Parliamentary Immunity as a Privilege

Catalan Immunity Cases Destabilise the Balance Between Protection and Accountability

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On 5 February 2026, the Court of Justice (CJEU) delivered its judgment in Case C-572/23 P, setting aside the General Court's (GC) ruling in Case T-272/21 and annulling the European Parliament's (EP) decisions of 9 March 2021 waiving the parliamentary immunity of Carles Puigdemont (P9_TA(2021)0059), Antoni Comín (P9_TA(2021)0060) and Clara Ponsatí (P9_TA(2021)0061). By contrast, Advocate General Szpunar (AG) had proposed to uphold the GC's judgment and the EP's decisions (Opinion of 4 September 2025).

The judgment marks yet another striking chapter in the long-running Catalan litigation before the EU courts. Following the CJEU's expansive interpretation of the scope of parliamentary immunity in *Junqueras Vies* (C-502/19) – which effectively recast an institutional guarantee as a strategically deployable privilege – the CJEU has now imposed an exacting standard of impartiality on the EP's waiver procedure. In particular, the CJEU requires the rapporteur of the committee responsible for the reasoned proposal to be insulated from even indirect political links with the party that instigated the underlying criminal proceedings, treating such attenuated proximity as capable of vitiating the entire waiver procedure under Article 41 of the EU Charter.

Although the judgment strengthens procedural safeguards, it also risks rendering the waiver procedure structurally fragile and chronically litigated, given the pluralistic and inherently political composition of the EP. The combined effect of an expansive conception of immunity and a maximalist understanding of impartiality tilts the balance toward institutional protection, thereby reinforcing the perception of immunity as a personal privilege rather than a functional safeguard.

From referendum to Luxembourg

The appellants were prominent members of the Catalan government at the time of the unconstitutional "self-determination referendum" held on 1 October 2017. Following the referendum, the Spanish Public Prosecutor's Office, the State Attorney's Office and the political party VOX initiated criminal proceedings against them for insurgency, sedition and misuse of public funds.

On 26 May 2019 – long after the initiation of the criminal proceedings – the appellants stood for the first time as candidates in the EP elections and were elected.

On 19 December 2019, the CJEU delivered its judgment in *Junqueras Vies*. The CJEU held that a candidate acquires the status of Member of the European Parliament (MEP), and thus immunity, from the moment and by the sole virtue of being elected (temporal and personal scope). The CJEU clarified that the acquisition of MEP status cannot be made conditional upon additional national requirements (such as the oath to respect the Spanish Constitution under Article 224(2) of the Spanish Electoral Law), relying on a combined reading of Articles 2, 10(1) and 14(3) of the TEU. More controversially, the CJEU interpreted Article 9 of Protocol No 7 and Article 343 of the TFEU as conferring immunity even where criminal proceedings had been initiated long before the EP elections (objective scope). This interpretation significantly expanded the objective scope of parliamentary immunity by extending protection even to instances where the absence of *fumus persecutionis* was objectively ascertainable. As previously argued, this effectively transformed immunity from a functional guarantee of parliamentary independence into a personal privilege susceptible to

abuse (see D. Pérez de Lamo; see also Article 5(2) of the EP Rules of Procedure (EPRP) and Notice 11/2019, paras 1-5 and 43).

On 13 January 2020, following *Junqueras Vies*, the EP took note of the election of Mr. Puigdemont and Mr. Comín as MEPs with effect from 2 July 2019. Ms Ponsatí acquired MEP status on 1 February 2020, following the UK's withdrawal from the EU. The Spanish Supreme Court subsequently requested the EP to waive their immunity. On 9 March 2021, the EP granted the requests.

The appellants challenged the EP decisions. On 5 July 2023, the GC dismissed the appellants' actions in their entirety. The appellants appealed before the CJEU.

Is the waiver a legal or a political measure?

As a preliminary matter, the CJEU addressed the nature of the EP's waiver decisions. The GC held that the EP "has a broad discretion [...] owing to the *political nature*" of the waiver decision (paras 112, 225 and 242). At the same time, the GC recognised that the decision is reviewable and capable of altering the legal situation of the MEP concerned and must comply with Article 41 of the EU Charter (paras 116, 225-226). The AG endorsed that approach (paras. 43-45).

However, the CJEU quashed that characterisation of the waiver, holding that "[a]lthough that procedure is conducted by politicians, [...] the decision by which the Parliament decides to waive the immunity are *not political in nature* [...] *but legal*" (para 80).

At first glance, the divergence appears puzzling, given that both courts accepted judicial review and the need to comply with Article 41 of the EU Charter (CJEU, paras 79-80). The real divergence seems to lie in the *standard of impartiality*. Both the GC and the AG acknowledged that the EP and its Members are "not, by definition, politically neutral", thereby contextualising impartiality within a political institution (GC, para 226; AG, paras 52-54). However, the CJEU rejected that contextualisation. By emphasising the legal nature of the waiver decision, the CJEU imposed a strict standard of objective impartiality detached from the EP's political composition. That cleavage shapes the remainder of the judgment.

The rapporteur's political affiliation

The first contested element concerned the fact that the rapporteur of the Committee on Legal Affairs (JURI) belonged to the same political group of the EP as Members of VOX, the Spanish party that – alongside the Public Prosecutor's Office and the State Attorney's Office – had instigated the underlying criminal proceedings. Under Rule 9 of the EPRP and Notice 11/2019, the rapporteur coordinates the JURI committee and prepares a draft report; the JURI committee adopts a reasoned proposal; and finally, the EP decides in plenary.

The GC found no infringement of Article 41(2) of the EU Charter (duty of impartiality). The GC stressed that the rapporteur acts in a committee whose composition reflects the political balance of the EP (para 243); and that political affinity cannot automatically be attributed to all MEPs of a political group (para 246). The AG similarly underlined that the waiver procedure inherently involves MEPs that oppose the political views of the appellants (para 52).

The CJEU reached the opposite conclusion. It relied decisively on point 8 of Notice 11/2019, which provides that "the rapporteur may not be a member of the same group [...] as the Member whose immunity is under discussion" (paras 97, 98, 104, 105). Accepting the appellants' interpretation, the CJEU extended this exclusion to cover membership in the same group as the party that initiated the criminal proceedings. Since the EP had adopted that standard internally, Article 41(1) of the EU Charter required its "consistent application" (para 98). The CJEU thus concluded that the rapporteur "does not offer sufficient guarantees to exclude any legitimate doubt [...] as to possible bias" (paras 104-106).

In my view, the CJEU's reasoning is open to criticism.

First, Notice 11/2019 is an internal guideline that does not create enforceable rights for individuals (GC, para 237 and the case law cited). The CJEU itself previously characterised Notice 11/2003 on the waiver of

immunity as "non-binding" (AG, para 49 and *Troszczynski v EP*, C-12/19 P, paras 25 and 44). In addition, the Notice is issued by the JURI committee; it is not act of the EP as such. By using point 8 of Notice 11/2019 as a benchmark of objective impartiality, the CJEU effectively transformed an internal guideline of the JURI committee into a binding standard governing the entire EP.

Second, if MEPs who are politically opposed to the MEP concerned are not disqualified from voting in plenary whether to grant the waiver, *a fortiori* such political opposition cannot justify the exclusion at the preparatory stage of the JURI committee's reasoned proposal (see also AG, para 54).

Third, it is the JURI committee that adopts the reasoned proposal and the EP that ultimately decides on the waiver – not the rapporteur acting alone. The CJEU does not explain why the rapporteur should be regarded as playing a decisive role in a procedure that, at every stage, requires a majority within a collegiate body whose members enjoy equal voting rights. As both the GC and the AG observed, given the pluralistic and political composition of the JURI committee and of the EP itself, it is inevitable that some MEPs involved in the waiver process will oppose the appellants' political views or even support the criminal proceedings.

Fourth, the extension of the ideology from one national party (VOX) to the entire European and Conservatives and Reformists (ECR) political group is tenuous (see also AG, para 74). During the 9th parliamentary term, VOX represented only a small fraction of both the ECR group and the EP. Namely, at the time of the voting (post-Brexit EP composition), VOX represented c. 6% of its ECR Group, which in turn accounted for c. 9% in the EP. Moreover, political groups in the EP are heterogeneous coalitions. Notably, VOX's departure from the ECR in July 2024 to join the Patriots for Europe indicates that their views were not representative.

In sum, the CJEU conflates *political proximity* with *objective bias*.

The "Catalonia is Spain" event

The second contested element concerned an event organised by the rapporteur in March 2019 entitled "Catalonia is Spain", during which the Secretary-General of VOX concluded with the words: "Long live Spain, long live Europe and lock up Puigdemont".

The GC found no evidence of bias. In particular, the GC held that the rapporteur did not express his views orally (para 250); other MEPs were present (para 250); and the rapporteur's opposition to the appellants' political ideas, shown by the organisation of the event, differs from the legal assessment of the waiver procedure and support for the criminal proceedings (GC, para 251; AG, para 78).

Again, the CJEU disagreed with the GC and the AG. It held that these facts "could be perceived as reflecting bias" (para. 112). Particularly, the CJEU held that the rapporteur's organisation of the event, in a context where VOX had already instigated the proceedings, could indicate support for the criminal prosecution (para 114). The CJEU therefore found an error in the "legal classification of the facts" (para. 115).

In my view, the CJEU's reasoning amounts less to correcting a legal classification than to reassessing the factual context of the conference and drawing different inferences. Moreover, organising a politically charged event expressing opposition to secessionist ideas does not automatically imply support for specific criminal charges. As the GC and the AG had pointed out, the presence of other MEPs and the rapporteur's silence during the event further weakens the inference of bias.

Impartiality uncompromised

Taken together, the CJEU's findings establish a high standard of objective impartiality.

The CJEU further held that the duty of impartiality constitutes an essential procedural requirement whose infringement entails the annulment of the EP's decisions (para. 132). Yet that formal logic sits uneasily with the concrete circumstances of this case. The criminal proceedings were initiated in October 2017, well before the appellants stood as candidates in May 2019 and before their election took effect on 2 July 2019 and

1 February 2020, respectively. It is therefore objectively impossible to contend that those proceedings were initiated with a view to interfering with their future, and at that stage purely hypothetical, functions as MEPs. Clearly there could not be *fumus persecutionis*. The reasoned proposal of the JURI committee and the EP's decisions expressly relied on that very consideration.

Although the CJEU reiterates that immunity is an institutional guarantee (paras 76-77), the combined effect of *Junqueras Vies*' expansive objective scope and a maximalist conception of impartiality reinforce the perception of immunity as a personal privilege.

Procedural rigour and structural tension

The immediate consequence is clear: the EP must restart the waiver procedure, this time ensuring compliance with the CJEU's stringent impartiality standard. Structurally, however, the problem persists. The EP is a plural and political body. Its committees and plenary inevitably include MEPs who oppose the political views of those concerned and who may even support criminal proceedings against them. All MEPs participate on an equal footing.

If objective impartiality requires insulation from political proximity, the procedure to waive the immunity risks becoming procedurally fragile and chronically litigated.

A saga prolonged

The duration of the proceedings is remarkable. From the Supreme Court's request in January 2020 to the CJEU's judgment in February 2026, six years have elapsed. The appeal alone lasted approximately two and a half years, although the CJEU ultimately resolved the case on a single procedural issue. If a similar timeframe follows, the process could extend for another six years. What seemed to be the closing chapter of the Catalan litigation before the EU courts now appears far from concluded.

As time passes, the structural fragilities of *Junqueras Vies* become increasingly apparent. The criminal proceedings that initiated in 2017 could not plausibly have intended to interfere with parliamentary functions in 2019, still less with a second mandate beginning in 2024 – and *a fortiori* not with a potential mandate in 2029, should re-election occur. The further the electoral horizon recedes, the more difficult it becomes to reconcile the broad objective scope of MEP immunity with its functional rationale.

Meanwhile, the broader Catalan litigation continues, including high-profile pending cases concerning the compatibility of certain provisions of the Spanish Amnesty Law with EU law (*SCC*, C-523/24, and *ACVOT*, C-666/24; see further D. Pérez de Lamo).

Conclusion: a landmark and a warning

The Catalan litigation has once again produced a striking judgment. The CJEU has strengthened procedural guarantees in EP proceedings. That clarification is constitutionally significant. Yet by combining an expansive understanding of MEP immunity with an uncompromising conception of impartiality, the CJEU destabilises the balance between the EP's independence and the accountability of its Members. In doing so, the CJEU also renders the waiver procedure fragile and prone to recurrent litigation.

If parliamentary immunity is to remain an institutional guarantee rather than evolve into an instrument of delay, the balance between protection and accountability will require careful recalibration in future cases.

Disclaimer: The views expressed are my own and do not reflect the views of my employer.

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