body of Parliament which does so is the Directorate-General for the Presidency of the European Parliament, one per Member State¹⁰.

¹⁰

http://www.europarl.europa.eu/france/resource/static/files/import/deputes_europeens_elus_en_france_2019/notification-officielle-elus-fr_2019.pdf

124. The decision to take note of an incomplete list of Members of the European Parliament, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47), is a reviewable act insofar as it departs from the results declared officially by Spain, as long as Parliament, despite having no discretion in the matter in accordance with the case-law of the Court of Justice, decides to disregard the results as declared officially by the competent Spanish authorities. Such decision has clear legally binding effects *vis-à-vis* the applicants and is also of direct and individual concern to the applicants, inasmuch Parliament refuses to take note of their election.
125. In the document of Directorate-General for the Presidency of 17 June 2019, the European Parliament even acknowledges, through a footnote, that it is not taking note of the results declared officially by Spain, including the names of all the Members of European Parliament elected in Spain, but of a list of an incomplete list notified by the Spanish authorities (see, to that effect, the “communication” of 17 June 2019 on the Members of the European Parliament elected in Spain. (A.43)). This has been confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47),
126. Parliament is therefore, in breach of Article 12 of the 1976 Electoral Act, not taking note of the **“of the results declared officially by the Member States”** (those published in the Spanish Official Gazette on 14 June 2019) but of an incomplete list of elected Members of the European Parliament notified by the Spanish authorities.
127. As the Parliament itself concedes, its “communication” does not include the 54 elected Members in Spain that, according to Article 3(2) of the European Council Decision (EU) 2018/937 of 28 June 2018, shall take up office on 2 July 2019. By failing to take note of the results officially declared by Spain (which are those published in the Spanish *Official Gazette* of 14 June 2019) before the opening of the first session following the election, and taking note of such incomplete list, has breached its obligation under Article 12 of the 1976 Electoral Act.
128. The European Parliament, in departing from the results declared officially by Spain, Parliament has not only disregarded those obligations under the 1976 Electoral Act, but also its most elemental duties under Rule 3(1) of the Rules of Procedure, which provides that *“the President shall invite the competent authorities of the Member States to notify Parliament without delay 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.”*
129. Since, as the European Parliament concedes in its document of 17 June 2019, the Spanish authorities have sent a list of names that does not include the names of all the elected Members, the President of the Parliament should have sent another request to the competent authorities of the Member States *“to notify without delay 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,” as provided in Rule 3(1). Due to its lack of discretion in the matter, Parliament cannot accept a list notified by a Member State that does not contain the names of all the elected Members according to the results declared officially by the Member States.

130. Where (as here) the competent authorities of a Member State fail to notify a complete list, thereby violating the disregard obligation of sincere cooperation under Article 4(3) TEU, it is incumbent on the European Parliament confirmed by Article 12 of the 1976 Electoral Act, to take note of the results officially declared by Spain (as published in this case in the Spanish Official Gazette on the 14th of June 2019), in order not to infringe the applicants’ right to stand for election or the rights of the citizens of the Union who they represent.

131. By failing to do so, Parliament has relied on the provisions of its Rules of Procedure and its alleged practice in this area to interpret the 1976 Electoral Act in a manner which is *contra legem* (see, to that effect, the judgment in *Italy and Donnici v Parliament*, paragraph 47) infringing the political rights of the applicants and of the citizens of the Union they represent under Article 14(3) TEU.

132. In any event, in case there is a dispute as regards the results of the election which falls under the 1976 Electoral Act, Rule 3(2) of the Rules of Procedure of the European Parliament obliges Parliament to allow all the elected Members to take up their duties until there is a ruling on such dispute, as will be developed in the fourth plea in law.

3. Third plea in law, alleging that Parliament’s decision to treat the communication of the Spanish Central Electoral Commission of 20 June 2019 as depriving of effect the declaration of the applicants as elected MEPs, which amounts to an unlawful declaration of a vacancy, attributable to the Parliament, infringes Articles 6(2), 8 and 13 of the 1976 Electoral Act, in connection with Article 39(2) of the Charter

133. On 20 June 2019, the Spanish authorities communicated to the President of the European Parliament a declaration of suspension (*sic*) of the privileges and immunities of the applicants. As is clear from the undated document with instructions on the line-to-take as regards the situation of the applicants issued by its Spokesperson’s Unit, the European Parliament has decided to treat such communication as a withdrawal of the applicant’s mandates.

134. Such decision of the European Parliament misapplies Article 13 of the 1976 Electoral Act and amounts to an establishment of a vacancy attributable to the Parliament itself, in circumstances other than the ones provided for in the 1976 Electoral Act.

135. As mentioned, Parliament's decision to treat such communication as a withdrawal of the applicant's mandate infringes Article 13 of the 1976 Electoral Act, but also the rights of the applicants to be elected and to sit in Parliament under Article 39(2) of the Charter, and the sovereign power of the votes that elected them as Members of the European Parliament in accordance with article 10(2) and 10(3) TEU.
136. Certainly, the Court of Justice held in *Donnici* that "*Article 12(2) of the 1976 [Electoral] Act in its original version excluded any discretion by the Parliament even in the event of withdrawal of the mandate of one of its members resulting from the application of national provisions which have an effect on the existing composition of that institution*" (see, to that effect, judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 56.)
137. However, that does not mean that the Parliament is obliged to treat a purported suspension of privileges by a Member State, which clearly infringes Article 6(2) of the 1976 Electoral Act in connection with Article 9 of Protocol No 7, as a declaration of vacancy, regardless of its wording in Spanish law, when such vacancy does not fall into one of the categories provided for in Article 13(1) of the 1976 Electoral Act.
138. Article 12(2) of the 1976 Electoral Act, in its original version, provided that "*where a seat falls vacant pursuant to national provisions in force in a Member State, the latter shall inform the Assembly, which shall take note of that fact. In all other cases, the Assembly shall establish that there is a vacancy and inform the Member State thereof.*" Under the version of the 1976 Electoral Act that was in force before Council Decision 2002/772 of 25 June 2002 and 23 September 2002, Member States were allowed to provide for a vacancy in any sort of circumstances, including but not limited to withdrawals of mandates, and Parliament was obliged to take note of such decision.
139. Council Decision 2002/772 of 25 June 2002 and 23 September 2002 modified that situation. Under new Article 13(1) of the 1976 Electoral Act, "*a seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.*" Therefore, after the entry into force of the current Article 13(1) of the 1976 Electoral Act, a seat shall only fall in those circumstances.
140. Parliament is not allowed to treat a suspension of privileges and immunities which clearly does not imply the withdrawal of the mandate, as the Spanish authorities themselves made clear in their communication of 20 June 2019, as if the seat had fallen vacant.

141. The Spanish authorities communication of 20 June 2019 could not have any effect in the internal sphere of the Parliament. The decision itself is contradictory and does not fit with any of the situations regulated by the 1976 Act or the Rules of Procedure.
142. First, because neither the Treaties nor the 1976 Electoral Act allow the laws of the Member States to suspend the privileges and immunities of the Members of the European Parliament. It is its sole power to do so.
143. Second, because a Member State can only declare that a seat has fallen vacant in the event of a withdrawal of the mandate in accordance to Article 13(3) of the 1976 Electoral Act. Although what is a withdrawal of the mandate might be ambiguous in certain circumstances, it is clear that a withdrawal of the mandate does not arise when national law does not lay down appropriate procedures for filling the vacant seat in accordance to Article 13(2) of the 1976 Electoral Act, as it is the applicants' case.
144. As long as the suspension communicated by the Spanish authorities does not amount to a withdrawal of the mandate of the applicants in the sense of Article 13 of the 1976 Electoral Act, it should have been treated as a non-existent act as for the 1976 Electoral Act and the Parliament should have refused to establish the vacancy in accordance to Rule 4(7) of the Rules of Procedure. As long as the Parliament has decided to take note of the communication of the Spanish authorities of 20 June 2019 and to treat such communication as a withdrawal of the mandate of the applicants, which it was not, in a situation not foreseen either in the 1976 Electoral Act nor in the Treaties, the decision to declare vacant the seats of the applicants is attributable to the Parliament.
145. In accordance with the case-law of the Court of Justice, Parliament is not allowed under Article 12 of the 1976 Electoral Act to rule on whether the communication of the Spanish authorities of 20 June 2019 is valid under Spanish law or even under Union law as a whole. But Parliament is obliged under the 1976 Electoral Act to assess whether a communication by a Member State is capable of producing legally binding effects in the composition of the Parliament in accordance with the provisions of Article 13 of the 1976 Electoral Act, especially when, as it is the case, the communication of the Spanish authorities is silent about the matter and does not mention what is the legal basis of such communication under the 1976 Electoral Act.
146. Holding otherwise would mean that Parliament would be obliged to give effect to any communication by a Member States even where a Member States acts clearly outside its competence under the 1976 Electoral Act. It is clear that Parliament is not obliged to take note of communications of the Member States on issues (such as a declaration of suspension of privileges) which are not of the competence of the Member States.

147. The Spanish authorities communication of 20 June 2019, a purported suspension of privileges and immunities which, by virtue of Articles 13(1), (2) and (3) of the 1976 Electoral Act, cannot have the legal effect of creating a vacancy, contrary to the European Parliament's approach, as such vacancy does not fall in any of the circumstances under Article 13(1) of the 1976 Electoral Act, and does not match Article 13(2) of such Act.
148. The Parliament has renounced its obligations and rights as it is the only competent institution that can decide on the rights and immunities of the MEP, when so allowed by Protocol (No 7), as it is the case in Article 9. It is important to notice that the applicants have been deprived of their rights and immunities by the Spanish Central Electoral Commission which is an administrative body with no capacity to take such a decision, a decision that has not been reviewed by any judicial authority.
149. Parliament failed to act in accordance to its obligations with regard to the communication sent by Spain on the 20 June 2019 which does not correspond with the provisions stated in Article 13 of the 1976 Act.
150. The applicants are not in any of the three situations prescribed in Article 13(1) of the 1976 Act (resignation, death or withdrawal of the mandate) and it was the Parliament obligation not to treat the communication of the Spanish Central Electoral Commission because as a declaration of vacancy, which amounts to a declaration of vacancy attributable to the Parliament. By acting in this way the Parliament is giving up its obligations under Article 13 of the 1976 Act.
151. By treating the communication of the Spanish Central Electoral Commission on 20 June 2019, the President of Parliament fails to preserve the *"integrity as a democratic legislative assembly" of the European Parliament. Indeed, Rule 5(2) of its Rules of Procedure state that "In exercising its powers on privileges and immunities, Parliament shall act to uphold its integrity as a democratic legislative"*. In this case, upholding its integrity would have meant to ensure there are 751 full Members of the European Parliament, as per the European Council Decision (EU) 2018/937 of 28 June 2018.
152. The integrity of the Parliament is undermined by stripping three of its Members, including the applicants, from their mandate without any legal basis, and depriving them from any effective remedy and/or the right to take their seats while the dispute is resolved by the competent bodies.
153. This decision attributable to the Parliament, inasmuch as it deprives the applicants of their rights as elected MEPs is able to produce binding effects on them and should therefore be reviewed by the Court.

4. Fourth plea in law, alleging that Parliament's decision 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, infringes Rule 3(2) of the Rules of Procedure of the European Parliament, in connection with Articles 5(1) and 12 of the 1976 Electoral Act, Article 39(2) of the Charter and Articles 10(1) and (2) and 14(2) and (3) TEU

154. Rule 3(2) of the Rules of Procedure provides that *"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 above-mentioned declaration, they shall take their seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto."*

155. Rule 3(2) of the Rules of Procedure has been as such in the Rules of Procedure of the European Parliament since 26 March 1981, although at the time it was Rule 6(3). In its current version, it was introduced when a general revision of the Rules of Procedure was adopted, on the basis of the Luster report (Doc. 1-926/80), as a consequence of the first elections to the European Parliament held in 1979. However, Rule 3(2) finds its roots in Rule 4(5) the Rules of Procedure of the European Parliamentary Assembly of 23 June 1958.

156. Rule 3(2) of the Rules of Procedure, in its current version, has a clear connection with Article 12 of the 1976 Electoral Act. Under Article 12, *"the European Parliament (...) 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."* Under Rule 3(3) of the Rules of Procedure, *"Parliament shall (...) rule (...) on any disputes referred to it pursuant to the provisions of the Act of 20 September 1976, other than those which, under that Act, fall exclusively under the national provisions to which that Act refers."*

157. It has also a clear connection with Article 5(1) of the 1976 Electoral Act, which provides that *"the five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election."* This provision would become meaningless if the existence of a dispute could have as a consequence a vacated seat in the European Parliament until such dispute is settled.

158. Moreover, due consideration shall be given to the fact that in this case there is no dispute between two contenders, but a dispute on whether two elected Members of Parliament are allowed to take up their seats.

159. Also, it has to be taken into account that the right of elected Members pursuant to Rule 3(2) of the Rules of Procedure of the European Parliament to take their seats in

Parliament and on its bodies and to enjoy all the rights attaching thereto until such time a ruling has been given on any dispute is an expression of the fundamental right to stand for election and to sit in Parliament once elected enshrined in Article 39(2) of the Charter of Fundamental Rights.

160. Certainly, since the adoption of the European Parliament decision on the amendment of Rules 3 and 4 of Parliament's Rules of Procedure (2005/2036(REG)), Rule 3(2) has been introduced by the phrase "*every Member whose election has been notified to Parliament.*" However, such amendment did not intend to restrain the scope of Rule 3(2), but to make the right to take the seat in Parliament and on its bodies and to enjoy all the rights attaching thereto "*subject to the prior delivery of a declaration that the elected Member does not hold any office incompatible with that of a Member of the European Parliament within the meaning of Article 7(1) and (2)*" of 1976 Electoral Act, and to implement "*the existing practice of addressing the Member States' authorities in order to draw attention to the need for timely notification in order to ensure the proper functioning of the newly elected Parliament as from its constituent session.*"¹¹

161. In any event, "*pursuant to the principle of hierarchy of norms, the Parliament may not rely on a provision of its Rules of Procedure and its alleged practice in this area to interpret (...) the 1976 [Electoral] Act in a manner which is contra legem*" (see, to that effect, the judgment in *Italy and Donnici v Parliament*, paragraph 47.)

162. In this case, the applicants have brought different disputes both before the European Parliament and before the judicial authorities of Spain, in accordance with the distribution of competences established in Articles 8 and 12 of the 1976 Electoral Act and the relevant case-law of the Court of Justice.

163. On 24 June 2019, the applicants lodged a dispute to the European Parliament pursuant to the provisions of the 1976 Electoral Act as regards Parliament's failure to take note of the results of the election declared officially by Spain, and subsequent decision to take note of an incomplete list of elected Members notified by the Spanish authorities on 17 June 2019. The dispute lodged to the European Parliament also disputed the effects of the unprecedented communication of the Spanish authorities of 20 June 2019 (**see document in A.34**).

164. The dispute referred to the European Parliament under Article 12 of the 1976 Electoral Act and Rule 3(3) of its Rules of Procedure relied on the following arguments:

165. First, that Parliament's failure to take note of the results of the election declared officially by Spain, and its subsequent decision to take note of an incomplete list of elected Members notified by the Spanish authorities breaches Article 12 of the 1976

¹¹ See Report of the Committee on Constitutional Affairs of 14 September 2006 (**A.39** mentioned above).

Electoral Act itself, which clearly provides that Parliament is obliged to take note of the “*results declared officially by the Member States.*” The only results declared officially by Spain are the ones published in the Spanish Official Gazette on 14 June 2019.

166. The applicants’ representatives argued that Parliament’s failure to take note of the results of the election declared officially by Spain breaches the case-law of the Court of Justice, which states that “*the use of the expression ‘take note’ in the context of the 1976 [Electoral] Act must be interpreted as indicating the Parliament’s complete lack of discretion in the matter*” (see, to that effect, judgment of 7 July 2005, *Le Pen v Parliament*, C-208/03 P, EU:C:2005:429, paragraph 50, and judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 55.)
167. Second, that the Spanish authorities communication of 20 June 2019 could not produce any binding effect on the composition of the European Parliament under Articles 1(3), 5(1), 6(1) and (2), 8, 12 and 13 of the 1976 Electoral Act, and Rule 4(7) of the Rules of Procedure.
168. The referral in Article 8 of the 1976 Electoral Act to national law with regard to the electoral procedure of the elections to the European Parliament does not allow Member States to create additional requirements for the elected Members of the European Parliament to be able to take up their duties in Parliament, other than the additional incompatibilities referred to in Article 7(3) of the 1976 Electoral Act, once the official results of the election have been declared in accordance with Article 12 of the 1976 Electoral. Under Article 5(1) of the 1976 Electoral Act, new Members of the European Parliament shall be able to take their duties as of the opening of the first session following each election. The opposite conclusion would undermine the functioning of the Union as a representative democracy, as provided for in Article 10(1) TEU.
169. As long as the power to suspend or waive the immunity of its elected Members is of the sole competence of the European Parliament under Article 6(2) of the 1976 Electoral Act, in connection with Article 9 of Protocol (No 7), the suspension of the privileges and immunities of the applicants declared in the communication of the Spanish authorities’ communication of 20 June 2019 cannot produce any binding effect on Parliament.
170. Furthermore, the declaration of suspension (*sic*) of privileges and immunities declared in the communication from the Spanish authorities of 20 June 2019 does not amount to an actual vacancy in the sense of Article 13(1) of the 1976 Electoral Act, since the declared suspension does not constitute a withdrawal of the mandate pursuant to Article 13(3). This is not the case, as expressly established in the communication from the Spanish authorities of 20 June 2019, and therefore the

Spanish authorities' communication of 20 June 2019 cannot produce any binding effect on Parliament.

171. The dispute brought before Parliament under Article 12 of the 1976 Electoral Act also recalled Parliament, in accordance with the recent case-law of the Court of Justice in *Delvigne*, Article 39(2) of the Charter "**Article 39(2) takes over the basic principles of the electoral system in a democratic State.**" Article 1(3) of the 1976 Electoral Act has substantially the same content as Article 39(2) of the Charter, as acknowledged by the Court of Justice in *Delvigne* (see, to that effect, judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraphs 41 and 44.) Therefore, Parliament shall have the right to settle disputes that fall under Article 1(3) of the 1976 Electoral Act too.
172. The dispute brought before Parliament on 24 June 2019 has not yet been settled pursuant to Article 12 of the 1976 Electoral Act and Rule 3(3) of the Rules of Procedure. It is important to underline that the dispute brought before Parliament does not intend that Parliament rules on disputes based on the national laws arising out exclusively of the national provisions to which the 1976 Electoral Act refers, or even under Union law as a whole. The applicants are aware of the case-law of the Court of Justice in *Donnici*, which states that such a request would exceed the powers of the Parliament.
173. The scope of the dispute is constrained to the obligation of Parliament under the act to take note of the results declared officially by the Member States, and challenges the effects that the Spanish authorities' communication of 20 June 2019 is able to produce as regards the composition of the European Parliament pursuant to the provisions of the 1976 Electoral Act.
174. In accordance with Article 12 of the 1976 Electoral Act and with Rule 3(3) of the Rules of Procedure of the European Parliament, the applicants have also brought the disputes falling exclusively under the national provisions to which the 1976 Electoral Act refers before the Supreme Court of Spain (A.44). The disputes brought before the Spanish judicial authorities have not been settled yet either.
175. Therefore, pursuant to Rule 3(2) of the Rules of Procedure, in connection with Article 5(1) of the 1976 Electoral Act and the right to stand for election and sit in Parliament once elected protected under Article 39(2) of the Charter of Fundamental Rights, as interpreted in accordance with the case-law of the European Court of Human Rights, shall be allowed to take their seats in Parliament and on its bodies and shall enjoy all the rights attaching thereto until a ruling has been given on the disputes referred both to Parliament and to the judicial authorities of Spain
176. It has to be taken into account that, since the adoption of the European Parliament decision on the amendment of Rules 3 and 4 of Parliament's Rules of Procedure

(2005/2036(REG)), Rule 3(2) provides that the right of elected Members of Parliament to take up their duties is "*subject to the prior delivery of a declaration that the elected Member does not hold any office incompatible with that of a Member of the European Parliament within the meaning of Article 7(1) and (2)*" of the 1976 Electoral Act.

177. Rule 3(2) of the Rules of Procedure also provides that "*following general elections, the declaration shall be made, where possible, no later than six days prior to Parliament's first sitting following the elections.*"
178. This time limit was introduced as a result of an amendment by Member of the European Parliament Panayiotis Demetriou under the justification that "*it is important that the written declaration of the Member is made some days prior to the first meeting of the Parliament following elections in order to allow for some time for the necessary bureaucratic first view and procedure to be completed. This way, we provide for this additional safety net to be verified before the first meeting of the Parliament following elections, in order to ensure the validity of the [sic] any decisions taken in this first meeting, for example, the election of the President.*" (A.45)
179. Parliament's decision not to abide by the right under Rule 3(2) of the Rules of Procedure and not to allow the applicants to make the said declarations, even when formally requested to do so in a letter on 24 June 2019, **as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47)**, amounts to a breach attributable to the European Parliament of the fundamental right to stand for election and to sit in Parliament once elected which is attributable to Parliament.
180. Pursuant to Rule 3(2) of the Rules of Procedure of the European Parliament, new Members "*shall declare in writing, before taking their seat in Parliament, that they do not hold any office incompatible with that of Member of the European Parliament within the meaning of Article 7(1) or (2) of the Act of 20 September 1976. Following general elections, the declaration shall be made, where possible, no later than six days prior to Parliament's first sitting following the elections.*"
181. In these circumstances, the expiry of the maximum period before the opening session of the European Parliament provided for in Rule 3(2) of its Rules of Procedure without Mr Puigdemont and Mr Comín being permitted to make the written declarations envisaged in that Rule constitutes an act of refusal to guarantee that right under the Rules of Procedure, the effect of which is to prevent them from taking their seats as elected Members of Parliament. This decision of the European Parliament is final, in the sense that, as a direct result of it, the applicants will not be able to begin their term of office on 2 July 2019, until the disputes brought before Parliament is

settled. Therefore, it has had legally binding effects and is of the applicants' individual and direct concern.

182. In light of Rule 3(2) of the Rules of Procedure of the European Parliament, in connection with Article 5(1) of the 1976 Electoral Act and Article 39(2) of the Charter of Fundamental Rights, the Parliament ought to have allowed Mr. Puigdemont and Mr Comin to make the written declarations provided for in Rule 3(2) and to take their seats accordingly from the date of the first sitting, at least until the disputes brought before Parliament and before the judicial authorities of Spain are settled.

5. Fifth plea in law, alleging that the President of the Parliament's decision refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, in accordance with Rule 8 of the Rules of Procedure infringes Rule 5(2) of the same Rules.

183. On 20 June 2019, the applicants sent a letter to the President of Parliament requesting him to take an initiative to assert, as a matter of urgency, their privileges and immunities as elected Members of the European Parliament. The letter was explicitly presented as an application pursuant to Rule 8 of the Rules of Procedure, based on the certain threat of arrest and arbitrary detention if the applicants travelled to Madrid to swear allegiance to the Spanish Constitution. Indeed, they knew at the time that another elected MEP was denied the request to be temporarily released from prison in order to do just that.

184. According to the relevant precedents of the European Parliament, "*as regards the duration of immunity, (...) immunity is considered to take effect when the results of the election are announced and to cease at the end of a Member's term of office*" (see, to this effect, the Donnez report of 10 October 1986, A2-0121/86).

185. This is the position that the European Parliament has consistently held over the years. In the European Parliament decision on the request for upholding of the immunity and privileges of Francesco Musotto (2002/2201(IMM)) (A. 46), the Parliament insisted that "*in view of its purpose, Articles 9 and 10 of the Protocol on the privileges and immunities must be interpreted in such a way that these provisions are effective from the time of publication of the results of the elections to the European Parliament.*"

186. It is to be recalled that, under Article 5(2) of the Rules of Procedure of the European Parliament, "*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."

187. One of the purposes of the aforementioned rule is to impose a mandate on the Parliament to defend the privileges and immunities, particularly when its composition and ability to function normally could be at risk. Indeed, Rule 7(2) of its Rules of Procedure states that *"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..."*
188. With regard to the President's refusal to assert the privileges and immunities of the applicants as MEPs, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47), the applicants note the judgment of the Court of Justice in Joined Cases C-200/07 and C-201/07, *Marra*, in which the Court held that a decision to defend the immunity *"constitutes an opinion which does not have binding effect with regard to national judicial authorities"* (see, to that effect, judgment of 21 October 2008, *Marra*, C-200/07 and 201/07, EU:C:2008:579, paragraph 39).
189. Notwithstanding, all known decisions along those lines refer to decisions to defend or not defend the immunity of Article 8 of the Protocol, rather than that of Article 9. In this sense, see order of 5 September 2012, *Farage v European Parliament and Buzek*, T-564/11, EU:T:2012:403, paragraph 28; order of 1 February 2018, *Collins v Parliament* T-919/16, EU:T:2018:58, paragraph 28; or *Patriciello*, C-163/10, EU:C:2011:543, paragraph 39).
190. The Court has always been careful to distinguish that the parliamentary immunity of Members of the European Parliament, as provided for in Articles 8 and 9 of the Protocol, comprises the two forms of protection usually afforded to members of national parliaments in the Member States. That is to say, immunity in respect of opinions expressed and votes cast in the exercise of their parliamentary duties, and parliamentary privilege, including, in principle, protection from judicial proceedings (*Marra*, paragraph 24).
191. As in *Patriciello* was pointed out, the view that decisions of the Parliament to defend or not defend a Member's immunity is *"an opinion without any binding effect on national courts"* relies on the interpretation of Article 8 alone, *"for there is no provision in the Protocol obliging those courts to refer to the Parliament the decision whether the conditions laid down in Article 8 of the Protocol have been met."* Unlike Article 9 of the Protocol, Article 8 does not give Parliament a power to intervene nor does it refer to rules of national law (see, to that effect, *Marra*, paragraphs 35 to 40).

192. In Collins (T-919/16, paragraph 28) the Court clarified that “*case-law is not inconsistent*”, for cases in which it was accepted that “*the contested decision constituted a measure against which an action for annulment could be brought, it related to a Parliament decision waiving the immunity of one of its Members in accordance with the third paragraph of Article 10 of the protocol*” [currently Article 9]. When the Court has found that a decision did not constitute a measure producing binding legal effects capable of being the subject of an action for annulment, it was always a decision not to defend the immunity of an MEP provided for in Article 8 of that Protocol, not Article 9.
193. The Court of Justice also, in any event, held that “*where an action has been brought against a Member of the European Parliament before a national court and that court is informed that a procedure for defence of the privileges and immunities of that Member, as provided for in Article 6(3) of the Rules of Procedure, has been initiated, that court must stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible*” (see, to that effect, judgment of 21 October 2008, *Marra*, C-200/07 and 201/07, EU:C:2008:579, paragraph 43.)
194. To the applicants view, this case-law applies, *mutatis mutandis*, as regards the procedure for asserting immunity under Rule 8 of the Rules of Procedure.
195. Insofar as the application under Rule 8 of 20 June 2019 was clearly referred to the freedom of movement protected under Article 9 of the Protocol, it is clear that the refusal to assert the applicants’ privileges and immunities has legal effects and should be capable of being the subject of an action for annulment.
196. In this case, the purpose of the refusal by the EP President to take such action as foreseen under Rule 8 is to preclude the applicants from taking their seats as Members of the European Parliament. That is a legally binding effect, which is properly justiciable under Article 263.
197. The binding legal effect of the EP President’s refusal, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.47), is underlined by the particular legal situation of the applicants in Spain. Although *Marra* was a case of Article 8, it nevertheless attributed a *procedural* binding legal effect on national courts to the application for defence of privileges and immunities of a Member, in connection with the principle of sincere cooperation. In particular, **the Court of Justice found that, when the court “is informed that a procedure for defence of the privileges and immunities (...) has been initiated, that court must stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible”** (see, to this effect, judgment of 21 October 2008, *Marra*, C-200/07 and 201/07, EU:C:2008:579, paragraph 43.)

198. It should be recalled that, as referred to in the facts, that the applicants have been subject to two European Arrest Warrants issued by the Supreme Court of Spain since November 2017, in Belgium and in Germany, on charges of rebellion and sedition. Both European Arrest Warrants were rejected by the judicial authorities of Belgium, in the case of Mr. Comín, and in Germany, in the case of Mr. Puigdemont. In the case in Belgium and with regards to Mr. Comín was rejected based on the lack of a valid national arrest warrant, and in the case of Mr. Puigdemont the German Court rejected the European Arrest Warrant on the basis of the lack of double criminality. The former on procedural grounds, and the latter on substantive grounds. In both cases, after the EAW was rejected the Spanish Supreme Court withdrew them.¹²

199. As also referred to in the facts, those charges are the same charges, on the exact same facts, under which the Spanish Supreme Court has held on remand without bail, now for more than a year and a half, among others, elected Member of the European Parliament Oriol Junqueras. According to Opinion No 6/2019 of 24 April 2019 by the United Nations Working Group on Arbitrary Detention, established by the Human Rights Council, *"the criminal charges against Messrs Cuixart, Sànchez and Junqueras¹³ were aimed at justifying their detention as a result of the exercise of their rights to freedom of opinion, expression, association, assembly and political participation, in contravention of articles 18 to 21 of the Universal Declaration and articles 19, 21, 22 and 25 of the Covenant, so it is arbitrary."*

200. The aforementioned legal opinions are enough to make the case that there is a *prima facie fumus persecutionis*, which would provide the basis for the Parliament to refuse to waive the immunity of the applicants. However, the very fact that there are outstanding arrest warrants against them, which obviously collide with the freedom of movement protected by Article 9 of the Protocol, should have led the President of the Parliament to take an initiative to assert the privileges and immunities of the applicants. Particularly in connection with the mandate for Parliament, pursuant to Rule 5(2) of its Rules of Procedure, to uphold its integrity as a democratic legislative assembly composed by 751 Members.

201. The initiative of the President that could be reasonably expected in these circumstances is to demand the courts of the Member State to stay the judicial proceedings and request in due course to the Parliament to waive the immunity of the applicants. The decision to waive or defend their immunity would by all means have binding effects on the courts.

202. The enormous legal implications of the decision of Parliament, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019

¹² This is perfectly described by the Parliamentary Assembly of the Council of Europe - Committee of Legal Affairs and Human Rights: report about Extradition requests and the abuse of process paragraphs 59, 60 & 61

¹³ Mr. Junqueras is the 3rd elected and declared MEP that was included in the list, with Mr. Puigdemont and Mr. Comín, preventing them to attend the reception service set up for elected Members of Parliament

(A.47), not assert the privileges and immunities of the applicants, and its binding effects on them, clearly justify the admissibility of the plea.

V.- EVIDENCES PRESENTED AND PROPOSED:

1.- The applicants submit as evidence all the document listed as annexes to this application with their description attached, and hereby request that they be accepted as evidence

2.- The applicants propose and request that, apart from the evidence included in this application as per point 1 above and described in the annexes, the following evidence should be brought to the Court:

a.- To request the Parliament for the minutes and transcription of the meeting of the Parliament's Bureau held on 17 June 2019

b.- To request the Parliament for a duly signed copy of the Legal Report written by Mr. Freddy Drexler on 15 April 2019

c.- Copies of all the written communications held between the President of the Parliament and its Cabinet and Mr. Drexler during April and May 2019

d.- Copies of all the written communications held between the President of the European Parliament and its Cabinet with the representatives of the Spanish Popular Party (EPP) and the Spanish Ciudadanos Party (ALDE) during May and June 2019

e.- The testimony as witness of Mr. Freddy Drexler,

f.- The testimony as witness of Mr. Antonio Tajani,

g.- The testimony as witness of all the Vice Presidents that attended the meeting of the Bureau of the Parliament, which took place on the 17th of June 2019,

h.- The testimony as witness of the Parliament General Secretary Mr. Klaus Welle

i.- The testimony as witness of MEP Mr. Esteban González Pons

j.- The testimony as witness of MEP Mr. Javier Nart

k.- The testimony as witness of MEP Mr. José Ramón Bauzá

l.- The testimony of MEP Mrs. Diana Riba

m.- The testimony of MEP Mr. Fernando Barrena

VI. FORM OF ORDER SOUGHT

On the basis of the foregoing, the applicants request the General Court of the European Union to:

- a) Annul the Parliament's decision to deny the applicants' access to the special reception service set up for elected Members of Parliament and the Instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declaration required by Rule 3(2) of the Rules of Procedure;
- b) Annul the Parliament's decision, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019, not to take note of the results officially declared by Spain of the election 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, which does not include the applicants;
- c) Annul 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, which amounts to an unlawful declaration of a vacancy that violates Article 13 of the 1976 Electoral Act, attributable to the Parliament;
- d) Annul 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;
- e) Annul the President of the Parliament's decision, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019, refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, in accordance with Rule 8 of the Rules of Procedure;
- f) Order the defendant to pay all costs of these proceedings, and in accordance with art. 340, second paragraph TFEU, order the defendant to pay compensation for the

damages suffered: the loss of monthly salary granted to the members of the European Parliament, plus 1 symbolic € for the moral damages.

In Luxembourg, 28 June 2019



Paul BEKAERT



Ben EMMERSON



Gonzalo BOYE



Simon BEKAERT

VI. LIST OF ANNEXES

Annex number	Description	Number of pages (incl. cover)	Placement in this document (page and paragraph)
A.1 (pages 1-2)	Power of Attorney	2	1
A.2 (pages 3-4)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Paul Bekaert.	2	1
A.3 (pages 5-6)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Ben Emmerson.	2	1
A.4 (pages 7-8)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Gonzalo Boye.	2	1
A.5 (pages 9-10)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Simon Bekaert.	2	1
A.6 (pages 11-43)	Protocol (No 7) on the Privileges and Immunities of the European Union.	33	2

A.7 (pages 44-47)	Spanish Official Gazette on the 2nd of April 2019, in which it is published the Decree calling elections to the European Parliament, to be celebrated on the 26th of May 2019.	4	7 (par. 3)
A.8 (pages 48-59)	Report of the Prosecutor Office on the 24th June 2019, requesting the dismissal of the appeal filed by the lawyer of Mr. Carles Puigdemont.	12	7 (par. 5)
A.9 (pages 60-64)	Document produced on 15 April 2019 at the request of Antonio Tajani by Mr. Freddy Drexler, the Jurisconsult at Parliament, which is referred by de author as SJ-0214/19 NL/NG/SAL/gr D2019)1257.	5	7 (par. 5)
A.10 (pages 66-129)	Spanish Official Gazette of 24 April 2019 in which it is published all the lists of candidates for the elections to the European Parliament registered before the Electoral Commission.	65	8 (par. 7)
A.11 (pages 130-144)	Complaint against the inclusion of Mr. Puigdemont and Mr. Comín and a third candidate (Ms. Clara Ponsatí) on the list of Lliures per Europa (Junts) filed by two political parties, Ciudadanos and Partido Popular, on the 25 April 2019.	15	8 (par. 8)
A.12 (pages 145-151)	Spanish Electoral Commission's decision on the 29 April 2019, excluding Mr. Puigdemont, Mr. Comín and Ms. Ponsatí from the electoral list of candidates.	7	8 (par. 10)

A.13 (pages 152-197)	Challenged of decision of de Spanish Electoral Commission by the applicants Mr. Puigdemont and Mr. Comín (as well as Ms. Ponsatí), as well as their coalition's representatives, on the 2 May 2019.	46	8 (par. 11)
A.14 (pages 198-206)	Report of the Spanish Prosecutor's Office on the 3rd of May 2019, in favour of the appeal, stating that Mr. Puigdemont and Mr. Comín could apply for a seat in the European Parliament.	9	8 (par. 12)
A.15 (pages 207-224)	Spanish Supreme Court's decision referring the case to Administrative Courts, on the 5 May 2019.	18	8 (par. 13)
A.16 (pages 225-234)	Resolution on the 6 May 2019 of the Administrative Courts Numbers 2 from Madrid in favor of the appeals, stating that Mr. Puigdemont and Mr. Comín were eligible to run for a seat in the European Parliament.	10	9 (par. 14)
A.17 (pages 235-237)	Resolution on the 9 May 2019 of the Constitutional Court confirming the decisions by declining to even hear the said appeals.	3	9 (par. 16)
A.18 (pages 238-242)	Letter from the lawyers for Mr. Puigdemont and Mr. Comín on the 29th of May 2019 to Mr. Tajani and the Parliament's Secretary General, demanding an explanation of what had happened and the impediments created to both of them.	5	10 (par. 21)
A.19 (pages 243-246)	Letter from the lawyers for Mr. Puigdemont and Mr. Comín on the 30 May 2019 to Mr. Tajani, urging him to	4	10 (par. 24)

	acknowledge and respect their rights as elected MEPs.		
A.20 (pages 247-337)	Letter to the President and the Vice-Presidents of the Parliament sent by eleven of the outgoing Members of Parliament on 31 May 2019, and the replay of several Vice-Presidents.	91	10 (par. 25)
A.21 (pages 338-341)	Decision of the Spanish Electoral Commission officially declaring the results of the elections held on May 26, on the 13 June 2019.	4	10 (par. 26)
A.22 (pages 342-359)	Spanish Official Gazette on 14 June 2019 in which published the official results and the official list of elected MEPs.	18	10 (par. 27)
A.23 (pages 360-362)	Letter sent to Mr. Tajani from Mr. Puigdemont and Mr. Comín on the 14th of June 2019, with the official results as declared and published in the Spanish Official Gazette and demanding to be recognized as elected MEPs.	3	10 (par. 28)
A.24 (pages 363-486)	Spanish Electoral Law.	124	11 (par. 30)
A.25 (pages 487-509)	Resolution of the Spanish Supreme Court Investigative Judge Mr. Pablo Llarena on the 15th of June 2019 the, refusing to withdraw the existing national arrest warrants issued against Mr. Puigdemont and Mr. Comín as part of the same proceedings.	23	11 (par. 31)
A.26 (pages 510-525)	Mr. Puigdemont's pledge of allegiance to the Spanish Constitution through a written statement done in front of a public notary through their legal representatives.	16	11 (par. 32)

A.27 (pages 526-541)	Mr. Comín's pledge of allegiance to the Spanish Constitution through a written statement done in front of a public notary through their legal representatives.	16	11 (par. 32)
A.28 (pages 542-546)	Decision of the Spanish Central Electoral Commission on 20th June 2019, refusing to accept Mr. Puigdemont and Mr. Comín's pledge of allegiance to the Spanish Constitution	5	11 (par. 32)
A.29 (pages 547-590)	Journal of Senate sessions of May 21, 2019, on which page 15 it can be verified that the Spanish Senate had accepted a written statement done in front of a notary public as a valid way of pledging allegiance to the Spanish Constitution.	44	11 (par. 32)
A.30 (pages 591-610)	Communication from United Nations Working Group on Arbitrary Detention (WGAD) issued on 24 April 2019.	20	11 (par. 34)
A.31 (pages 611-617)	General communication issued from the "Unité Administration des Députés", with the list of names of the elected MEPs, for public knowledge.	7	12 (par. 35)
A.32 (pages 618-647)	Request sent from Mr. Puigdemont and Mr. Comín to Mr. Tajani on 20 June 2019, based on article 8 of the Act of 1976, asking the European Parliament, as a matter of urgency, to assert their privileges and immunities.	30	12 (par. 36)
A.33 (pages 648-652)	Communication of the Spanish Central Electoral Commission to the European Parliament on 20 June 2019 claiming that our clients' privileges and immunities had been suspended and their seats (and that of Mr. Oriol Junqueras) had been left vacant.	5	12 (par. 37)

A.34 (pages 653-666)	Formal dispute lodged by the legal counsel of Mr. Puigdemont and Mr. Comin a before the European Parliament On 24 June 2019, asking that they be allowed to take their seats pending verification of their credentials and resolution of the dispute in accordance with Rule 3 of the European Parliament's Rules of Procedure.	14	12 (par. 39)
A.35 (pages 667-670)	Answer to a citizen by the Citizens' Enquiries Unit of 13 June 2019.	4	17 (par. 62)
A.36 (pages 671-676)	A "communication" of 17 June 2019 on the Members of the European Parliament elected in Spain issued by the Directorate-General for the Presidency of the European Parliament	6	17 (par. 62)
A.37 (pages 677-684)	An undated document on the line-to-take instructions as regards the situation of the applicants issued by the by Spokesperson's Unit of the European Parliament	8	17 (par. 62)
A.38 (pages 685-688)	Notice of 31 January 2006 from the Director-General of the Directorate-General for the Presidency to the Chairman of the Committee on Constitutional Affairs (PE 368.054v01-00)	4	21 (par. 87)
A.39 (pages 689-702)	Report of the Committee on Constitutional Affairs on the amendment of Rules 3 and 4 of Parliament's Rules of Procedure (2005/2036(REG))	14	22 (par. 89)
A.40 (pages 703-706)	Modification of articles 3 and 4 of the Parliament's Rules of Procedure	4	22 (par. 89)

A.41 (pages 707-709)	Notice 21/2019 from the Chair-in-Office of the Quaestors of the European Parliament On 22 May 2019.	3	22 (par. 90)
A.42 (pages 710-714)	Document about when and how are the MEPs notified to the European Parliament.	5	26 (par. 117)
A.43 (pages 715-721)	“Communication” of 17 June 2019 on the Members of the European Parliament elected in Spain.	7	28 (par. 125)
A.44 (pages 722-810)	Appeal filed by the lawyers of Mr. Puigdemont and Mr. Comín, before the Supreme Court of Spain against the resolution of the Spanish Central Electoral Commission on the 26th June 2019.	89	36 (par. 175)
A.45 (pages 811-813)	Amendment of Rules 3 and 4 of the European Parliament's Rules of Procedure (2005/2036(REG))	3	37 (par. 179)
A.46 (pages 814-816)	European Parliament decision on the request for upholding of the immunity and privileges of Francesco Musotto (2002/2201(IMM))	3	38 (par. 186)
A.47 (page 817-818)	Letter from Mr. Antonio Tajani to Mr. Carles Puigdemont and Mr. Antoni Comín, on 27th June 2019.	2	2
Total pages 818			