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ORDER OF THE VICE-PRESIDENT OF THE COURT

20 December 2019*

1138195

(Appeal — Application for interim measures — Institutional law — Members of the European Parliament — Act concerning the election of the representatives of the European Parliament by direct universal suffrage — Article 12 — Verification of credentials — Decision of the Parliament to take note of the list of elected candidates notified by the national authorities and exclude the appellants owing to their lack of compliance with a formality imposed by national law — Action for annulment — Prima facie case)

In Case C- 646/19 P(R),

APPEAL under the second paragraph of Article 57 of the Statute of the Court of Justice of the European Union, brought on 2 September 2019,

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

Antoni Comín i Oliveres, residing at Waterloo,

represented by: P. Bekaert and S. Bekaert, advocaten, G. Boye, abogado, and B. Emmerson QC,

appellants,

the other party to the proceedings being:

European Parliament, represented by F. Drexler, N. Görlitz and Z. Nagy, acting as Agents,

defendant at first instance,

THE VICE-PRESIDENT OF THE COURT,

after hearing the Advocate General, Mr Szpunar,

* Language of the case: English.

EN

makes the following

Order

1 By their appeal, Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres seek to have set aside the order of the President of the General Court of the European Union of 1 July 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T-388/19 R, not published, 'the order under appeal', EU:T:2019:467), by which the General Court dismissed their action seeking, first, the suspension of operation first of the decision of the European Parliament not to take note of the results declared officially by the Kingdom of Spain of the elections to the 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; secondly, of the decision of the Parliament to treat the communication of the Junta Electoral Central (Central Electoral Commission, Spain) of 20 June 2019 as depriving of effect the declaration of the appellants as elected Members of the Parliament, and, thirdly, the decision of the Parliament refusing to guarantee, pursuant to Rule 3(2) of the Rules of Procedure of the European Parliament, the right of the appellants 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 brought before the Parliament and the Spanish judicial authorities and, second, to order the Parliament to take all the necessary measures, including the confirmation of privileges and immunities that the appellants derive from Article 9 of the Protocol (No 7) on the privileges and immunities of the European Union annexed to the EU, FEU and the EAEC Treaties, to enable them to take their seats in the Parliament from the opening of the first session that followed the elections.

The background to the dispute, the procedure before the General Court and the order under appeal

2 The appellants stood as candidates in the elections for Members of Parliament, convened by Real Decreto 206/2019, por el que se convocan elecciones de Diputados al Parlamento Europeo (Royal Decree 206/2019, convening the elections for the European Parliament), of 1 April 2019 (BOE No 79 of 2 April 2019, p. 33948), and held on 26 May 2019 ('the elections of 26 May 2019').

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

4 At the elections held on 26 May 2019, that coalition received 1 018 435 votes and gained two seats in Parliament.

5 On 13 June 2019, the Central Electoral Commission adopted the decision proclaiming the candidates elected to the Parliament at the elections held on 26 May 2019 ('the proclamation of 13 June 2019').

6 In particular, the proclamation of 13 June 2019 stated that, in accordance with Article 224(1) of ley orgánica 5/1985, de régimen electoral general (Organic Law 5/1985 on the general electoral regime), of 19 June 1985 (BOE No 147 of 20 June 1985, p. 19110) ('the Electoral law'), the Central Electoral Commission proceeded, at its meeting of 13 June 2019, according to the data included in the aggregate counts records forwarded by each of the provincial electoral commissions, to recount the vote at national level in the elections of 26 May 2019, to assign the seats corresponding to each of the candidacies and to proclaim the candidates nominally elected, which included the appellants.

7 Furthermore, the proclamation of 13 June 2019 stated that it might be the subject of a contentious-electoral petition, provided for in Article 112 et seq. of the Electoral law before the Contentious-Administrative Chamber of the Tribunal Supremo (Supreme Court, Spain), pursuant to Article 225 of the Electoral law, that that petition must be lodged before the Central Electoral Commission within three days of that proclamation and that the session in which the elected candidates would swear or affirm allegiance to the Constitución (Constitution, Spain), before the Central Electoral Commission, in accordance with Article 224(2) of the Electoral law, would take place in the Palace of the Congress of Deputies on 17 June 2019, at 12.00 hours.

8 On 14 June 2019, the proclamation of 13 June 2019 was published in the *Boletín Oficial del Estado*.

9 On 15 June 2019, the Investigative Judge of the Tribunal Supremo (Supreme Court) refused to withdraw the European arrest warrants issued in respect of the appellants.

10 On 17 June 2019, the Central Electoral Commission refused to allow the appellants to give their pledge of allegiance by a written statement made before a notary or through representatives as designated in a notarised document.

11 On the same day, that electoral commission notified the Parliament of the list of candidates elected in Spain ('the letter of 17 June 2019'), which did not include the appellants.

12 On 20 June 2019, the Central Electoral Commission sent a letter to the Parliament worded as follows:

'At its session on 20 June 2019, the Central Electoral Commission adopted the resolution reproduced below.

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

Resolution

(1) Article 224(2) of the Electoral law, on elections to [Parliament] provides:

Within 5 days following that proclamation, the elected candidates must swear or affirm allegiance to the Constitution before the Central Electoral Commission. On expiry of that term, the Central Electoral Commission is to declare the vacancy of the seats assigned to Members of the [Parliament] having failed to swear or affirm their allegiance to the Constitution and to suspend all the prerogatives to which they are entitled on account of their mandate, as long as they do not make that oath or affirmation.

(2) In accordance with Article 224(2) of the Electoral law, since [the appellants] have neither sworn nor promised to respect the Constitution, their seats are declared vacant and all the prerogatives that their status could confer are suspended. That will remain the case until the necessary oath or affirmation is given.

(3) Accordingly, we inform the [Parliament] that [the appellants] have not acquired the status of Members of the [Parliament] nor therefore any of the prerogatives that may be conferred on them, until they swear or affirm allegiance to the Constitution.'

13 On 27 June 2019, the President of the Parliament sent a letter to the appellants. That letter reads as follows:

'In reference to your letters dated 14 June, 20 June and 24 June 2019 sent by your lawyers, I would like to inform you that on 18 and 20 June 2019 the Spanish authorities (Central Electoral Commission) communicated to me the official results of the elections [to the Parliament] in Spain. According to Article 12 of [the Act concerning the election of representatives to the European Parliament by direct universal suffrage (OJ 1976 L 278, p. 5) annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1)] and the corresponding case-law of the Court of Justice, the Parliament is to take note of the results officially declared by the Member States and it is for the national courts in the first place to rule on the lawfulness of national electoral provisions and procedures.

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

14 By application lodged at the Registry of the General Court on 28 June 2019, the appellants sought, in essence, the annulment of the various decisions by the Parliament which prevented them, according to them, from sitting as elected members.

15 By a separate document lodged at the Registry of the General Court on the same day, the appellants made an application for interim measures pursuant to Articles 278 and 279 TFEU, in which they claimed, in essence, that the President of the General Court should:

- suspend the operation, on the basis of Article 157(2) of the Rules of Procedure of the General Court or, in the alternative, on the basis of Article 156 of those Rules of Procedure, pending a ruling in the main action,

  – of the Parliament's decision not to take note of the results officially declared by the Kingdom of Spain of the elections 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, confirmed by the letter of the President of the Parliament of 27 June 2019, which is without legal basis, in so far as that decision does not include them;

  – of the Parliament's decision to treat the communication by the Central Electoral Commission of 20 June 2019 as depriving of effect the declaration of the appellants as elected Members of Parliament, as confirmed by the letter of the President of the Parliament of the 27 June 2019, which is without legal basis and amounts to an unlawful declaration of a vacancy attributable to the Parliament;

  – 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 guarantee, pursuant to Rule 3(2) of its Rules of Procedure, the right of the appellants 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

- order the Parliament, on the basis of Article 157(2) of the Rules of Procedure of the General Court or, in the alternative, on the basis of Article 156 of those Rules of Procedure, pending a ruling in the main action, to take all the necessary measures, including the assertion of their privileges and immunities under Article 9 of Protocol (No 7) on the privileges and immunities of the European Union to enable them to take their seats in the Parliament from the opening of the first sitting following the elections on 2 July 2019.

16 On 1 July 2019, the President of the General Court, without hearing from the Parliament beforehand, adopted the order under appeal by which he rejected the application for interim measures brought by the appellants.

17 In the order under appeal, the President of the General Court first of all examined whether the condition of a prima facie case was satisfied.

18 In that regard, after recalling, in paragraphs 30 to 34 of the order under appeal, the jurisprudence set out in paragraphs 52 to 55 and 57 of the judgment of 30 April 2009, *Italy* and *Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275), relating to the principles governing the interpretation of Article 12 of the Act concerning the election of representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787, as amended by Decision 2002/772 ('the Electoral Act'), the President of the General Court, in the first place, considered, in paragraph 38 of the order under appeal, that the principal plea raised by the appellants alleging, in essence, that the declaration of 13 June 2019 must be regarded as being the 'results declared officially' by the Kingdom of Spain, within the meaning of Article 12 of the Electoral Act, such that in not having 'taken note' of that declaration for the verification of credentials as it was required to do and in having, on the contrary, referred to the communication of 17 June 2019, the Parliament infringed that article, appeared, prima facie, to be unfounded.

19 As stated in paragraphs 39 and 40 of the order under appeal, relying on the terms of the proclamation of 13 June 2019 and, in particular, on the indications expressly given there as to the possibility of bringing contentious-electoral petitions against that proclamation and as to the requirement for elected candidates to swear or affirm allegiance to the Constitution at a session held on 17 June 2019, the President of the General Court held, in paragraph 41 of the order under appeal, that although that proclamation could be deemed to be an important and necessary step in the national procedure organised for the election of Members of Parliament, it appeared, prima facie, to be merely an intermediary step in that national procedure, which concluded with the official communication of the results for the purposes of Article 12 of the Electoral Act.

20 Accordingly, after finding, in paragraph 43 of the order under appeal, that the appellants were not included in the list sent by the Spanish authorities to the Parliament on 17 June 2019, the President of the General Court held that, prima facie, the appellants could not be regarded as the candidates officially declared as elected, within the meaning of Article 12 of the Electoral Act. He therefore concluded, in paragraph 44 of the order under appeal, that the appellants could not successfully claim that the Parliament should have considered the proclamation of 13 June 2019 to be the official declaration within the meaning of Article 12 of the Electoral Act and disregarded the communication of 17 June 2019.

21 In the second place, to the extent that it considered that no official proclamation by the Spanish authorities, within the meaning of Article 12 of the Electoral Act,

designating the candidates as elected had taken place, the President of the General Court held, in paragraph 45 of the order under appeal, that the appellants' claim that they should have been permitted to swear or affirm their allegiance to the Constitution before a notary, or the claim that that possibility had been denied them on a discriminatory basis, was, prima facie, irrelevant, since the question whether the appellants should have been authorised to swear or affirm allegiance without appearing in person at the session convened on 17 June 2019 was, according to the President of the General Court, for the national authorities to determine.

22 In the third place, the President of the General Court held, in paragraph 51 of the order under appeal, that the appellants' claim that the letter of the Central Electoral Commission sent on 20 June 2019 to the Parliament, to the extent that it concluded that the appellants' two seats were vacant, did not comply with Article 13 of the Electoral Act, was also, prima facie, irrelevant.

23 In those circumstances, the President of the General Court dismissed the application for interim measures made by the appellants on the ground that the condition relating to a prima facie case was not satisfied, and also took the view that it was not necessary to examine the condition of urgency or to weigh the balance of interests at stake.

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

- set aside the order under appeal;
- adopt the interim measures sought pending a ruling by the General Court on the main action;
- order the Parliament to pay the costs of the appeal proceedings.

25 The Parliament contends that the Court should:

- dismiss the appeal in its entirety and,
- order the appellants to pay the costs of the appeal and of the proceedings for interim measures in Case T-388/19 R.

The appeal

26 In support of their appeal, the appellants raise 10 grounds of appeal. The Court considers it appropriate to examine the fourth ground first of all.

Arguments

27 By the fourth ground of appeal, the appellants criticise the President of the General Court for having misapplied the concept of 'results declared officially'

within the meaning of Article 12 of the Electoral Act, and the concept of 'electoral procedure' within the meaning of Article 223(1) TFEU and Article 8 of the Electoral Act.

28 The appellants in particular contest the assessment of the President of the General Court that the proclamation of 13 June 2019 could not, prima facie, be regarded as the 'results declared officially', within the meaning of Article 12 of the Electoral Act.

29 While, like the President of the General Court, the appellants consider that the concept of 'results declared officially', within the meaning of Article 12, corresponds to the final step in the electoral procedure, they submit however that those results are the expression of the popular will expressed through elections carried out on the basis of direct universal suffrage in a free and secret ballot, in accordance with Article 39 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 1 of the Electoral Act. The counting of the votes and assignment of seats puts to an end therefore to the 'electoral procedure'. Thus, the word 'result' used in Article 12 of the Electoral Act must be understood as the numerical result of the votes cast and counted on election day, and the order of elected candidates. According to the appellants, Member States are not permitted to give a different scope to the concept of 'results declared officially', within the meaning of Article 12 of the Electoral Act.

30 The appellants submit that this interpretation is borne out not only by a systematic interpretation of Articles 8 and 12 of the Electoral Act, together with Articles 10 and 14 TEU and Article 223 TFEU, but also by the preparatory works of the Electoral Act, in its different linguistic versions. In addition, that interpretation follows from Rule 3(3), second subparagraph, of the Rules of Procedure of the Parliament, which explicitly refers to 'the full results of the election'.

31 The appellants contest the three grounds on which the President of the General Court relied in order to make the assessment set out in paragraph 28 of this order, namely, first, that the proclamation of elected candidates states that it could be the subject of a contentious-electoral petition, secondly, that the same proclamation states that the elected candidates were required to swear or affirm allegiance to the Constitution at a session convened on 17 June 2019 and, thirdly, that the communication of 17 June 2019 must be regarded as the 'results declared officially' within the meaning of the Electoral Act.

32 In the first place, according to the appellants, the ground relating to the statement in the proclamation of 13 June 2019 of the possibility of a contentious-electoral petition being lodged against it, set out in paragraph 40 of the order under appeal, is irrelevant in that, in accordance with Article 5(2) of the Electoral Act, the elected members in any event have the right to take up their seats from the opening of the first sitting following the elections, in spite of any pending disputes that the election results may be subject to. That ground also misapplies the case-law of the Court, in particular that resulting from the judgment of 30 April 2009,

Italy and *Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275). In any event, they submit that that ground is irrelevant since no contentious-electoral petitions were lodged against the proclamation of 13 June 2019, with the result that it has become final.

33 In the second place, the appellants submit that the ground relating to the pledge of allegiance to the Constitution, also referred to in paragraph 40 of the order under appeal, cannot be upheld as it rests on a misinterpretation of Spanish law according to which the appellants are not elected candidates for so long as the Central Electoral Commission has not received their oath.

34 In that regard, the appellants point out that, under Spanish law, acquiring the status of elected candidate is not subject to the condition of swearing or affirming allegiance to the Constitution, in accordance with the case-law of the Tribunal Constitucional (Constitutional Court, Spain). Therefore, the required swearing or affirming of allegiance to the Constitution is not an act that is part of the 'electoral procedure' within the meaning of Article 8 of the Electoral Act and Article 223(1) TFEU.

35 Thus, according to the appellants, in regarding the oath as part of that electoral procedure, the President of the General Court added a condition for obtaining the status of elected candidate which was not laid down in Article 12 of the Electoral Act and, consequently, he exceeded his powers in breach of Article 8 of the Electoral Act and Article 223(1) and (2) TFEU.

36 Finally, the appellants observe that on 27 June 2019, the Central Electoral Commission itself notified the President of the Parliament of the declaration of Ms Estrella Durá Ferrandis as an elected candidate before she had given, on 1 July 2019, the pledge of allegiance to the Constitution, which proves not only the error of the President of the General Court in the interpretation of Spanish law, but also that the Parliament did not treat the appellants equally.

37 In the third place, the appellants submit that the ground on which the communication of 17 June 2019 must be regarded as the 'results declared officially' within the meaning of Article 12 of the Electoral act, set out in paragraph 43 of the order under appeal, also cannot be upheld, as it rests on circular reasoning. The order under appeal does not allow it to be determined with certainty whether the President of the General Court considered that the appellants were not included in the list given in that communication because they were not elected candidates, or whether he considered that the appellants were not elected candidates because they were not included in that list. According to the appellants, the President of the General Court failed to explain how or on what basis that list could be regarded as the 'results declared officially' within the meaning of Article 12 of the Electoral Act.

38 Furthermore, the appellants point out that, unlike the President of the General Court, the Spanish authorities themselves do not present that communication as

being the 'results declared officially' by the Kingdom of Spain, since that communication expressly states that the elected candidates are not included in that list.

39 The interpretation by the President of the General Court is, moreover, contrary to Article 5(2) of the Electoral Act since it means that, as regards the elections of 26 May 2019, only 748 Members of Parliament were elected and not 751.

40 That interpretation is also contrary to the case-law of the Court which makes a clear distinction between the 'declaration' of the results, including the declaration of a candidate as an elected Member of the Parliament, and the 'communication' of that declaration to the Parliament, the latter being bound only by the official proclamation of the results and not by any other communication, as is clear, inter alia, from paragraphs 16 and 21 of the judgment of 30 April 2009, *Italy* and *Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275). In that context, the appellants consider that, contrary to what is stated in paragraph 41 of the order under appeal, Article 12 of the Electoral Act cannot be regarded as covering any 'communication' made by the Member States.

41 The Parliament submits that the fourth ground of appeal must be rejected as being in part inadmissible and in part unfounded.

42 In the first place, the Parliament submits that the appellants' arguments set out in paragraphs 32 to 36 of this order aim to challenge the assessment made by the President of the General Court as regards the proclamation of 13 June 2019 and the applicable national law. Such an assessment is a factual one and therefore cannot be subject to review by the Court of Justice on appeal, unless there is a distortion of the facts.

43 In that regard, the Parliament observes that the appellants have not expressly alleged such a distortion and that, even if that were the case, the purported distortion does not in any event appear, from the documents in the case file submitted to the Court, to be manifest.

44 Therefore, the Parliament considers that that submission should be rejected as manifestly inadmissible.

45 In the second place, the Parliament contests the appellants' argument set out in paragraphs 37 to 40 of this order and contends that the President of the General Court gave sufficient reasons for his interpretation of the concept of 'results declared officially', within the meaning of Article 12 of the Electoral Act, by basing his reasoning exclusively on the case-law applicable, namely the judgment of 30 April 2009, *Italy* and *Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275).

46 In that regard, after recalling that in the present interim proceedings the President of the General Court was not required to carry out a detailed examination of the pleas raised by the appellants but rather a prima facie assessment of those pleas,

the Parliament states that since there is case-law on the question of law raised by the appellants before the Court of Justice, it was not for the President of the General Court to reconsider that settled case-law in the context of that examination.

47 The Parliament adds that, pursuant to that case-law, the President of the General Court did not err in finding that the proclamation of 13 June 2019 could not be regarded as a relevant act for the purposes of Article 12 of the Electoral Act.

48 In that context, the Parliament contends that the proclamation of 13 June 2019 was regarded by the President of the General Court as an intermediary step in the applicable national electoral procedure and that that assessment, being factual in nature, cannot be called into question on appeal. Thus, the question of law raised in the fourth ground of appeal is limited to whether the President of the General Court erred in law in finding that an act corresponding to a purely intermediary step in the national electoral procedure cannot be regarded as being the act required in Article 12 of the Electoral Act, which is to be notified to the Parliament.

49 Paragraph 55 of the judgment of 30 April 2009, *Italy* and *Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275) permits an unambiguous answer to be given to that question.

50 Consequently, the Parliament considers that the appellants' submissions set out in paragraphs 37 to 40 of this order should also be rejected as manifestly unfounded.

Findings of the Court

51 As a preliminary matter, it should be recalled that Article 156(4) of the Rules of Procedure of the General Court, provides that applications for interim measures must state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. Thus, according to the settled case-law of the Court of Justice, the judge hearing an application for interim relief may order suspension of operation of an act, or other interim measures, if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action. Those conditions are cumulative, so that an application for interim measures must be dismissed if either of them is absent. The court hearing the application for interim relief must, where appropriate, also weigh up the interests involved (order of the Vice-President of the Court of 21 March 2019, *Crédit agricole and Crédit agricole Corporate and Investment Bank* v *Commission*, C-4/19 P-R, not published, EU:C:2019:229, paragraph 12 and the case-law cited).

52 As regards, in particular, the requirement of a prima facie case, it must also be recalled that that condition is met where at least one of the pleas in law relied on

by the applicant for interim measures in support of the main action appears, prima facie, not unfounded. That is the case, inter alia, where one of the pleas relied on reveals the existence of difficult questions of law the solution to which is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the court hearing the application for interim relief but must be the subject of the main proceedings, or where the discussion of issues by the parties reveals that there is a major legal disagreement whose resolution is not immediately obvious (order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 30 and the case-law cited).

53 In the present case, as has been stated in paragraph 18 of this order, in order to prove the presence of a prima facie case, the appellants raised, inter alia, a plea alleging, in essence, that in having 'taken note', for the purposes of the verification of credentials required by it under Article 12 of the Electoral Act, not of the proclamation of 13 June 2019 but of the communication of 17 June 2019, the Parliament breached that article. However, the President of the General Court held, in paragraph 38 of the order under appeal, that that plea appeared, prima facie, to be unfounded, which the appellants contest.

54 As is clear from paragraphs 36 and 37 of the order under appeal, that plea raises the question whether, in the circumstances of the present case, the concept of 'results declared officially' by the Member States, within the meaning of Article 12 of the Electoral Act, must be understood as referring to the list of candidates which, after the counting of the votes, were proclaimed elected by the national authorities, such as that list was published in the *Boletin Oficial del Estado*, namely, in the present case, the proclamation of 13 June 2019; or whether that concept must, on the contrary, be understood as referring to the list of elected candidates that the Member State communicated to the Parliament, for the purposes of the verification of credentials required to be undertaken by that institution, namely, in the present case, the communication of 17 June 2019, even though the latter list excluded one or several of the candidates proclaimed elected, such as the appellants, on the ground that they did not fulfil a requirement imposed by the national electoral law on all candidates proclaimed elected, namely that of swearing or affirming allegiance to the Constitution within five days following the proclamation.

55 In that regard, the President of the General Court, in paragraphs 39 to 43 of the order under appeal, considered that, prima facie, the proclamation of 13 June 2019 was an intermediary step in the national procedure organised for the election of the Members of Parliament, such that, in accordance with paragraph 55 of the judgment of 30 April 2009, *Italy* and *Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275), from which it is clear that an intermediary step in that procedure can hardly be deemed to be the act by which the Member State concerned officially declares the results within the meaning of Article 12 of the Electoral Act, the proclamation of 13 June 2019 could not be regarded as being such 'results'.

56 According to the President of the General Court, the communication of 17 June 2019 thus constitutes, prima facie, the step that closed the national procedure organised for the election of the Members of Parliament, so that that communication must be regarded as the 'results declared officially' within the meaning of Article 12 of the Electoral Act.

57 By the fourth ground of appeal, the appellants contest those assessments by the President of the General Court, with the exception of the interpretation made by him of paragraph 55 of the judgment of 30 April 2009, *Italy* and *Donnici* v *Parliament* (C-393/07 and C-9/08, EU:C:2009:275).

58 In the first place, the appellants submit that since the concept of 'results declared officially', within the meaning of Article 12 of the Electoral Act, must be understood as the act of the national electoral authority that refers to the numerical result of the votes cast and counted on election day and the order of elected candidates, only the proclamation of 13 June 2019 may therefore be regarded as being those 'results'.

59 In that regard, it should be recalled that Article 14 TEU, Article 39 of the Charter and Article 1 of the Electoral Act enshrine the principle of direct universal suffrage in a free and secret ballot as a principle governing the election of Members of Parliament. It follows therefore from those provisions that the composition of Parliament must faithfully and completely reflect the free expression of the choices made by the citizens of the European Union, through direct universal suffrage, as to the people by whom they wish to be represented in a given legislature.

60 In those circumstances, it cannot prima facie be excluded that, as the appellants submit, the proclamation of 13 June 2019 must be regarded as being the 'results declared officially' within the meaning of Article 12 of the Electoral Act.

61 In the second place, the appellants contest the two grounds, set out in paragraph 40 of the order under appeal, on which the President of the General Court relied in particular when finding that, prima facie, the proclamation of 13 June 2019 could not be considered to be 'results declared officially' within the meaning of Article 12 of the Electoral Act, namely, as regards the first, the fact that the proclamation expressly stated that it could be subject to the lodging of a contentious-electoral petition and, as regards the second, the fact that the proclamation stated that the candidates declared elected were required to swear or affirm allegiance to the Constitution in the five days following their proclamation.

62 As regards the first ground set out in paragraph 40 of the order under appeal, it must be observed that the Court has held that the Parliament may not reject the official declaration made by the national authorities, even if it is contrary to the principles of the Electoral Act, pointing out that it is for the national courts, where appropriate after obtaining a preliminary ruling from the Court of Justice, to rule on the lawfulness of the national electoral provisions and procedures (judgment of

30 April 2009, *Italy* and *Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 70 and the case-law cited).

63 It is clear from that settled case-law of the Court that the latter does not rule out the possibility that the 'results declared officially' within the meaning of Article 12 of the Electoral Act may be contested before the national courts.

64 Therefore, contrary to the President of the General Court's conclusion in the order under appeal, the fact that the proclamation of 13 June 2019 expressly states that it may be the subject of a contentious-electoral petition does not exclude, prima facie, that it may be considered to be the 'results declared officially' within the meaning of Article 12 of the Electoral Act.

65 As regards the second ground in paragraph 40 of the order under appeal, the appellants submit, in the first instance, that that ground rests on a misinterpretation of Spanish law that results in the pledge of allegiance to the Constitution that is required to be given becoming an additional condition for obtaining the status of candidate elected to Parliament, which is not provided for in Article 12 of the Electoral Act.

66 Since that submission amounts, in essence, to disputing the interpretation of Spanish law made by the President of the General Court, it must be observed immediately that that is a question of fact which is not, in principle, subject to review by the Court of Justice (judgment of 9 November 2017, *TV2/Danmark* v *Commission*, C-649/15 P, EU:C:2017:835, paragraph 48).

67 Thus, as regards the examination, in the context of an appeal, of the General Court's findings with regard to national law, the Court of Justice has jurisdiction only to determine whether that law was distorted. In that regard, it should be recalled that a distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 9 November 2017, *TV2/Danmark* v *Commission*, C-649/15 P, EU:C:2017:835, paragraphs 49 and 50 and the case-law cited).

68 In this case, however, no such distortion, which has not moreover been expressly invoked by the appellants, has been established, as the appellants do not specifically indicate which facts or which items of evidence may have been distorted by the President of the General Court, nor do they demonstrate the existence of errors by him that might have led him to distort the facts or the evidence.

69 In that regard, the line of argument set out in paragraph 36 of this order must be rejected as it amounts to a new plea in law.

70 It should be recalled that it has consistently been held by the Court that a plea raised for the first time in an appeal before this Court must be rejected as inadmissible. In an appeal, the Court's jurisdiction is confined to examining the assessment by the General Court of the pleas argued before it. To allow a party to

put forward in that context a plea in law which it has not raised before the General Court would mean allowing that party to bring before the Court of Justice, whose jurisdiction in appeals is limited, a wider case than that heard by the General Court (judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 109 and the case-law cited).

71 Therefore, the argument alleging an incorrect interpretation of Spanish law must be rejected as inadmissible.

72 The appellants submit, in the second instance, that by integrating the pledge of allegiance to the Constitution into the national procedure organised for the election of the Members of Parliament, that interpretation fails to comply with Articles 8 and 12 of the Electoral Act and Article 223(1) and (2) TFEU.

73 In that regard, it should be recalled that according to Article 8 of the Electoral Act, the electoral procedure is to be governed in each Member State by its national provisions, subject to the provisions of the Electoral Act. Therefore, although the Member States are required to comply with the provisions of the Electoral Act in so far as they lay down certain electoral procedures, the fact nonetheless remains that, in the end, they have the task of organising the elections, in accordance with the procedure laid down by their national provisions, and also, in that connection, of counting the votes and making the official declaration of the electoral results (judgment of 30 April 2009, *Italy* and *Donnici* v *Parliament*, C-393/07 and C-9/08, EU:C:2009:275, paragraph 60 and the case-law cited).

74 Taking into account the fact that, in accordance with Article 14(3) TEU, Article 223(1) TFEU, Article 39 of the Charter, and Article 1 of the Electoral Act, the election of Members of Parliament is governed by the principle of direct universal suffrage in a free and secret ballot, as stated in paragraph 59 of this order, it cannot, prima facie, be excluded that the act closing the procedure for electing Members of Parliament is that containing the results of the count of the votes cast by the electors, such that the accomplishment of all subsequent formalities required by national law does not form part of that electoral procedure.

75 The question of whether the pledge of allegiance to the Constitution of the Member State concerned required of the elected candidates by the national law may be regarded as part of the procedure for the election of Members of Parliament is a question of law to which the answer is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the judge hearing the application for interim measures.

76 Therefore, contrary to the President of the General Court's conclusion, the fact that the proclamation of 13 June 2019 states that the candidates declared elected are required, in accordance with national law, to swear or affirm allegiance to the Constitution does not exclude, prima facie, that that proclamation may be regarded as the 'results declared officially' within the meaning of Article 12 of the Electoral Act.

77 Therefore, without it being necessary to examine the other arguments relied on by the appellants as part of the fourth ground of appeal, it must be held that, by finding that the proclamation of 13 June 2019 could not, prima facie, be considered to be the 'results declared officially', within the meaning of Article 12 of the Electoral Act, and that, prima facie, the appellants could not be regarded as having been officially declared elected, for the purposes of that article, the President of the General Court committed an error of law.

78 Consequently, the President of the General Court was wrong to hold that the plea alleging, in essence, that the Parliament had breached Article 12 of the Electoral Act by having taken note, for the purposes of that article, not of the proclamation of 13 June 2019 but of the communication of 17 June 2019, was, prima facie, unfounded.

79 Since the fourth ground of appeal raised by the appellants is well founded, it is necessary to uphold the appeal and consequently to set aside the order under appeal, without it being necessary to examine the other grounds of appeal.

The application for interim measures brought before the General Court

80 Under the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may then either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment. The abovementioned provision also applies to appeals brought under the second paragraph of Article 57 of the Statute of the Court of Justice of the European Union (order of 23 April 2015, *Commission* v *Vanbreda Risk & Benefits*, C-35/15 P(R), EU:C:2015:275, paragraph 59 and the case-law cited).

81 In the present case, the President of the General Court wrongly concluded that there was no prima facie case, without having examined the condition of urgency or having weighed the balance of interests at stake. In addition, the order under appeal having been delivered, as stated in paragraph 16 of this order, without the Parliament having been heard beforehand, the Court does not dispose of all the elements necessary to decide whether that condition is satisfied and, if necessary, to weigh those interests.

82 Lastly, in its observations before the Court, the Parliament claimed that the Court should reject the application for interim measures on two grounds, namely, principally, the appellants' lack of interest in bringing proceedings and, in the alternative, the manifestly inadmissible nature of the pleas raised in the action in the main proceedings. However, those questions, which were raised for the first time before the Court, have not been debated between the parties.

83 Consequently, it must be held that the state of the proceedings in the present application for interim measures is not such as to permit it to be ruled upon and that it is necessary therefore to refer the case back to the General Court.

Costs

84 Since the case is referred to the General Court, the costs of the present appeal must be reserved.

On those grounds, the Vice-President of the Court of Justice hereby orders:

1. **The order of the President of the General Court of the European Union of 1 July 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T-388/19 R, not published, EU:T:2019:467), is set aside.**

2. **The case is referred back to the General Court of the European Union.**

3. **The costs are reserved.**

Luxembourg, 20 December 2019.

A. Calot Escobar — R. Silva de Lapuerta

Registrar — Vice-president

Certified a true copy,

Luxembourg, 20. 12. 2019

For the Registrar

Matija Longar
Administrator