

European Justice confirms the loss of immunity of Catalan pro-independence

Among others the ex President Puigdemont

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USPA NEWS - On Wednesday, the General Court of the Court of Justice of the European Union (CJEU) dismissed the action brought by the Catalan ex President and current MEP Carles Puigdemont i Casamajó, Antoni Comín i Oliveres and Clara Ponsatí i Obiols against the decisions of the European Parliament to waive their immunity. It also dismissed as inadmissible the action brought by Puigdemont and Comín against the refusal of the President of the European Parliament to defend their parliamentary immunity.

"Following the holding of the referendum on self-determination on October 1, 2017, in Catalonia (Spain), the Spanish Public Prosecutor Office, the Spanish State Counsel and the VOX political party brought criminal proceedings against a number of individuals, including Carles Puigdemont i Casamajó (then President of the Generalitat of Catalonia), Antoni Comín i Oliveres and Clara Ponsatí i Obiols (then members of the Autonomous Government of Catalonia)," explained the CJEU in a press release.

In March 2018, added the Court of Justice of the European Union, the Spanish Supreme Court issued an order charging the three politicians with "the alleged offences of insurgency and misuse of public funds. By order of July 9, 2018, the Spanish Supreme Court declared that they had refused to appear following their flight from Spain and stayed the criminal proceedings instituted against them until such time as they are found."

After these events, Carles Puigdemont, Antoni Comín and Clara Ponsatí presented themselves as candidates for the European Parliament in the elections held in Spain in May 26, 2019. As a result, Puigdemont and Comín were elected. But their names were not on the list of candidates elected in Spain because they had not taken the oath or promise to respect the Spanish Constitution required by national law. Their seats in the European Parliament were therefore declared vacant, "and all the prerogatives to which they might be entitled by virtue of their duties were suspended until such time as they took that oath or made that promise."

By email of October 10, 2019, a Member of the European Parliament, acting inter alia on behalf of Carles Puigdemont and Antoni Comín, asked the European Parliament to defend their parliamentary immunity. In the meantime, arrest warrants against Puigdemont, Comín and Ponsatí were issued by the investigating judge of the Criminal Chamber of the Spanish Supreme Court, so that they might be tried in the criminal proceedings at issue. By letter of the same date, the President of the European Parliament replied to the request for defense of the immunity of Puigdemont and Comín, drawing attention to the fact that the Parliament could not regard them as Members of the Parliament in the absence of official notification of their election by the Spanish authorities. Puigdemont and Comín ask the General Court of the European Union to annul the decision of the President of the Parliament allegedly contained in that letter.

The General Court considers that, by the decision contained in his letter of December 10, 2019, the President of the European Parliament, in essence, implicitly refused to announce in Parliament the request for the defense of the parliamentary immunity of Puigdemont and Comín, and to refer that request to the committee responsible for examination. However, the Court considers that the defense decision requested was not in any event capable of producing binding legal effects, so that (much like such a decision, had it been adopted) "that implied refusal does not constitute an act open to challenge. The Parliament cannot adopt decisions to defend immunity which produce binding legal effects with regard to the Spanish judicial authorities, either on the basis of its exclusive competence to waive that immunity or on the basis of the national law to which EU law refers."

The General Court rejects all the pleas put forward by the three Members, in particular their arguments that the Parliament erred in concluding that the legal proceedings at issue were not brought with the intention of damaging the Members' activities. According to the General Court, during its examination of a request for waiver of immunity, the Parliament is not required to examine the legality of the Spanish judicial acts. "That question falls exclusively within the competence of the national authorities," explain the General Court.

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