



LUXEMBOURG

ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONES RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
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VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

ORDER OF THE VICE-PRESIDENT OF THE GENERAL COURT

26 November 2021 *

(Interim measures – Institutional law – Member of Parliament – Privileges and immunities – Waiver of the parliamentary immunity of a Member of the Parliament – Application for suspension of operation – No urgency)

In Case T-272/21 R II,

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

Antoni Comín i Oliveres, residing in Waterloo,

Clara Ponsatí i Obiols, residing in Waterloo,

represented by P. Bekaert, G. Boye, J. Costa i Rosselló and S. Bekaert, lawyers,

applicants,

v

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

defendant,

supported by

Kingdom of Spain, represented by S. Centeno Huerta, acting as Agent,

APPLICATION under Articles 278 and 279 TFEU for the suspension of operation of decisions P9_TA(2021)0059, P9_TA(2021)0060 and P9_TA(2021)0061 of the Parliament of 9 March 2021 on the request for waiver of the applicants' immunity,

THE VICE-PRESIDENT OF THE GENERAL COURT

* Language of the case: English.

replacing the President of the General Court, in accordance with Article 157(4) of the Rules of Procedure of the General Court,

makes the following

Order

Facts, procedure and forms of order sought

- 1 The applicants, Mr Carles Puigdemont i Casamajó, Mr Antoni Comín i Oliveres and Ms Clara Ponsatí i Obiols, are Members of the European Parliament. Criminal proceedings have been brought against them in Spain for acts relating, inter alia, to offences of ‘sedition’ (‘the criminal proceedings at issue’). In that regard, European arrest warrants, within the meaning of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), were issued by the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court, Spain) against the applicants.
- 2 Following the requests of the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court), which were sent to it by the President of the Second Chamber of the Tribunal Supremo (Supreme Court), the Parliament, by decisions P9_TA(2021)0059, P9_TA(2021)0060 and P9_TA(2021)0061 of 9 March 2021 (‘the contested decisions’), waived the applicants’ immunity based on point (b) of the first paragraph of Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union, annexed to the EU and FEU Treaties (‘Protocol No 7’).
- 3 By document lodged at the Court Registry on 19 May 2021, the applicants brought an action for annulment of the contested decisions.
- 4 By separate document lodged at the Court Registry on 26 May 2021, the applicants made an application for interim measures (‘the first application for interim measures’).
- 5 By order of 30 July 2021, *Puigdemont i Casamajó and Others v Parliament* (T-272/21 R, not published, under appeal, ‘the first order for interim measures’, EU:T:2021:497), the Vice-President of the General Court dismissed the first application for interim measures on the ground that the applicants had failed to show that the condition relating to urgency was satisfied.
- 6 On 23 September 2021, Mr Puigdemont was arrested at Alghero Airport (Italy) in execution of the European arrest warrant relating to him.

- 7 By document lodged at the Court Registry on 1 October 2021, the applicants submitted the present application for interim measures ('the second application for interim measures').
- 8 On 5 October 2021, the judge hearing the application for interim measures put a question to the applicants to which they replied within the prescribed time limit.
- 9 On 11 October 2021, the applicants brought an appeal against the first order for interim measures (Case C-629/21 P(R), *Puigdemont i Casamajó and Others v Parliament and Spain*).
- 10 On 15 October 2021, the Parliament lodged its observations on the second application for interim measures. On the same day, the Kingdom of Spain lodged its statement in intervention and the main parties lodged their observations on that statement within the prescribed time limit.
- 11 On that same day, the judge hearing the application for interim measures requested the parties to state the consequences to be drawn from the lodging of the appeal against the first order for interim measures for the present proceedings, in particular as to whether it was appropriate to stay those proceedings pending the decision of the Court of Justice on that appeal. The parties presented their observations within the prescribed time limit.
- 12 The applicants claim that the judge hearing the application for interim measures should:
 - suspend the operation of the contested decisions;
 - reserve the costs.
- 13 The Parliament contends that the judge hearing the application for interim measures should:
 - dismiss the second application for interim measures;
 - order the applicants to pay the costs.
- 14 The Kingdom of Spain contends that the judge hearing the application for interim measures should:
 - dismiss the second application for interim measures as inadmissible;
 - in the alternative, dismiss the second application for interim measures as unfounded;
 - order the applicants to pay the costs.

Law

- 15 Having regard to the material in the case file, the Vice-President of the General Court considers that he has all the information necessary to rule on the second application for interim measures, without there being any need first to hear oral argument from the parties.
- 16 In the present case, it should be noted that the second application for interim measures is based on Article 160 of the Rules of Procedure of the General Court, which states that refusal of an application for an interim measure is not to bar the main party who made it from making a further application on the basis of new facts.
- 17 In the examination of such an application, it must be established whether the applicant has adduced new facts capable of calling into question the assessment by the judge hearing the application for interim measures with regard to the conditions which are to be met if the operation of an act is to be suspended or other interim measures are to be granted (see, to that effect, order of 13 October 2006, *Vischim v Commission*, T-420/05 R II, EU:T:2006:304, paragraph 55).
- 18 It should be stated, in that regard, that the judge hearing the application for interim measures is entitled to begin his examination of an application for interim measures based on new facts by assessing whether the condition relating to urgency is satisfied. He may take the first order as a basis for examining the second application and consider the new facts in the light of his first assessment of the urgency (see order of 27 June 2007, *V v Parliament*, T-345/05 R II, not published, EU:T:2007:190, paragraph 35 and the case-law cited).
- 19 In those circumstances, and without there being any need here to decide whether the facts invoked by the applicants are ‘new’ or, more generally, whether the present application for interim relief is admissible, it must be ascertained whether the evidence adduced by the applicants is capable of calling into question the assessment made by the judge hearing the application for interim measures in the first order for interim measures that there was no urgent need to order suspension of operation of the contested decisions (see, to that effect, order of 27 June 2007, *V v Parliament*, T-345/05 R II, not published, EU:T:2007:190, paragraph 36).
- 20 In that regard, it should be noted that it is apparent from the first order for interim measures that, inter alia, the Tribunal Supremo (Supreme Court), in the criminal proceedings at issue, submitted, on 9 March 2021, a request for a preliminary ruling to the Court of Justice under Article 267 TFEU (Case C-158/21, *Puig Gordi and Others*, ‘the request for a preliminary ruling’), which had the effect of staying those proceedings. Given that the request for a preliminary ruling concerns the execution of the European arrest warrants issued in the criminal proceedings at issue, which include the warrants relating to the applicants, it was considered, in the first order for interim measures, that the suspension of those proceedings called for the suspension of the execution of those warrants, as the Spanish

authorities had essentially stated. The judge hearing the application for interim measures inferred from this that there is nothing to suggest that the Belgian judicial authorities or the authorities of another Member State could execute the European arrest warrants issued against the applicants and could surrender them to the Spanish authorities. He concluded that the serious and irreparable damage pleaded by the applicants cannot be classified as damage which is certain or established with a sufficient degree of probability and that, accordingly, the applicants had therefore failed to show that the condition relating to urgency was satisfied.

- 21 In support of the second application for interim measures, the applicants advance, in the presentation of the new facts on which they rely, the fact that Mr Puigdemont was arrested on 23 September 2021 in Italy and that, the following day, the President of the Corte d'appello di Cagliari, sezione distaccata di Sassari (Cagliari Court of Appeal, Separate Sassari Chamber, Italy, 'Cagliari Court of Appeal') ordered his release and invited him to a hearing on 4 October 2021. The applicants also refer to the fact that, on the same day, the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) indicated to the Cagliari Court of Appeal that neither the criminal proceedings at issue nor the European arrest warrants issued against the applicants had been suspended and that he disputed that the submission of the request for a preliminary ruling had suspensory effect. The applicants also state that, on 28 September 2021, the Tribunal Supremo (Supreme Court) informed them that the French authorities had requested the Spanish authorities, on 12 March 2021, to remove from the Schengen Information System the flags, within the meaning of Article 24 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ 2007 L 205, p. 63), on the alerts for arrest for surrender purposes concerning the applicants. Lastly, they submit that, on 30 September 2021, the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) reminded the Cagliari Court of Appeal that the European arrest warrants issued against the applicants had not been suspended, that Mr Puigdemont enjoyed no immunity, that he had to be surrendered to the Spanish judicial authorities, and that the Italian authorities had to adopt restrictive measures against him pending a decision on the European arrest warrant relating to him.
- 22 The Parliament contends that only events that took place in Sardinia (Italy) may be regarded as new facts and that the applicants' arguments based on other facts must be rejected as inadmissible. It further submits that the second application for interim measures must be dismissed on the ground that neither the condition relating to urgency nor that of the existence of a prima facie case are satisfied; the balance of interests also runs counter to that application.
- 23 The Kingdom of Spain contends that the second application is inadmissible. In the alternative, it takes the view that any argument which does not relate to the events

referred to by the applicants which took place in Sardinia is inadmissible. In any event, it submits that the application is unfounded.

- 24 In that regard, it is necessary to reject the applicants' arguments, in so far as they seek to challenge the assessments made by the judge hearing the application for interim measures in the first order for interim measures, to repeat, without relying on new facts, the arguments put forward in the first application for interim measures, or to criticise the arguments put forward by the other parties in that application. Article 160 of the Rules of Procedure was not conceived to enable an applicant, whose application for interim measures has been rejected, to lodge one or more new applications for interim measures so as to initiate a legal debate with the judge hearing the application for interim measures. If such an applicant is not in a position to establish the facts which arose after the rejection of its first application for interim measures or which could not be raised during the proceedings which led to that rejection, the only channel available to it is to bring an appeal before the Court of Justice so as to challenge any errors of law which may have been committed at first instance (order of 18 September 2014, *Frucona Košice v Commission*, T-103/14 R II, not published, EU:T:2014:785, paragraph 16). That is the situation in the present case, since the applicants have brought an appeal against the first order for interim measures (Case C-629/21 P (R) *Puigdemont i Casamajó and Others v Parliament and Spain*).
- 25 It must also be noted that none of the evidence put forward by the applicants calls into question the considerations set out in the first order for interim measures concerning the legal effects arising from the submission of the request for a preliminary ruling. Moreover, first, as regards the effects on the criminal proceedings at issue, it follows from the very wording of the first paragraph of Article 23 of the Statute of the Court of Justice of the European Union that the purpose of such a request is to suspend the proceedings pending before the national court in which it is made. It must therefore be confirmed that the criminal proceedings at issue are suspended until the Court has ruled on the request for a preliminary ruling and specified that that suspension follows directly from the submission of that request and does not require any specific decision of the referring court in that regard. It is apparent, in any event, from the request for a preliminary ruling that the Tribunal Supremo (Supreme Court) was aware of the fact that the criminal proceedings at issue were suspended as a result of the submission of that request, given that that fact is one of the grounds relied on by that court for requesting that its application be dealt with under an expedited procedure. Second, as regards the effects on the execution of the European arrest warrants relating to the applicants, it should be observed that the request for a preliminary ruling concerns the execution of the European arrest warrants issued in the criminal proceedings at issue, since it seeks to ascertain whether Framework Decision 2002/584 enables the executing judicial authority to refuse surrender of the person sought via a European arrest warrant, based on grounds for refusal which are laid down in its national law but which are not provided for as such in the Framework Decision. It follows that, as was stated in the first order for interim measures and as the Kingdom of Spain had, in essence, indicated in the first

application for interim measures, the suspension of the criminal proceedings at issue necessarily calls for the suspension of the execution of those warrants. It should be noted, however, that that suspension follows directly from the suspension of those criminal proceedings and does not require a specific decision by the national authorities in that regard.

- 26 The applicants contend, however, in essence, that, notwithstanding the existing legal situation, they may, as a matter of fact, be arrested or have their freedom of movement curtailed, or even be extradited and imprisoned in Spain, thus exposing themselves to serious and irreparable damage, as demonstrated by the new facts on which they rely.
- 27 In this respect, it should be noted that some of the circumstances referred to by the applicants tend to show that it is possible that certain national authorities did not draw all the conclusions from the submission of the request for a preliminary ruling, in particular those relating to the suspension of the criminal proceedings at issue and of the execution of the European arrest warrants relating to the applicants.
- 28 Nonetheless, however regrettable the evidence adduced by the applicants in support of the second application for interim measures may be, it does not call into question the assessments made by the judge hearing the application for interim measures in the first order for interim measures.
- 29 In that regard, first, it should be noted that the applicants erred in claiming that it was accepted in the first order for interim measures that their arrest would constitute serious and irreparable harm. Such an interpretation is based on a misreading of that order, in particular paragraphs 58 and 60 thereof, the meaning and scope of which the applicants misconstrue. That order cannot therefore be interpreted as meaning that the arrest of the applicants *ipso facto* constitutes, by itself, such damage. In any event, in order for that to be the case, it is necessary to demonstrate that the applicants' right freely to exercise their parliamentary mandate and the proper functioning of the Parliament would be impaired. A Member of the European Parliament, faced with a decision waiving his or her immunity, cannot reasonably claim, as serious and irreparable harm directly caused to him or her by that decision, that the decision would impair not only his or her right freely to exercise his parliamentary mandate, but also the proper functioning of the Parliament (order of 29 March 2012, *Golnisch v Parliament*, C-569/11 P(R), not published, EU:C:2012:199, paragraph 29). As was noted in the first order for interim measures, the immunity conferred by the second paragraph of Article 9 of Protocol No 7 was not waived by the contested decisions. The applicants therefore still enjoy their immunity when travelling to attend meetings of the Parliament, so that serious and irreparable damage allegedly caused directly by the contested decisions as a result of an arrest remains hypothetical. It may, on the other hand, be accepted that such damage could occur if they were surrendered to the Spanish authorities and imprisoned in Spain.

- 30 Second, as regards the fact that Mr Puigdemont was arrested when travelling in Italy on 23 September 2021, it should be noted that the President of the Cagliari Court of Appeal released him the following day, relying expressly on the considerations set out in the first order for interim measures and, moreover, that that court, in a decision of 4 October 2021, suspended the procedure for the execution of the European arrest warrant issued against Mr Puigdemont until decision P9_TA(2021)0059 has become final and the Court of Justice has delivered its decision on the request for a preliminary ruling. Far from establishing the existence of serious and irreparable damage, those facts tend to confirm that, drawing the conclusions from the submission of the request for a preliminary ruling, the executing judicial authorities do not intend to execute the European arrest warrants relating to the applicants before the Court of Justice has given judgment in that case and that, therefore, they do not run, at this stage, the risk of surrender to the Spanish authorities.
- 31 Third, as regards the fact that the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) approached the Italian authorities on 24 September 2021, in order to indicate, inter alia, that neither the criminal proceedings at issue nor the European arrest warrants relating to the applicants had been suspended and that he disputed that the submission of the request for a preliminary ruling had suspensory effect, it must be stated that it is irrelevant. Although it is true that the Spanish authorities have not adopted a decision suspending those proceedings and that those European arrest warrants have not been withdrawn or suspended, which was, moreover, common ground when the first order for interim measures was made, the fact remains that the suspension of those proceedings and the subsequent suspension of the execution of those warrants follow from the submission of that request for a preliminary ruling and that those effects are binding on the competent national authorities, including judicial authorities, without the need for a specific decision by those authorities, as has been stated in paragraph 25 above. For the same reasons, the argument that the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) again approached the Cagliari Court of Appeal on 30 September 2021 (see paragraph 21 above) and the argument alleging that the Tribunal Constitucional (Constitutional Court, Spain) refused, on 4 October 2021, the applicants' request for suspension of the execution of the national and European arrest warrants relating to them must be disregarded. In any event, it should be noted, first, that the order for reference of the Tribunal Supremo (Supreme Court) of 9 March 2021 itself refers, as was also noted in paragraph 25 above, to the suspensory effect of the submission of that request on the criminal proceedings at issue and, second, that the information provided by the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) had no effect in the present case.
- 32 Fourth, as regards the fact that the French authorities have asked the Spanish authorities to remove from the Schengen Information System the flags concerning Mr Puigdemont which the French authorities had requested be added, it is also irrelevant in the present case. That fact, subsequent to the submission of the request for a preliminary ruling but prior to the first order for interim measures,

cannot demonstrate, contrary to the applicants' claims, that they face a risk of being arrested 'even when travelling to or from a parliamentary session', since they still enjoy the immunity conferred by the second paragraph of Article 9 of Protocol No 7. Furthermore, the fact at issue is liable only to make possible Mr Puigdemont's potential arrest in France. As has been observed (see paragraph 29 above), such an arrest cannot by itself give rise to harm capable of justifying the grant of the interim measures sought in the present case. In addition, there is no evidence to show that the French authorities intend at this stage to make such an arrest. Finally, that fact cannot in any event imply, directly and with certainty, Mr Puigdemont's surrender to the Spanish authorities. Moreover, it should be noted that it is clear from the case file before the Court that, on 30 September 2021, the Italian authorities requested that such flags be added to the alerts with a view to arrest for the purpose of surrendering Mr Comín i Oliveres and Ms Ponsatí i Obiols, which rules out the possibility of those two individuals being arrested in Italy. It is also apparent from the case file before the Court that they went to Italy in October 2021 and were not arrested, whereas the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) sent a communication to the Cagliari Court of Appeal relating to them on 4 October 2021.

- 33 Fifth, and in any event, it should be noted that the judge hearing the application for interim measures cannot base the finding of serious and irreparable damage on the premiss that the competent national authorities might not, as the case may be, draw all the conclusions from the submission of the request for a preliminary ruling. That premiss can only be hypothetical, since those authorities must, in accordance with the principle of sincere cooperation, take into account the fact that the criminal proceedings at issue are suspended because of the submission of that request and its subsequent effects on the execution of the European arrest warrants relating to the applicants.
- 34 It follows from all of the foregoing that the evidence submitted by the applicants is not such as to call into question the assessment made by the judge hearing the application for interim measures in the first order for interim measures that there was no urgent need to order suspension of operation of the contested decisions.
- 35 It follows that the second application for interim measures must be dismissed, without it being necessary to rule on the pleas of inadmissibility raised by the Parliament and the Kingdom of Spain.
- 36 Under Article 158(5) of the Rules of Procedure, the costs are to be reserved.

On those grounds,

THE VICE-PRESIDENT OF THE GENERAL COURT

hereby orders:

- 1. The application for interim measures is dismissed.**

2. The costs are reserved.

Luxembourg, 26 November 2021.

E. Coulon

S. Papasavvas

Registrar

Vice-President