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THE ACQUISITION OF PARLIAMENTARY IMMUNITY IN CASE OF PROVISIONAL CUSTODY: CASE C-502/19

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Introduction

The regime of European parliamentary immunity is one of the most controversial issues for both European and national realms: in fact, today there are still debates regarding its functioning. Once it was established that the Members of the European Parliament (MEPs) were elected through direct suffrage, neither their status nor the powers of the European Parliament (EP) were affected. Throughout the history, the EP has increased its competencies due to the numerous reforms of the European Treaties which affected MEPs' status: the dual mandate was annulled and a common Members' Statute on pensions and salary was endorsed.

However, many components did not change including the electoral procedure, which must be established by each Member State, and the system of parliamentary immunities. Although several reforms have been proposed at the end of the last century, none of them was accepted obstructing any change of this regime.

The dissertation examines the case of the Catalan pro-independentist deputy Oriol Junqueras Vies, in which the EU General Court established, on 19th December 2019, that parliamentary immunity was acquired by the defendant according to Article 9 of the Protocol (No. 7) on Privileges and Immunities of the European Union although Spanish Law argued the contrary. The judgement of the EU Court of Justice provoked manifold repercussions at mediatic, social and political level and boosted the hostility between the Spanish central government and Catalonia. In addition, the definitions, which were traditionally accepted, have been challenged by revolutionary academic interpretations. In this case, the Spanish Supreme Court had to 'interfere' with European Law's principles highlighting the controversies between Member States and the European Union which affected substantially their relationship, especially during the last period.

The relevance of this case resides in the fact that both basic democratic rights including representative democracy or universal suffrage and ethical questions, such as the limitation of freedom of expression, are involved. This chronicle is still open: in fact, today Mr. Junqueras is in prison.

The thesis is intended to focus on judicial and political questions including the understanding of the concept of parliamentary immunity, the normative context in which this case is found, its factual background and the analysis of the CJEU's sentence along with its implications.

CHAPTER I

EUROPEAN PARLIAMENTARY IMMUNITY

1.1 The Concept of Parliamentary Immunity: Origins and Terminology

The concept of parliamentary immunity is provided by national laws in each country but there is still uncertainty regarding its real understanding due to various interpretations attributed to it. In fact, this term can include two different types of immunity which are non-accountability, i.e., the freedom of speech and parliamentary vote which is also called the Westminster type of immunity, and inviolability, i.e., the freedom from deprivation of liberty and legal proceedings.

In addition, the immunity regime is regulated by national legislation, so each State has its own one and they differ from each other. The purpose of parliamentary immunity is to ensure the proper functioning of the legal body of Parliament and to guarantee its independence[1].

The concept of parliamentary immunity, or legislative immunity, is a structure that grants partial immunity from prosecution to each Member of the Parliament; a Superior Court of Justice or the Parliament itself has the competence to remove the immunity before in case of prosecution. The latter point is fundamental because the Members are free to express their choice through their vote without fearing prosecution.

At the center of this concept, it is necessary to analyze the definition of legal immunity or immunity from prosecution which is a legal status in which an entity or individual is not considered accountable for an infringement of the law, and it can be from criminal prosecution or from civil liability or both. There are two categories of this type of immunity which are immunities of government officials including parliamentary, judicial, sovereign, diplomatic and absolute ones, and immunities of individuals participating in the legal process including amnesty law, spousal privilege, witness, and charitable privileges.

For what regards the terminology, the various Constitutions refer to the two definitions mentioned above of parliamentary immunity with different names including *irresponsabilité, inviolabilidad, insindacabilità* or privilege for the non-accountability principle and *inviolabilité, inmunidad, improcedibilità* or freedom from arrest for the inviolability one. This duality is not present in all States: in fact, in the Netherlands inviolability is not enjoyed and, in the United Kingdom as well as in Ireland, it can be applied only to measures to remove

[1] S. HARDT (2020: 1).

freedom within the scope of civil proceedings. These two types of immunities have different scopes, effects, and historical roots[2].

The origins of the concept of parliamentary immunity can be analyzed starting from a precise focus on the immunity systems of three countries which are the United Kingdom, France, and the Netherlands.

For what regards the first case, the origins are found in the beginning of the Anglo-Norman Era after the 1066 Norman conquest where the advisors of the king and family members enjoyed freedom from molestation and free passage under the monarch's peace, also known as *pax regis*. As a matter of fact, the origin of the freedom from arrest had existed before the creation of the institutional legal body of the Parliament. The other immunities, including the freedom of speech, have developed during the following centuries.

In order to understand the origins of free speech, it is necessary to trace back to the session of the English Parliament in 1397 in which a bill that denounced the shameful customs of the Court of Richard II of England and the excessive financial burdens was passed by the House of Commons. Afterwards, it was established that Thomas Haxey, who was the member that proposed this bill against the Crown, was accused of death for treason but a royal pardon prevented it. After this dispute, the Members of the Parliament started to discuss about the right to freedom of speech and opinion during their office without the interference of the king.

Finally, after the end of the English Civil War, Article 9 of the Bill of Rights of 1689 provided freedom of speech protecting discussions and acts of Members of Parliament from any royal interference.

Freedom of speech remains today a crucial element for the correct functioning of the institutional body and the Article shows imprecision in its terminology, but many elements should be considered[3].

On the other hand, freedom from arrest was linked to measures which restricted personal freedom from civil actions in the United Kingdom. Erskine May, who was the chief executive of the House of Commons, published in 1844 its masterpiece titled "Parliamentary Practice" which represented a parliamentary authority establishing the rules to be followed during parliamentary procedure regarding these privileges. In addition, the relationship between the Parliament and the Courts was explained by him concluding that the jurisdiction over the internal proceedings of the House of Commons falls in its own hands while the Courts had to interpret the legislative texts. The scope of these immunities is arbitrated by the Courts but also the Parliament can contribute to it.

Thomas Erskine May defines the concept of parliamentary immunity as "the sum of certain rights enjoyed by each House collectively as a constituent part

[2] EUROPEAN PARLIAMENT (1993: 7).
[3] S. HARDT (2013: 273).

of the High Court of Parliament; and by Members of the House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined in statute"[4]. These rights are not free-standing ones, but they arise in order to let the Members of Parliament perform their functions. There are also some powers which are exercised collectively by both chambers and are rooted in the nature of the Parliament as a High Court placing it in a special position.

The problem of codification of these privileges provided by a comprehensive statute is still debated today in the country. Throughout the history, many improvements have been experienced in this country's system of immunities including the creation of the 1999 Joint Committee on Parliamentary privilege and Select Committees[5].

The second case is France which also provided freedom from passage in the middle-age for all parliamentarians but then absolutism developed so the establishment of the real concept of immunity was postponed until the end of the French Revolution of 1789, where the principle of non-liability was ensured by preventing the incrimination of the Members of the National Constituent Assembly. The advisors of the king had limited and temporary immunity from trial, but they were still under the monarch's rule. The two decrees of 1789 and 1790 were passed by the Assembly granting freedom of speech and freedom from arrest by creating a double immunity system which was under many debates and can be found today in Article 26 of the French Constitution. This system was enforced by the Constitution of 1791, which constituted an important influence for other nations in the following centuries.

The third case to be analyzed in order to fully understand the origins of the concept of parliamentary immunity is the Netherlands in which in 1588 the Act of Guarantee, known as *acte van vrijwaring,* was approved by the States of Holland and provided freedom from arrest to the deputies in order to go to the meetings of the States and return. After one century, the *acte van indemniteit,* which was the Act of Indemnity, was adopted establishing the compensation to any deputy and his heirs from any damage caused by the expression of their political position in contrast with the stadholder government. In this case, this provision was limited to this political attitude because there was no powerful actor such as an absolute king. These two acts were adopted as a reaction to some events and not in order to create a cohesive immunity regime. These acts were not established to guarantee the independence of deputies but to ensure their attendance and protect them from their successors.

[4] W. MCKAY ET AL. (2004: 75).
[5] EUROPEAN PARLIAMENT (1993: 8).

After the French Revolution, the system of immunity established by the Constitution of year III was transplanted into the Dutch constitutional order and Napoleon abolished it later. Once the Dutch monarchy was re-established, the system of inviolability was adopted by the Netherlands without precisely recognizing the freedom of speech in the Parliament. Inviolability was abolished by the Constitution of 1848, which represents the basis of the French modern Constitution.
Finally, as it was demonstrated, the two types of immunities have developed in different periods and ways. Once the Parliament started to emancipate itself from its limited advisory role, the contrast against the king became more sophisticated. Although the origins have different backgrounds, they share the same cause which is a change in the conception of the Parliament from an advisory organ to an independent one in contrast with the power of the crown that needs protection[6].

1.2 Normative Context

Each country or political entity establishes its own immunity system, as it was argued before. For this reason, it is essential to analyze simultaneously different national systems of immunity in order to confront the various legislative options adopted by the States and to understand whether a set of common principles of immunity law exists or not, despite the highlighted differences. The rules established by these systems are system-specific so they must be compared also considering the national background of each country or institution. The first elements to be analyzed are the factors which shaped and are still shaping these systems and, afterwards, it is possible to state that the concept of parliamentary immunity crosses national borders and discover common parameters for harmonization.
It is not easy to fully understand the legal provisions regarding this concept and their practical application, especially when the cases under discussion are very complex, e.g., those which include indispensable rights. Moreover, the background in constitutional theory is also relevant as it represents the basis of the national legal provisions concerning the concept of parliamentary immunity.
The need for background studies is the fundamental epistemological problem of comparative law according to *The Oxford Handbook of Comparative Law*[7]. In addition, it is important to focus on the "partly autonomous reality created by the norms, doctrines and concepts of a legal system that do not necessarily find exact counterparts in another"[8]. Finally, it is useful to examine the way

[6] S. HARDT (2013: 273-275).
[7] M. REIMANN, R. ZIMMERMANN (2006).
[8] N. JANSEN (2006: 307).

in which the general theme of parliamentary immunity is enforced in the European and Spanish Laws' contexts.

1.2.1 Parliamentary Immunity in EU Law

The parliamentary immunity system of the European Union (EU) dates to the period in which the European Parliament (EP) was composed by appointed delegates rather than elected representatives. This structure provided the most important legal provision in this field, that is the Protocol No. 7 on Privileges and Immunities of the European Union which regulates the immunity system and it is divided into six chapters dealing with property, funds, assets and operations, communications and laissez-passer, Members of the European Parliament (MEPs), representatives of Member States taking part in the work of the institutions of the European Union, officials and other servants, privileges and immunities of missions of third countries accredited to the EU and general provisions. Chapter III is the one which shall be analyzed in this section as it is composed by three main essential articles for the present discussion.

These articles are, first, Article 7 (ex Article 8), which states that the MEPs' right to travel to and from the first sitting of the new EP cannot be obstructed and both national authorities and other Member States must confer the functions of the deputies representing the nation abroad during provisional missions to MEPs.

Secondly, Article 8 (ex Article 9) argues that:

> Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Thirdly, Article 9 (ex Article 10) establishes that:

> during the sessions of the European Parliament, its Members shall enjoy:
>
> (a) in the territory of their own State, the immunities accorded to Members of their Parliament;
>
> (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.
>
> Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.
>
> Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

As it was mentioned before, these are the most fundamental legal provisions regarding the parliamentary immunity system in the European community

because they set the basis for this field. Absolute non-accountability, which is present in all Member States even though it is related to votes and opinions, is provided by Article 8[9].

On the other hand, Article 9 guarantees the European-based principle of inviolability, comparable to the one enjoyed by national deputies, to MEPs depending on the territory and time in which they are located. In addition, it generated some doubts regarding the inclusion of civil proceedings in the term "legal proceedings" for the principle of inviolability, since this specific case was not included in the legal systems of the countries that adopted this protocol. Also, it provides the inviolability structure which is composed by every Member State's system and the EP's principle of inviolability[10].

It is essential to discover the scopes of these articles which will be evaluated at the end of this chapter.

All things considered, it is fundamental also to mention the Electoral Act of 1976 regarding the election of the Members of the EP which establishes that "elections shall be by direct universal suffrage and shall be free and secret"[11], "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"[12] and "the term of office of each member of the European Parliament shall begin and end at the same time as the period referred to in paragraph 2"[13]. These articles reflect the fact that the basic democratic principles, including direct universal suffrage, must be respected in each Member State and even though they establish the rules regarding the beginning and the end of the parliamentary mandate, they generated some incomprehension forcing the Court to clarify some aspects. The judgement regarding Mr. Junqueras that will be analyzed in the next chapter will provide a clear solution to the exact moment in which the parliamentary mandate starts and terminates according to the European Court.

There are other articles of the same legal provision that are essential to this analysis, including Article 4(2), which maintains that the privileges and immunities entitled to MEPs must be enjoyed according to the Protocol of 8th April 1965 on the privileges and immunities of the European communities, and Article 7(2), which argues that the national provisions must develop the electoral procedure to elect MEPs and must not change the essence of the balloting organization. These articles constitute two important legal arrangements that give the Member State some decisional power for what concerns the choice of the electoral practice highlighting the fact that EU and the States must cooperate in order to coexist in the same system. In particular,

[9] S. HARDT (2015: 23).
[10] S. HARDT (2015: 24).
[11] Article 1 Electoral Act of 1976.
[12] Article 3(2) Electoral Act of 1976.
[13] Article 3(3) Electoral Act of 1976.

the second Article produced some complications and debate regarding the possibility to create a common electoral procedure for all Member States.
Moreover, Article 10 suggests that first meeting of the new EP must be held on the first Tuesday after a period of one month since the elections have finished[14] and once it starts, the previous EP's authority will terminate [15].
Finally, it is stated that the credentials of each MEP must be checked by the EP, which is entitled to examine the official election results and regulate the debates derived from national or European provisions[16]. This decision underlines the fact that the European Parliament is involved in the final process of the MEPs' elections and, therefore, has a partial responsibility regarding the newly elected representatives.
In conclusion, all the doubts and problems that emerged from these European provisions will be discussed in the final chapter in order to understand what could be done to reach clarity on these issues.

1.2.2 Parliamentary Immunity in Spanish Law

The most important legal source concerning parliamentary immunity in the Spanish Law is the Constitution, in particular Article 71, which states that Members of the Congress and senators enjoy inviolability of the opinions expressed during their functions[17] and shall enjoy freedom from arrest and may be arrested only in the event of *flagrante delicto*. In addition, they may be neither indicted nor tried without prior authorization of their respective House[18] and the Spanish Supreme Court will be competent in the trials against deputies and senators[19].
Even though (1) seems to refer only to opinions expressed by parliamentarians, it also includes their votes in the exercise of their office, and this is also confirmed by Article 21 of the *Reglamento del Senado* (Rules and Regulations of the Spanish Senate). The existence of secret ballots in the chamber can be essential for the protection of these liberties but also a problem for the stability of the parliamentary majorities. This protection is considered as absolute, and it must be remarked that it covers only those opinions or votes expressed in the exercise of the functions of a parliamentarian inside the chambers. As it was demonstrated by EU Law, also the Spanish Constitution states that detention can be implied for the case of *flagrante delicto*, which is the situation in which the accused individual is directly seen or caught in the act of committing an offense.

[14] Article 10(3) Electoral Act of 1976.
[15] Article 10(4) Electoral Act of 1976.
[16] Article 11 Electoral Act of 1976.
[17] Article 71(1) Spanish Constitution.
[18] Article 71(2) Spanish Constitution.
[19] Article 71(3) Spanish Constitution.

For what regards the indictment against one deputy or senator, the Spanish Constitution clearly states that there is no need of a previous authorization of the corresponding Chamber[20].

The Spanish parliamentary immunity has two dimensions: it is, first, an institutional guarantee for the integrity of both the national and European parliaments, which constitute the only representative legal organs, and a safeguard at individual level for the independence of each deputy. The second dimension is a consequence of the first one because since the population is represented in the Parliament, deputies represent people's interests.

The Parliament itself has the power to decide the suspension or annulment of a mandate and this is an important point because in this way both chambers control their integrity.

The immunities enjoyed by parliamentarians renew themselves every time a new Parliament, which has nothing to do with the previous and the following ones, is elected and formed.

Journalists including Javier Perez Royo argued that once the Parliament delivers its authorization to the judicial body that indicted a deputy or senator, the latter must be released if he or she is under provisional custody and is elected to the European Parliament[21].

Moreover, it is necessary to consider the Spanish electoral law, known as *Ley orgánica 5/1985 de Régimen Electoral General*, of 19th June 1985 in order to understand how the Spanish electoral system is regulated and, especially, which are the necessary requirements that each deputy shall fulfil according to law. It is composed of two hundred and twenty-seven articles divided into six titles dealing with the common dispositions for the elections through direct universal suffrage, the special dispositions for the elections of deputies and senators, the municipal and provincial elections, the elections of Canary Islands' Council and the general dispositions for the elections of the European Parliament.

The last one, known as Title VI, is divided into seven chapters concerning the right of active and passive suffrage, the incompatibilities, the electoral system, the call for elections, the electoral procedure, divided into five sections, and the expenditure and subsidies. This legal source is the specific one which deals with all the regulations of the parliamentary elections system at national and European level.

The preamble of this law shows its scope that is respecting democracy in which the citizens can express their opinions through their right of suffrage. Article 81 of the Spanish Constitution establishes that the Spanish Parliament must adopt a law which regulates the electoral system. It shows the necessity

[20] M. A. NAVARRO (2003).
[21] J. PEREZ ROJO (2019).

to adopt a unified and global treatment and regulate the specificities of each electoral process in the scope of the State's competences.

In addition, the State has the exclusive competence to regulate the basic conditions that guarantee the principle of equality before the law in the exercise of the constitutional rights, including the one concerning suffrage[22].

Article 224 of this electoral law indicates that the Central Electoral Board is responsible to declare officially the results of the elections of parliamentarians, who will swear before the Constitution, and, if this rule is not fulfilled, the seat(s) will be declared as vacant removing all the immunities linked to the office. This Article will be essential for the CJEU and other scholars in order to understand the real essence of the mandatory oath that the Spanish Constitution proposes.

Another fundamental legal source are the Rules of Procedure of the Congress of Deputies of 1982 which regulate the Spanish parliamentary system of the lower chamber and are composed of thirteen titles concerning the deputies' statute, the parliamentary groups, the organization of the Congress, the general dispositions of functioning, the legislative procedure, the control on the government dispositions with legal force, the granting of authorizations and trust, the appeals and requests, the government's plans and programs, the proposals of appointment and the end of the parliamentary mandate.

The law establishes that the necessary conditions that a newly elected deputy must follow consist in the presentation of the credential to the Secretary General, the fulfilment of the declaration of activities and the mandatory oath before the Constitution[23].

In addition, it argues that once the official elections results are declared, the privileges linked to the seat are enjoyed by the elected deputy and these rights cannot be achieved after there have been three sittings of the Parliament and the conditions mentioned in (1) are not fulfilled[24].

The fact that these Rules have never been reformed has produced many debates among Spanish scholars who think that these provisions are fundamental because the citizens' rights are involved. Among the problems faced within the Spanish Parliament, there have been the excessive presence of the executive in both chambers, the devaluation of representative democracy and the prominence of political parties which monopolizes the parliamentary job[25].

The parliamentary regulations do not simply constitute a set of legal norms designed to organize and regulate the parliamentary procedures but, instead,

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[22] Article 149(1) Spanish Constitution.

[23] Article 20(1) *Reglamento del Congreso de los Diputados* (Rules of Procedure of the Congress of Deputies) of 10th February 1982 (BOE No 55 of 5th March 1982, p. 5765).

[24] Article 20(2) *Reglamento del Congreso de los Diputados* (Rules of Procedure of the Congress of Deputies) of 10th February 1982 (BOE No 55 of 5th March 1982, p. 5765).

[25] E. ARANDA ALVAREZ (2017: 22).

they defend the independence of the chambers and make the collaboration of political parties possible[26].

The solutions provided in the article titled "The Rules of Procedure of the Spanish Congress: Proposals for Reform"[27], are strengthening the function of representation and legitimation, improving the legislative and control functions, and establishing clear norms for the management of the debates.

Furthermore, the Spanish Law on Criminal Procedure, also called *Ley de enjuiciamento criminal*, represents a set of legal norms which regulates the judicial activity in every criminal proceeding. This law is divided into seven books which concern the general provisions, the investigation, the oral hearing, the special proceedings, the appeal, annulment and revision, the proceedings regarding minor offences and the enforcement of sentences. Each book has a set of titles and chapters in which nine hundred and ninety-nine articles are developed.

Article 384A of this law argues that after the allegation of a provisional custody due to criminal wrongdoing to someone who is connected to violent or rioter groups, the public office of the accused individual under trial must be interrupted until he or she remains in custody. This legal source will be considered by the European Court to deliver a valuable sentence examining the fact that Junqueras was under provisional detention.

There are other articles of the Spanish Law on Criminal Procedure that must be mentioned in order to broadly understand the undertaken CJEU judgement: e.g., Article 503 provides that there are three conditions that must be followed in order to impose the custody which are the confirmation of the accomplishment of an act that can be considered as an intentional criminal breach condemned to two or more years of prison, the recognition of an existent responsibility and the certainty of the accused's attendance in the judicial procedure even though he or she could escape.

Moreover, when both chambers are in session, an authorization delivered by the chamber in which the defendant is associated with must be obtained by a Court that is intended to prosecute him or her[28], and the notification of an arrest of a parliamentarian must be referred within twenty-four hours[29].

These provisions will be useful to understand the debate regarding the decision of imprisonment of Junqueras after the violent riots sustained by the pro-independence movement of Catalonia.

In the case in which the prosecution occurs between the sessions of the Parliament or before the reunion of both chambers, the chamber linked to him or her must be informed of this[30].

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[26] K. LOEWENSTEIN (1986: 255-258).
[27] E. ARANDA ALVAREZ (2017).
[28] Article 750, *Ley de Enjuiciamiento Criminal* (Law on Criminal Procedure).
[29] Article 751, *Ley de Enjuiciamiento Criminal* (Law on Criminal Procedure).
[30] Article 752, *Ley de Enjuiciamiento Criminal* (Law on Criminal Procedure).

Finally, it is shown that the proceedings must be suspended by the judicial officer since both chambers have been informed until a decisive solution is undertaken by the corresponding chamber[31] and the judicial process must be interrupted if the authorization is rejected by the chambers but the criminal proceedings against other individuals under accusation must advance[32].
To conclude, all these legal sources will be implemented in the Judgement of 19th December 2019 of the European Court of Justice and their possible flaws will be explained in the final chapter of this thesis.

1.3 The Acquisition of European Parliamentary Status

Since 1976, the European Parliament evolved from being an assembly composed of appointed members to an elected institution which represents a political agenda-setter of the European Union characterized by the election of its representatives through direct universal suffrage. The EP is the only institution which is elected directly by the European citizens.
Members of European Parliament were appointed by each of the Member States' Parliaments, so all Members had a dual mandate. Throughout the decades, the EP has experienced many enlargements and its powers and influence increased substantially. A great deal of countries started to become part of the European Union and they had to enjoy democratic representation in the EP, so the number of seats changed continuously.
It is important to discuss about the European parliamentary status and its acquisition because it is strictly related to the concept of immunity, in fact they are interconnected. The first passage that one must analyze is the legal context in which the acquisition can be found in order to have a clear understanding of it.
The Treaties argue that the EP shall be composed of representatives of the Union's citizens and the maximum number is seven hundred fifty-one Members excluding the President. The representation of individuals shall be proportional with a minimum threshold of six members per Member State and ninety-six is the maximum number of seats that a Member State can obtain. It is important to remind that the European Council shall adopt by unanimity a decision that establishes the composition of the EP based on the latter's initiative and on national quotas because the Treaties do not provide any clause on its composition[33].
In the past, the European Parliament had only supervisory powers but today the EP shall, jointly with the Council, exercise legislative and budgetary functions including political control, consultation, and the election of the

[31] Article 753, *Ley de Enjuiciamiento Criminal* (Law on Criminal Procedure).
[32] Article 754, *Ley de Enjuiciamiento Criminal* (Law on Criminal Procedure).
[33] R. SCHÜTZE (2018: 159).

President of the Commission[34]. The European Parliament has legislative, budgetary, supervisory, and elective powers. The first category includes the acceptance of a Commission's proposal jointly with the Council, the power to give its consent before the adoption of a legislation, the consultation it may deliver and its role in stipulating international agreements.
The second category consists in the establishment of the Union's annual budget. The third one is based on the power to debate, question, and investigate. The last one includes the election of the President of the Commission by the majority and other officers, the power to give its consent to the whole institution, if there is no more trust, the capacity to deliver a motion of censure[35].
Article 2(1) of Decision 2005/684/EC, Euratom of the European Parliament of 28th September 2005, established that they exercise their mandate independently, in fact they cannot be bound by any instruction imposed by national authorities, community institutions, private interest groups or non-governmental organizations or receive a binding mandate. The independence of their mandate is justified by the identification of different discordances to prevent conflicts of interest.
For many years, the 1976 Electoral Act imposed that the membership of the EP was not compatible with a membership in a national or European political entity, in fact a Member of the European Parliament cannot be a member of the national legislature of a Member State. In the past, they were appointed by national parliamentarians from among their own membership. The issue of the so-called dual mandate created many debates during the last centuries between those who criticized it by stating that led to absenteeism and those who supported it by believing in a strengthening of the relationship between national and European assemblies.
It is demonstrated that Member States decide the specifics of the electoral procedure according to their national provisions while respecting the principles of the voting system[36], and this led to the problem that there is no uniform electoral procedure in all Member States. Another important principle is the one which suggests that every citizen has the right to vote and to stand as a candidate in elections for the EP even though he or she is not in his or her member State of origin.
After years of discussions, the Statute for Members of the EP was adopted by the institution to lay down the regulations and general conditions that govern the performance of the duties of Members of the EP, establish that Members shall be free and independent and shall vote on an individual and personal basis and shall not be bound by any institution. In addition, they can create

[34] Article 14 TEU.
[35] R. SCHÜTZE (2018: 167-171).
[36] Article 7(2) Electoral Act of 1976.

political groups and shall receive an adequate salary and pension in order to safeguard their independence. They are elected to represent their national citizens and shall enjoy a European political group or party enjoying a privileged status within the Parliament. The EP can organize itself internally by electing a President which has the main powers within the institution.
Party-list proportional representation is the most used method by most of the Member States in order to elect their representatives in the European Parliament with a single constituency but there are other electoral procedures including the highest average method of proportional representation or the largest remainder method. Another important feature which must be considered is the different calculation of national quota and election threshold which is different from country to country.
Furthermore, there has been a huge debate about the exact moment in which the elected national representatives acquire the status of Members of the EP because there was substantial uncertainty.
The Electoral Act of 1976 states that the term of office of Members of the European Parliament begins and expires at the same time as the five-year period beginning at the opening of the first session following each election and this period can be extended or reduced by a decision of the Council. This term can end in case of death, resignation or on expiry of their term of office. The EP must be informed by national authorities if the term expires because of the application of national legislation such as a result of incompatible mandates.
In the case of vacant seat due to death or resignation, the national authorities must be informed by the EP in order to elect or appoint another representative. In addition, Members remain in office until the opening of the first sitting of the European Parliament following the elections.
Since Rousseau's epoque, parliamentary mandate has interested many scholars due to its importance in the democratic representation of citizens in the Parliament. In the past, the imperative mandate was imposed in most of the parts of the world while today the free representational one is spread representing the entire population and enjoying independence and privileges.
For what regards the duration of the parliamentary mandate, it is around four or five years for lower houses and longer in the upper ones. In some cases, the term of office does not exist, so it depends on membership of the government and in other cases, especially senators, have no time limit being appointed for their entire life[37].
Some countries suggest that the mandate starts on the election day or when election results are proclaimed but it is not assured that Members acquire full powers of their office once the election results are declared. In fact, in Australia's House of Representatives elected representatives can act as

[37] M. VAN DER HULST (2000: 8-10).

Members once the election results are declared but a mandatory oath is necessary in order to start performing their functions in the proceedings of the institution.

In some cases, the mandate starts once the election results are validated so when the elected Members are registered officially as winners of the elections. The start of the mandate often coincides with the inaugural sitting of the newly elected assembly since the Parliament is responsible for the validation of the results of the elections. In some cases, the beginning starts when the outgoing parliamentarians' mandate ends. Moreover, there are many special cases, for example the beginning of the mandate can be effective on a specific date or once a statement of acceptance is received[38].

One major problem is the validation of the mandate because an election does not end when the votes have been counted and in most countries three actions are necessary including the official declaration of the results, the validation of each candidate's election and the settlement of disputes concerning compliance with the electoral rules or the determination of whether irregularities occurred in the conduct of the elections.

After validation, the newly elected Members can take seat in the assembly establishing that election has not been challenged and there is no incompatibility to solve. The validation of the mandate can be performed by a special entity or committee which is entitled to refer everything to the assembly which will validate the election or not[39].

For what concerns the end of the parliamentary mandate, it is different according to each country and depends on its beginning. In some cases, it ends on the last day of the legal term of the legislature or, if it is dissolved prematurely, on the date of dissolution and in others it ends on the date of new elections or on the date of validation or first day of the term of the mandates of newly elected parliamentarians. In addition, different regimes may coexist within the same assembly[40].

For what regards resignation, it could be impossible, possible through a formal procedure or without stating the reasons behind it. Moreover, the loss of the mandate can happen on many occasions including the removal by the instigation of the electorate or party, the permanent expulsion for reasons of incompatible functions, loss of eligibility, disciplinary penalties, or loss by judicial decision through automatic disqualification or disqualification by a decision of Parliament[41].

After 1981, parliamentary practice developed and created some principles and criteria to serve as a guidance for the committee. The consideration of the requests for immunity to be waived is governed by the principles found in the

[38] M. VAN DER HULST (2000: 12).
[39] M. VAN DER HULST (2000: 13-14).
[40] M. VAN DER HULST (2000: 15).
[41] M. VAN DER HULST (2000: 16).

reports of the committee which are the product of CJEU's work throughout the centuries. These principles state that the purpose of immunity is to guarantee independence, its renunciation by a single deputy is without legal effect, the privilege is valid throughout the mandate and has an autonomous character. Finally, their application constituted an essential way to decide what should be done in response to the single requests for waiving immunity[42].

1.4 Material and Temporal Scope of Parliamentary Immunity

In order to reach a broader view on the concept of parliamentary immunity, it is essential to understand and discover its temporal and material scope, which is not well defined under the provisions of the Protocol analyzed in this case. As it was underlined at the beginning of this chapter, the purpose of parliamentary immunity is to ensure the proper functioning of the institution involved and to guarantee its independence.

In addition, its general purpose is to make the Parliament able to complete its functions without the participation of external intervention. The protection produced by the immunity is regarded as indispensable for the operation of democracy and this is confirmed by many case laws and academic sources.

In the past, immunity has been used to protect the legislative assembly from the executive power as the latter prevailed for centuries surpassing the role of the Parliament. Moreover, the Parliament's independence was under the Judiciary's verification and still connected to the executive. The element of parliamentary immunity is important for the principle of separation of powers and the system of checks and balances especially for the countries which are not based on democracy.

Parliamentary immunity is not a personal privilege but an institutional one that parliamentarians need to perform their tasks, according to many scholars. The fact that immunity protects deputies and senators from their actions during their office leads to criticism of this element which is in contrast with the principle of equality[43].

It is essential to understand the scope of the duties of parliamentarians because some authors believe that Article 9 of the Protocol suggests that the term 'immunity' refers only to the principle of inviolability. This problem was avoided by the CJEU for many years as well as concrete decisions regarding the immunity system. In two famous cases, *Marra*[44] and *Patriciello*[45], the Court stated that the scope of the European non-accountability is in the hands of the national judge. The Advocate General Maduro established that the

[42] EUROPEAN PARLIAMENT (1993: 147).
[43] S. HARDT (2015: 7).
[44] *Alfonso Luigi Marra v. Eduardo De Gregorio and Antonio Clemente* (preliminary ruling), CJEU 21st October 2008, joined cases C-200/07 and C-201/07.
[45] *Aldo Patriciello*, CJEU 6th September 2011, case C-163/10.

expression of statements and opinions regarding issues of general interest is included in the scope of parliamentary duties even in cases outside the parliamentary sphere[46].

Another important scholar, the Advocate General Jääskinen, believed that in order to decide if an opinion is expressed in the exercise of a MEP's duties, it is necessary to understand the content of that opinion, which shall be connected to the real work of the EP and not to the concept of general interest[47]. The Court was inspired by this opinion in fact, in one of the cases mentioned before, it argued that the principle of non-accountability applies in cases in which opinions are expressed even outside the Parliament because what matters is its content and character[48].

Historically, the introduction of the concept of parliamentary immunity seemed to be justified by the fact that it was necessary to protect the institution as a community one and not its components as single members and this was exalted by the equality principle among them.

The immunity enjoyed by parliamentarians regarding the expression of any opinion provided by Article 9 of the Protocol is intended to protect their freedom in order to perform their duties without any fear, but this purpose is not identical in every European Member State.

To solve this issue, the Parliament declared that:

> Members of Parliament shall not be subject to any form of inquiry, detention or legal proceedings, in connection with civil, criminal or administrative proceedings, in respect of opinions expressed or votes cast during debates in Parliament, in bodies created by or functioning within the latter or on which they sit as Members of Parliament[49].

This statement shall be applied not only during the part-sessions of Parliament but also during the meetings of parliamentary bodies including committees or political groups. Moreover, the opinions expressed during party conferences, election campaigns or in books or articles published by Members of Parliament are not included in Article 9 of the Protocol.

It is recognized that the principle of non-accountability applies only to opinions and votes and not to any acts of physical violence.

In addition, actions committed with defamatory intent are not included within the scope of the principle of non-accountability by the Protocol while in the German and Greek legal sources it is covered.

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[46] Opinion of AG Maduro in *Marra*, joined cases C-200/07 and C-201/07, delivered on 26th June 2008, paras. 37-38.

[47] Opinion of AG Jääskinen in *Patriciello*, case C-163/10, delivered on 9th June 2011, para. 89.

[48] S. HARDT (2015: 24-27).

[49] Resolution on the draft protocol amending the Protocol on the Privileges and Immunities of the European Communities, OJ No. C 99, 13th April 1987, p. 43. See also the Donnez report (A2- 0121/86), Part B, p. 20.

Moreover, Article 9 of the Protocol argues that this principle has an absolute nature, so any exclusion is admitted by any political entity, and it is not susceptible to the procedure contained in Rule 5 of the Rules of Procedure.
The Parliament proposed a new version of Article 9 in order to let parliamentarians to testify in the Court if their testimony is connected to their activities as Members of the European Parliament[50].
Article 10 of the Protocol regards the immunity in the strict sense which includes opinions and votes expressed outside the institutional body and actions that are not considered as opinions or votes. This Article differentiates two situations: the territory of origin and the territory of another Member State. In the first case, parliamentarians enjoy immunities provided by their national legal system and this produces inequality in the treatment among Member States and obliges the Parliament to study each national legislation in case of a request for a waiver of immunity causing delays in decision-making, errors in interpretation and misapplication of the rules under analysis. In order to overcome this problem, the Parliament developed its own system concerning the process of waiving of immunity.
On the other hand, in the second case parliamentarians enjoy immunity from any form of detention or legal proceedings and here immunity is not defined in relation with national law. In addition, it was established that this privilege protects Members throughout their term of office and covers the instigation of legal proceedings, investigatory procedures, acts in execution of sentences already passed and appeal procedures.
The use of the term 'legal proceedings' created problems when establishing if the scope of the immunity is delimited around criminal law or it can be extended to civil law as the concept of non-liability. This aspect has been interpreted as referring to any legal proceeding but there are still some doubts about this interpretation. Immunity in the case of civil proceedings is not provided by any of the six founder Member States of the EC and in 1987 it was proposed to restrict the privilege to criminal proceedings and measures involving deprivation or limitation of individual freedom. This interpretation was reinforced by the recently introduced paras. 3 and 3a of Rule 5 of Parliament's Rules of Procedure.
Article 10(2) refers to the immunity enjoyed while MEPs are travelling to and from the place of meeting of the European Parliament. In the past, the scope of (2) was to ensure the proper functioning of the assembly during the sessions of the European Parliament but today it is applied in cases when MEPs are travelling to or from the place of meeting of the institution if the national legislation does not guarantee immunity or fails to apply it. In 1987 during the revision of the Protocol, the Parliament removed the reference to this type of immunity.

[50] EUROPEAN PARLIAMENT (1993: 133).

The last paragraph of Article 10 states that immunity cannot be enjoyed if a member is found in the act of committing an offence. This last point caused the problem of knowing if the Parliament needs to request the suspension of legal proceedings already initiated under the national law in this occasion[51].
Rule 5(3) of Parliament's Rules of Procedure established that any member could ask for the suspension of proceedings or release of the accused. This right was included in the national legislations of the six founding Member States but not for what regards the EP. This can be explained by the fact that the interruption of immunity has only a temporary effect and applies only when a MEP is arrested in order to let the Member States stop a situation where public safety or law and order can be under attack.
The general immunity provisions can be applied after the threat has been erased. The EP agreed on having the right to propose requests for the suspension of legal proceedings against Members and, after the committee on legal affairs and citizens' rights' interpretation which argued that Article 10 attributed this right to Members who were nationals of the Member States in question, it established that it was plausible[52].
The scope of the principle of non-accountability, which is the freedom of speech, can be analyzed through the study of the *ratione personae*, which means protection for whom, *ratione temporis*, which corresponds to when does protection begin and end, *ratione loci* which tries to understand if the protection is only within Parliament or also beyond and *ratione materiae* that focus on what acts are covered by this principle.
For what regards the first one, Members of Parliament and ministers enjoy this privilege but in some countries such as in the United Kingdom, it extends also to everybody who is involved in the proceedings of Parliament including officials, witnesses, and lawyers. In those countries which are influenced most by the French model, this privilege covers only parliamentarians[53].
Concerning the second one, protection is enjoyed from the time of election if it is not declared invalid in countries such as France, Italy, and Belgium. In other countries, it starts when election has been validated or after the oath-taking ceremony. The freedom of speech principle is applied solely during sittings and starts effectively from the first one while in some countries it is valid in all circumstances, no matter if the Parliament is in session. In addition, the immunity ends with the expiry of a member's term of office or the dissolution of the Parliament and remains valid for words spoken and votes cast during the exercise of his or her mandate. In the case of parliamentary proceedings and votes published in various forms, the principle has no time limit[54].

[51] EUROPEAN PARLIAMENT (1993: 134-137).
[52] EUROPEAN PARLIAMENT (1993: 134-139).
[53] M. VAN DER HULST (2000: 67).
[54] M. VAN DER HULST (2000: 68).

For what regards the third element mentioned before, the immunity has no limit concerning the place because it is enjoyed inside and outside the Parliament because it is related to the mandate and not to the place. Obviously, acts which are not related to the exercise of the mandate are not covered by the immunity even if discussed inside the institution. However, MEPs remain responsible for what happens outside the Parliament because the privilege is linked to what is related to the proceedings of the Parliament. In some countries this privilege is more limited to the floor of assembly inside the institution[55].

For what concerns the *ratione materiae*, the protection could be valid also for statements from the floor of the house or in committee, bills or proposed resolutions, votes, written or oral questions and interpellations and suspensions of sittings but not in all countries. In some nations, also words spoken during activities by political groups enjoy it and, in most countries, words or votes reported in official parliamentary publications or in the press are not included in the scope of this privilege but many debates are still going on about this question. Moreover, the immunity's scope falls within the verbal or written communications between an MP and a minister, or between two MPs, on subjects linked to proceedings in the institution or in committee. In general, words spoken during debates on radio or television are not protected under this privilege even though a small group of countries such as Greece and Romania accept it.

There is a difference between "qualified" and "absolute" privilege in fact the first one falls under the jurisdiction of courts and tribunals while the other one not. Written or oral reproduction of parliamentarians' words or writings is protected under immunity if the practice is accurate and loyal to what has been affirmed. Furthermore, there are restrictions based on the nature of the words spoken which means that in some countries some topics are not admissible so they cannot fall within the scope of the immunity. Some examples are insults to the head of State or royal family, provocation towards Members of government, criticism on judges, the dissemination of information regarding closed sittings of Parliament, treat libel and defamation[56].

The scope of the principle of inviolability can be analyzed as well in terms of *ratione personae, ratione temporis, ratione loci* and *ratione materiae*.

For the first one, the immunity applies only to Members of Parliament or federal assembly if present and it can be extended to those who testify before a parliamentary committee or an assembly, certain officials of the parliamentary institution or other office bearers such as the head of State,

[55] M. VAN DER HULST (2000: 69).
[56] M. VAN DER HULST (2000: 67).

ministers and judges of certain Courts. In Spain, the office of the public prosecutor is also covered to some extent[57].

For what concerns the second one, the start of the enjoyment of the immunity is marked with the day of the elections or appointment so it could be possible to enjoy it before the mandatory oath. In addition, it is enjoyed during the parliamentary session so there is often no gap between the end of one session and the beginning of the next. Inviolability could also be extended before or after the session and in most cases judicial proceedings cannot be pursued without the explicit authorization of the assembly[58].

For the third one, the place has no influence on the acquisition of this privilege.

In the last one, the immunity is limited to criminal proceedings, and it is not applicable to all criminal situations. There are many restrictions based on the nature or gravity of the offence apart from the flagrante delicto including libel, defamation, or shocking statements.

Finally, inviolability can preclude all legal proceedings and can be used only against arrest or being summoned to appear before a Court. The most spread protection is the one against arrest in which the Parliament ensures freedom from deprivation of liberty[59].

[57] M. VAN DER HULST (2000: 81-82).
[58] M. VAN DER HULST (2000: 82-84).
[59] M. VAN DER HULST (2000: 84).

CHAPTER II

MR. JUNQUERAS AND CJEU JUDGEMENT

2.1 The Catalan Question: Historical Background until the Junqueras Case

In order to understand the causes of the Junqueras case, it is essential to discuss about the Catalan affair: the contemporary internal Spanish conflict between the central government and the regional one.
Catalonia is an autonomous region in the Spanish territory whose boundaries exist since the ninth century. Then, it became a militarily and commercially stronger kingdom under the Crown of Aragon, which included confederations such as eastern Spain, most of the Mediterranean area and the south of Italy during the twelfth century.
In the fifteenth century, the kingdoms of Aragon and Castile were unified through the marriage of King Ferdinand and Isabel generating a premature Spanish regime although the legislative and political system of Aragon had to be respected.
The political and cultural conflict between Catalonia and the rest of Spain has ancient historical origins: in the seventeenth century, a more centralized policy was followed by King Felipe IV which led to vigorous disagreement of the Catalan region and the war which began in 1640 and ended in 1659 with the victory of the regional front that obtained the recognition of its rights. Nogue and Vicente believed that from this moment of history, the Catalan population started to reason in a locally centered way especially through their language which differed from the rest of the country[60].
In the eighteenth century, the Spanish Crown was contended between the royal houses of the Habsburgs, allied with the Catalans, and the Bourbons, who won the conflict with King Felipe V. Therefore, all political freedoms were eradicated, Spanish was imposed as the official language and, however, Catalonia developed economically, demographically and industrially.
At the beginning of the new century, autonomy was regained by the region through the creation of the *Mancomunitat*, which was the political institution that controlled the Catalan provinces of Barcelona, Tarragona, Gerona and Lerida.
In this century, Spain and Catalonia experienced the dictatorships of Primo de Rivera and Francisco Franco, who both promoted Spanish nationalism subjugating minorities' rights, including those of the Basques, Catalans and Galicians. The purpose of this repressing policy was to reduce the claim on independence by local citizens and challenge Catalonia's institutions of self-

[60] J. NOGUE, J. VICENTE (2004: 120).

rule which gave the region a certain degree of autonomy[61]. These events, obviously, increased the nationalistic spirit of the Catalan population whose rights and interests were repressed in a cruel way.
In addition, it is important to mention that, during the twentieth century, a great deal of countries, especially colonies, achieved independence inspired by the wave of nationalism across the world.
The process of democratization in the 1970s, in which the State experienced a transitional political phase after the death of Franco in 1975 and the adoption of the new Constitution of 1978, led to the restoration of Catalan's elements of self-governance in the regional system of "State of Autonomies". A new and incomplete form of federalism was institutionalized giving competence over health and education to subnational regimes because the regional entities could not effectively participate in the central policy-making process.
For what concerns the right of self-governance of the autonomous Spanish regions, including Catalonia, and the principle of unity, Article 2 of the Spanish Constitution states that:

> the Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity amongst them all.

These principles represent the fundamental groundings of the Spanish political organization and system because it prioritizes the power of the central government over the one of the regional administrations.
In 1979, the *Generalitat de Catalunya*, which is the administrative-institutional system of the Catalan government, was institutionalized and became the major political actor for what regards the question of independence playing a crucial role still today. Through this institution, the contemporary Catalan political leaders, including Oriol Junqueras, could express their sentiment of repression of national identity that the region has always felt.
In 2006, a referendum was held in which a new Statute of Autonomy proposed by a coalition government that considered Catalonia as a State within Spain was adopted. It also provided more control on regional functions and a new way to distribute resources between the regional government and the national one. However, it was judged as unconstitutional by the Spanish Constitutional Court leading to the starting idea to promote a referendum for independence by political parties which was supported also by citizens[62]. This decision was not successfully welcomed by the Catalan population since it limited the region's competences.

[61] C. A. TZAGKAS (2018: 58).
[62] G. RICO, R. LIÑEIRA (2014: 257-280).

The support for independence was triggered also because of the economic crisis in 2008 which became crucial for the development of the nation spreading unemployment, especially in the middle classes.
Another important event was the victory of the elections in 2011 of the *Partido Popular* (PP) which increased the claim for independence in all Catalan citizens: in fact, in 2014, almost half of the population supported it.
There has been a huge debate regarding the components of the pro-independentist movement: some believed that it was composed primarily of higher classes while others maintained that it included the entire Catalan society, which started to spread the idea of a possible referendum.
In 2010, the Catalan political institution pushed for bargaining with the central government, which rejected its requests leading to the 2015 regional parliamentary elections in which the pro-independence parties gained a majority of seventy-one seats in the Parliament. The two most influent parties were "Together for Yes" (*JxSi*) and the extreme left "Popular Unity Candidacy" (CUP, *Candidatura de Unidad Popular*) who won 44.4 and 3.5 per cent of votes, respectively.
In September 2017, the laws which settled the referendum for self-determination and whose purpose was to separate from the Spanish regime were adopted by the regional government.
As it is demonstrated, all these events provoked in the Catalan population a sense of violation of their identity which must be regained immediately as every community claims.
In October of the same year, the famous referendum for independence was held although it was unconstitutional according to the Spanish Constitutional Court and many recommendations were given regarding its legal implications in case of becoming law. The forty-three per cent of the population participated actively to it resulting in one of the major political events of Catalan history. This political initiative was supported by many pro-independentist Catalan leaders, including Oriol Junqueras, leading to serious consequences for what regarded his political office and reputation.
Voters were attacked by police forces and this conflict had an enormous mediatic impact: in fact, the news immediately spread all over the world generating debates on this kind of abuse of power.
After the referendum, Carles Piugdemont, who was the leader of the Catalan European Democratic Party and the President of the region, declared the region independent but suddenly he nullified this declaration, and a resolution was adopted by the Catalan government with no further implications. These events triggered the power to control the region to the central State if the constitutional requirements are not completely fulfilled and a provisional suspension of autonomy is voted by the Spanish Senate[63].

[63] Article 155 of the Spanish Constitution.

The Catalan Parliament and government collapsed, and, on 21st December 2017, regional elections were held by the central government. Although "Citizens" (*Ciudadanos*), which is a pro-unionist party, won the elections, the pro-independence parties gained the majority in Parliament.
Puigdemont was in exile in Belgium after a Spanish arrest warrant, so Quim Torra became the leader of the pro-independence government and other political figures including Oriol Junqueras, Jordi Cuixart, Jordi Sanchez and Quim Forn were sentenced to prison.
In 2018, Pedro Sanchez, leader of the PSOE (Spanish Socialist Workers' Party), became President and the conservative leader of *Partido Popular* Mariano Rajoy was displaced.
Protestors generated both peaceful and violent conflicts against regional and national police in Barcelona, Girona, Lleida and Tarragona, especially in 2019, after the sentence against the leaders of the independentist movement.
In this dispute, the values of self-determination oppose those of territorial integrity and constitutional conformity as in most of secessionist conflicts and independence is at the center of the debate.
The relevant causes of this internal conflict have been the different level of regional fiscal autonomy, the will for more regional autonomy and identity matters including language[64].
For what regards the first one, all Catalan taxes go to the central government avoiding any control by the region and, in addition, the funds for the regional government return to it in a disproportional manner: in fact, Catalonia produces nineteen per cent of the Spanish GDP and only eleven per cent of it returns to the local government[65]. The Spanish government responds to this argument arguing that the deficit is high because of the inefficiency of the regional government, which must cooperate with the national one to benefit economically. This point is probably the most crucial within this longstanding conflict and a solution must be found in order to peacefully stop the violent events that occurred in the last years.
Another cause concerns the protection of national identity, strengthened by the adoption of bilingual educational programs in many local schools of the territory to promote national ideals and customs also through the media[66].
It is fundamental to focus on the possible risks and benefits that Catalan secession would imply, including the difficulty for the region, once it would become independent, to join the European Union, because it would be merely impossible to obtain a full agreement with the central government also at European level.

[64] J. COLOMER (1998: 40-52).
[65] C. K. CONNOLLY (2013: 55-58).
[66] C. A. TZAGKAS (2018).

Moreover, Catalonia would not enjoy anymore the access to the European markets and financial supply and this possible consequence provoked the abandonment of many banks and multinational corporations including Caixa and Sabadel[67].
During the 1960s and the 1970s, there was a wider immigration towards Catalonia from different parts of the country which contributed to the coexistence of a plurality of views regarding independence: some argue that outside Spain, the region would not grow economically or enjoy an advantageous position. Moreover, there are divisions within Catalan citizens on this issue: in fact, Ivan Serrano analyzed that only twenty per cent of them supported independence before 2010[68].
For what concerns those who support secessionism, especially the middle and upper classes, it is believed that the Catalan regional identity, including language and culture, cannot be repressed. For example, it is unfair that Catalan citizens feel more comfortable to speak Spanish instead of their mother tongue within the society.
Many studies have found that urban areas are more against independence while the rural parts of the region support it. Obviously, the central Spanish government does not even consider the possibility of a total self-governance of Catalonia, and it is very probable that it will never accept full autonomy.
It is fundamental to mention the intervention of some external actors in this dispute including the European Union, in fact the Commission and the European Parliament along with the United States of America supported the unity of the Spanish State by condemning the use of force and abuse of power performed by police forces during the period in which the referendum of 2017 was held and promoting dialogue with Madrid.
Finally, in order to have a broader view regarding these kinds of internal conflicts and understand the real meaning of secessionism, this situation could be compared to those in Italy with Padania, France with Corsica, Belgium with the Flanders and Spain with the Basque Country[69].

2.2 Dispute in the main proceedings and questions referred for a preliminary ruling

Oriol Junqueras i Vies is a Spanish politician and historian born in Catalonia, who participated, on 1st October 2017, to the promotion of the unconstitutional independence referendum for Catalonia while he was the Vice-President of the Catalan *Generalitat*, ruled by Carles Pigdemont, who was the leader of the

[67] J. BADCOCK (2017).
[68] I. SERRANO (2013: 525).
[69] F. GHITIS (2017).

Esquerra Republicana de Catalunya (ERC) which is the Republican Left of Catalonia.

After this involvement, criminal proceedings were brought by the Spanish Public Prosecutor's Office, the Counsel for the State and the VOX political party against several people including him and other collaborators involved in the secessionist process committing rebellion or sedition, civil disobedience and misappropriation of funds. During the investigation phase of these criminal proceedings, he was subject to a provisional detention after a decision established on 2nd November 2017 based on Article 503 of the Law on Criminal Procedure, which was continuously restored but did not change his situation.

On 28th April 2019, Junqueras was a candidate and winner of the elections as a member of the Spanish Congress of Deputies while he was still in prison after the opening of the trial stage of the proceedings. Of course, this victory represented a crucial issue because the fundamental popular right to vote and elect a political representative opposed the legal decisions regarding the crimes attributed to him.

On 14th May 2019, the Spanish Supreme Court established, through an order, that the request for a prior permission provided by Article 71(2) of the Spanish Constitution to the Congress of Deputies was not necessary and the immunity could not be valid because he was elected after the opening of the trial stage for the proceedings. In addition, after the request made by him, the same order provided him an extraordinary permission in order to reach the place of the first meeting of the Congress of Deputies and formalize the legal requirements for his office under surveillance. As it can be seen, the question of owning a certain type of political immunity is at the center of the debate.

On 24th May 2019, once he returned to prison, his membership as a deputy was suspended by the administrative board of the Congress of Deputies following Article 384A of the Law on Criminal Procedure.

On 26th May 2019, he was elected as a member of the European Parliament and the election results were published in the "Declaration of Members elected to the European Parliament in the elections held on 26th May 2019". This election rendered the Junqueras case more complicated involving a great deal of questions and implications to this story.

In the past, he had already been part of the European institutional body from June 2009, in which the National Electoral Council of Spain established that he was elected as a MEP, to 2011.

Moreover, Junqueras' request for an authorization in order to perform the mandatory oath established by Article 224(2) of the Organic Law No. 5/1985 del *Regimen Electoral General* before the Constitution was rejected by the order of the Spanish Supreme Court. Consequentially, his seat was declared as vacant, and its subsequent prerogatives were annulled by the Central Electoral Board. Both problems of the mandatory oath and the declaration of

vacancy of the seat will be crucial for the discussion regarding the fairness of the judgements against Junqueras.

The first session of the parliamentary term was opened on 2nd July 2019 by the President of the EP, but he could not appear, so he brought an action against the order of 14th June 2019 of the Spanish Supreme Court in which he demanded the immunities provided by Article 9 of the Protocol on the privileges and immunities of the European Union to be valid.

The Spanish Supreme Court asked to the European Court of Justice the interpretation of EU law in the context of Junqueras' appeal and the referring court held that the concreteness of the ruling on this case would not be affected by the decision to be adopted and that it was necessary to let the EU Court acknowledge the questions under discussion.

For what regards these questions, it was argued that the challenged order was a rejection to provide an extraordinary permission, Junqueras' actions constituted criminal offences, and the Spanish Supreme Court considered all the elements including rights and interests to submit the order which rejected his request. In order to protect the purpose of the criminal proceedings against him, the Spanish Court prioritized the provisional detention instead of his right to participate and declared that his travel to the first meeting of the EP would undermine the provisional detention established by Spanish law.

Moreover, the Spanish Supreme Court, after the Judgment No. 459/2019, stated that the term 'sessions' must be defined without considering national law and that the temporal scope of the privileges provided in Article 9 of the Protocol needed a broader definition.

In addition, only the members who took their seat or those who have complied with the requirements can enjoy these immunities and the referring court tried to understand if the protection provided by these privileges can be equitable to the other rights including the right to vote and to stand as a candidate for the EP[70] and the right to free elections[71].

Finally, the Spanish Supreme Court decided to refer three preliminary questions to the European Court of Justice for a preliminary ruling which consisted of, first, establishing if the privileges provided in Article 9 of the Protocol for the accused individual who has been under provisional custody applied before the start of the first meeting of the EP.

Secondly, if the first question were positive, it was necessary to understand if he could invoke these immunities during the sessions of the EP even though he did not perform the obligations imposed by national legislation.

[70] Article 39 of the Charter of Fundamental Rights of the European Union.

[71] Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

The third question regarded whether the provisional custody shall be revoked by the Spanish Supreme Court in order to let him complete his obligations and attend the first meeting of the EP.
On 14th October 2019, which was the same day in which the hearings before the ECJ occurred, he was sentenced for 13 years of prison and excluded from carrying any public office[72]. The Spanish Supreme Court decided to inform the ECJ that its request for a preliminary ruling was still influential and central and the Court of Justice agreed with this view. Furthermore, his exiled colleagues Carles Puigdemont and Antoni Comin have never been deprived from the status of MEPs and could hold their office after the judgement of the Spanish Court having the same claims of Junqueras.
After this judgement, a Spanish judge imposed a European arrest warrant for Carles Puigdemont who escaped in Belgium in self-exile. Twelve leaders of the Catalan independence movement have been accused of rebellion and sedition to misuse of public funds. This ruling generated many armed protests in the streets of Barcelona by citizens who did not agree with the Spanish Court's decision.
The result of this event was traffic, stop of flights and demonstrations for the following days. The President Sanchez congratulated through television with the judges who sentenced these independentists by stating that they gave an example of autonomy and transparency which are essential in a democratic regime. In addition, other politicians including the leader of the main opposition popular party Pablo Casado agreed positively with the sentence of the Spanish Court. However, it created many debates because other scholars were not in favor of this sentence including Laura Borras who was a separatist lawmaker and declared that it was anti-democratic and a profound violation of rights.
On 16th October 2019, two days after being sentenced to thirteen years of imprisonment, Junqueras delivered his opinion, reported in *The Washington Post*, arguing that the judgement infringed the rule of law because of indiscriminate repression and the principle of democracy. He accused the Spanish government of limiting the political and civil rights of citizens and affecting the exercise of the democratic principle. He tried to influence the audience by stating that this sentence was intended to punish the entire Spanish population. He added that his colleagues, who opposed him including Sanchez, did not collaborate with him in fact many elections were held without accepting the problematical situation.
In addition, according to him, the Spanish government had contributed to boost the troublesome conflict in Catalonia and a referendum based on self-determination was needed. He defined the independentists as innocent people who were put in prison because of the predominance of injustice in the society.

[72] *Tribunal Supremo*, judgement of 14th October 2019, *Causa Especial*/20907/2017.

He emphasized the fact that a democratic solution in cooperation with international organizations including the United Nations was necessary, and Spain opted for solving a conflict by adding more debate and contrast among citizens.
At the end of his comment, he concluded that the independentist movement would continue to fight in order to let its voice be heard and regain the political position for which he was elected[73].

2.3 Opinion of the Advocate General Szpunar of 12th November 2019

On 12th November 2019, the opinion of the Advocate General Szpunar was delivered based on an in-depth understanding of the immunities' history, progress and theoretical knowledge. This figure represents a magistrate and member of the Court of Justice of the European Union (CJEU) who has the competence to assist its functioning. Their appointment procedure and the immunities are equivalent to those of judges, but they only have an advisory role and do not participate in the decision-making on cases. Their mandate lasts for six years although they can resign, and it cannot be obstructed before its end. In addition, they have the responsibility for presenting an opinion on the cases assigned to them with complete impartiality and independence[74]. In addition, it is important to state that his opinion was not binding on the Court of Justice, in fact he proposed legal solutions to the cases that fall under his responsibility.
However, it must be analyzed, first, in order to understand the main flaws of the Spanish Court's sentence against Junqueras and, secondly, because it influenced the following CJEU judgement.
He tried to address the main problems highlighted by the Spanish Supreme Court regarding the MEPs immunities due to the division of competences between the EU and its Member States and the beginning of the parliamentary office. He also declared that the question under discussion was based on a constitutional importance because it went beyond the concrete case.
He clarified many points concerning the acquisition of the status of European parliamentarian, the immunities attributed to it through a different interpretation of Article 9 of the Protocol, and, finally, the flaws of the Spanish system including the obligation of the mandatory oath.
First, he argued that the immunity constituted a guarantee for the MEPs and EP's independence and, in order to enjoy it, it was necessary to acquire the status of parliamentarian. It is important to differentiate the MEPs election, regulated by Member States which also control incompatibilities, the validity

[73] Opinion of Oriol Junqueras of 16th October 2019, The Washington Post.
[74] N. BURROWS, R. GREAVES (2007).

of elections and the active or passive right of suffrage, and their status, which should be free from national legislation and competence.

The main point highlighted by him was that he did not agree with the Spanish Supreme Court, the Commission and the EP stating that Junqueras did not acquired the status of MEP but instead he believed that EU law must regulate the status because European citizens directly vote those who compose the European institutions. Consequently, the only element that can influence the status is the vote of the electorate and no other requirements established by EU law or national one. Voters vote individuals that must represent them and not people who aspire to do it so the vote cannot condition validation or confirmation.

He added that "the consideration that only a person who takes up the actual exercise of his mandate without hindrance will acquire the status of a member of EU Parliament and the immunity associated with it leads to a vicious circle"[75]. The status is valid until the end of the mandate, except in cases of death, resignation or withdrawal.

For what regards the temporary scope of the parliamentary status, the end of the electoral process and the start of the mandate is marked once the electoral results are proclaimed, so from that moment, the officially elected member is covered by parliamentary immunity, as provided for in the Protocol. This statement is very important because it will be supported by the CJEU in its judgement.

Moreover, the Advocate General believed that the interpretation of Article 9 of the Protocol was outdated and could be useful for the contemporary situation so an evolutionary interpretation that "guarantees the coherence and the unity of the status" of MEPs was needed[76]. As a response, he proposed an interpretation which strengthened the powers of the Parliament for what concerns the immunity of its members recommending that the EU Court should declare that the Parliament must decide if it is adequate to waive or defend the parliamentary immunity, from the moment in which the national legislation provides immunity to members of the national Parliament[77].

As it was mentioned before, the status of parliamentarian is connected to the immunities provided by EU Law, and it must be understood when these privileges can be invoked by deputies. It was established that even though any meeting is occurring, the EP is considered as permanently in session from the first meeting. Therefore, from the first Tuesday after one month of the end of elections, MEPs enjoy the immunities provided by the European Protocol. In addition, the Advocate considered that the immunity is enjoyed before and

[75] Opinion of the Advocate General M. Szpunar of 12th November 2019, Judgment No. 459/2019.

[76] Opinion of the Advocate General M. Szpunar of 12th November 2019, Judgment No. 459/2019.

[77] J. A. VALLES CAVIA (2020: 196-200).

after the session and can be invoked before the beginning of the parliamentary mandate. These other conclusions have been shared by the CJEU also in the sentence of 19 December of the same year and represent a crucial point for what regards the enjoyment of the parliamentary immunities.
Parliamentary immunity is enjoyed also while deputies are travelling to and returning from the first session of the EP. According to him, the privilege of inviolability can be invoked also for the newly elected members of the EP in order to be able to be in the position to travel in order to start its office. Any restrictive measure or obstacle to a MEP's right to travel must be abolished by national forces excluding the case in which the EP itself has revoked the immunity.
Furthermore, he stated that the EU Parliament shall be free from any national authority to revoke or confirm the immunity and the preliminary ruling of the Junqueras sentence of 14th October 2019 was no more essential[78].
Another problem which was crucial for the Junqueras case has been the legal provision which requires to take a mandatory oath before the Spanish Constitution in order to acquire the status of parliamentarian and, therefore, the privileges linked to the office[79]. The exercise of the mandate can be affected by the mandatory oath, but it is not included in the electoral process and cannot be an obstacle for the acquisition of the status of MEP and its related privileges. The lack of swearing before the Spanish Constitution, which leads to the proclamation of a vacant seat and the avoidance of immunities, is not consistent with the limitation of the role of Member States in regulating and managing the electoral process established by the 1976 Electoral Act. In addition, all the formalizations that shall happen after the proclamation of the election results represent just a mere declarative character in fact, this process can be a requirement for elected deputies in order to perform their tasks but not for the acquisition of the parliamentarian condition, according to Szpunar.
For what regards the rejection of the special authorization, the Advocate General believed that it was not necessary to ask whether the Spanish Supreme Court was entitled to submit it or not.
Moreover, the Court of Justice has the competence to interpret EU legislation in real disputes before Member States while in the case in which the actuality of the main dispute is lost, its answer would have a hypothetic character, so the Court of Justice does not have jurisdiction to answer the questions referred for a preliminary ruling submitted by the Spanish Supreme Court[80].

[78] C. FASONE, N. LUPO (2020: 1532-1535).
[79] Article 224(1) of the Spanish Constitution.
[80] Article 267 TFEU.

Finally, according to him, the real problem was the punishment of loss of civil rights attached to Junqueras because it leads to the loss of any public office and eligibility.

2.4 CJEU Judgement of 19th December 2019

The central topic of this thesis is the analysis of the Case C-502/19, in which the issue of the acquisition of the status of MEP and, therefore, the parliamentary immunities linked to the public office have been discussed.
The procedure before the European Court started once the Spanish Supreme Court requested to undertake the reference for a preliminary ruling under an accelerated procedure as the Rules of Procedure of the Court of Justice provide[81].
After having considered the normative context, the main proceedings and the questions referred for a preliminary ruling, the ECJ consulted the Judge Rapporteur and the Advocate General and accepted to follow this kind of procedure motivated by the fact that this case involved an individual, namely Junqueras, under provisional custody.
After the disqualification from holding any public office made by the Spanish Supreme Court on 30th October 2019, Junqueras requested the EU Court to reopen the oral phase, as it is provided by law[82].
As a response, the European Court held that there was no necessity to reopen it because the suspension imposed by the national court was not an influential factor for its decision[83].
For what concerned the admissibility of the request for a preliminary ruling, the referring court should draw the consequences of the sentence and determine the effects of the immunity under discussion. The Spanish government declared that if Junqueras had the right to obtain the immunity provided in the Protocol, it would be ineffective because, as Spanish law states, the trial stage of the criminal proceedings had been opened before the elections to the European Parliament. Therefore, the provisional detention attributed to Junqueras could not be prevented by any immunity and it was established that he was serving a custodial sentence.
According to the EU Court, the national court must evaluate the necessity for a preliminary ruling in order to deliver its judgement as well as the importance of the questions submitted to the Court[84].
The European Court stated that it could refuse to treat these preliminary questions only in the case in which the interpretation was not related to the actual facts of the main action or its purpose or when the court had not the

[81] Article 105 of the Rules of Procedure of the Court of Justice.
[82] Article 83 of the Rules of Procedure of the Court of Justice.
[83] Case C-502/19, para. 50.
[84] Case C-502/19, para. 55.

necessary material to answer properly to the questions so the request for a preliminary ruling was admissible, so it was necessary to provide answers to the preliminary questions[85].

After being elected to the EP, Junqueras' request to leave the prison in order to comply with the requirements established by law for acquiring the parliamentary status was rejected by the Spanish Supreme Court.

As it was mentioned before, the Spanish Supreme Court asked for an interpretation of Article 9 of the Protocol to the CJEU through the three preliminary questions regarding the enjoyment of immunity.

The EU Court affirmed that the Article refers to the immunities enjoyed by MEPs but, at the same time, it does not provide a definition of a MEP so the context and the purposes must be considered[86].

In addition, it was reminded that the principle of representative democracy is at the center of the functioning of the European Union as it is provided in Article 10(1) TEU.

The parliamentary status is linked to being elected by direct universal suffrage in a free and secret ballot[87] while the term of office represents the main attribute of that status.

The EP must draw up a project which sets the necessary dispositions in order to enable direct universal suffrage according to a uniform procedure for all the Member States[88].

It is important to remark that national authorities must determine the electoral procedure which respects the European principle of proportionality[89] while the EP has the competence to verify MEPs' powers and take note of the official results proclaimed by each Member State[90].

As the Advocate General declared in his opinion, the acquisition of the parliamentary status occurs once the electoral results are officially proclaimed by each Member State and connects the elected person with the institution while the mandate starts and terminates at the same time as that five-year period linking the elected deputy with the parliamentary term.

The Electoral Act provides, in Article 6(2), that the members of the EP enjoy equally the immunities established by the Protocol during the entire duration of the sessions of a given term of the European Parliament even if it is not actually sitting.

Moreover, the immunity is enjoyed while deputies are travelling to and coming back from the first meeting of the EP, so it is enjoyed before the beginning of their term of office.

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[85] Case C-502/19, para 56.
[86] Case C-502/19, para 62.
[87] Article 14(3) TEU.
[88] Article 223(1) TFEU.
[89] Article 8(1) of the Electoral Act of 1976.
[90] Article 12 of the Electoral Act of 1976.

The EP's composition must reflect entirely the free expression of choices of the European citizens and the institution must be protected against obstacles to its good functioning because these immunities provide its independence and ensure the effectiveness of the right to stand as a candidate at elections provided in Article 39(2) of the Charter of Fundamental Rights.

The European Court concluded, in its judgement of 19th December 2019, that Article 9 of the Protocol must be interpreted as meaning that, first, the immunity provided in the second paragraph is enjoyed by an officially elected deputy of the EP even though he was under provisional custody and did not comply the requirements established by national legislation. Second, the provisional custody imposed should be revoked to give the accused deputy the possibility to appear before the first sitting of the EP and if the national judge believes that this provisional measure should be imposed after the meeting, it must ask the EP to waive the immunity[91].

Therefore, Junqueras enjoyed the parliamentary immunity since he was elected to the European Parliament although under a provisional custody.

Finally, these conclusions must be considered in controversial cases, such as the Junqueras one, in which an elected MEP was deprived of its right to travel in order to attend the first sitting of the EP and acquire the parliamentary privileges.

[91] CJEU, judgement of 19th December 2019, Case C-502/19, *Junqueras Vies.*

CHAPTER III

THE JUNQUERAS CASE'S RELEVANCE

3.1 Catalan Question and *Causa Especial 20907/2017*: Analysis and Implications

The Junqueras case constitutes an essential pillar of the contemporary Catalan affair, as it was shown in Chapter II, in fact, there is an interrelated relationship between the two events which must be analyzed in-depth along with their repercussions.
For what regards the actors who expressed an unclear position regarding the conflict, it is important to mention the positions of each party, especially the Catalan European Democratic Party, whose first goal was the achievement of independence as other pro-independentists aspired to but then, it aimed at negotiating and cooperating with the central government.
The Catalunya en Comu Podem, which was a left-wing political alliance, supported the referendum of 2017 but it did not agree with the settlement of independence as the final objective. In both cases, these indecisions provoked the loss of many supporters.
For what concerns those who expressed a clear point of view, the Popular Unity Candidacy is a left party which is willing to cooperate neither with the national administrative and political system nor with the European Union while Ciudadanos is the most powerful pro-unionist party that struggled to fully govern in Catalonia since the population tends more to the pro-independentist side as time passes.
In addition, the other pro-unionist parties are the Socialist's Party of Catalonia (PSC), allied with the Socialist Worker's Party (PSOE) led by Sanchez, and the Popular Party of Catalonia, which has not an influential role at political and social level.
There are many other political actors who participated in this conflict including the nationalists, who aspire to secession since the rejection of the Statute of Autonomy of the Catalan region[92].
The main difference with other populist movements and the Catalan case is that the latter wants a European recognition and collaboration, and this prevented alliances with other populist parties.
The European Union believed that this was a national dispute and, therefore, must be solved at national level avoiding taking any clear and stable decision.
After the episodes of violence performed by the Spanish local police, the EU was obliged to express its position, through a statement on 2nd October 2017 delivered by the Commission, and declared that the referendum was illegal and a possible withdrawal from Spain would imply the one from the European Union[93].

[92] C. A. TZAGKAS (2018).
[93] European Commission, Statement on the events in Catalonia, 2nd October 2017.

The ex-President of the European Parliament, Antonio Tajani, also expressed his opinion stating that Catalonia will never be recognized as an independent State and considered the referendum illegal.
It is important to mention that territorial integrity and sovereignty of all European Member States must be protected and safeguarded according to the European vision.
Moreover, the central Spanish government is the only one which can ask for mediation to the EU, which is willing to protect Spanish unity and opt for collaboration through dialogue.
Another fact that must be analyzed is that the international and European communities along with Member States are not willing to accept the recognition of new States because it would provoke a sequence of claims for independence of many regions, including Corsica, Padania or the Flemish territory and this would alter the relationships among these political entities[94].
This aspect jeopardizes the relationship between the EU and the Catalan independentist movements since the latter tend to reject a European intervention although it is the only supporter they could have.
The fact that, in the referendum of 2017, Catalan citizens could vote in any polling station of the region in order to facilitate the process made it look like a desperate attempt to fight for secession. At the same time, as it was mentioned, the Catalan population expressed its disappointment by going to vote although the situation with police forces was critical.
The criminal implications and the illegal controversies have worsened the view of the Catalan conflict both at national and international level. The media and the Spanish Supreme Court have contributed to alter the reputation of the Catalan political figures. In addition, the evasion in exile to other countries of some pro-independentists leaders, including Piugdemont, has not favored the Catalan question.
The legal reality has been altered by some Catalan political leaders, who have been accused for having held the referendum, because citizens have been deluded that the referendum could really achieve independence while its main goal was the opportunity to modify Catalan fiscal relationship with the central government.
The illegal referendum violated Spanish law and there is still today no legal basis to declare independence valid.
Although there have been high tensions and State rejection of the pro-independence movement, some scholars considered this case as a "negative" violent civil conflict since it has remained at low-intensity levels, unlike secessionist conflicts in Yugoslavia and Corsica[95]. This aspect is fundamental in order to analyze the process of social polarization within Catalonia and how it can result in violence.

[94] R. A. JACCHIA, D. SCAVUZZO, S. CAPRUZZI (2017).
[95] L. BALCELLS, S. DORSEY, J. TELLEZ (2020).

Polarization can generate distrust and avoid a harmonious outcome of the conflict so it must be studied in-depth since it is an ambiguous element within independentist movements.
It is demonstrated that if secession is reached, a certain kind of identity, characterized by social repercussions regarding affect and stereotyping, can be created and there is much more internal homogeneity within the pro-independence faction in comparison with the anti-independence one[96].
As it was mentioned before, the referendum for independence of 2017 and the regional elections of December of the same year, called by the Spanish government after the imposition of direct rule as a response to the declaration of independence, represented two salient events of this conflict.
The Spanish Supreme Court judgement of 14th October 2019 (*Causa Especial 20907/2017*) generated a great deal of debates regarding the repercussions of the accusations: it was very intrinsic and controversial since the academic world was divided with reference to the sanctions established by Spain and the allegations of crimes involved.
The promotion of the independence plan supported by Junqueras and the illegal referendum held in October 2017 reflected many aspects linked to the crime of rebellion.
In order to define the behaviors occurred in Catalonia as incriminating conducts, Article 472 of the Penal Code must be rigorously considered.
According to José Luis Marti, professor of Philosophy of Law at Barcelona University of Pompeu Fabra, it is true that Spanish police forces were subject to violence, uprisings, threats and coercion in public by citizens, but the final goal was independence of Catalonia and the prevention of the implementation of the Spanish authorities' lawful measures[97].
This ambition satisfies one of the purposes of Article 472(5) of the Spanish Penal Code which considered independence as part of the national territory.
During a meeting in the *Generalitat*, the members of the Catalan regional police represented by Josep Lluis Trapero stated that, before the referendum, they had to fulfill the constitutional legality so they could not sustain this goal proposing to interrupt the elections.
Consequentially, the problem of public order, linked to the creation of riots in which physical violence would be used, was pointed out and the separatist leaders knew what they were willing to face.
According to the experts of Criminal Law, this conduct represented a crime of rebellion without any doubt, but these violent acts should have been objectively appropriate to reach the goal in order to consider them as linked to the crime of rebellion. The degree of violence of these acts could have triggered the abandonment of the State and its resignment to secession but these physical acts are not considered important threats to democracy so this cannot be the case.

[96] L. BALCELLS, J. FERNANDES-ALBERTOS, A. KUO (2021).
[97] J. L. MARTI (2019).

In José Luis Marti's opinion, the presence of a violent uprising is not a sufficient condition because an objective danger must be expressed in the conduct, according to the principle of the least harm and the exclusive protection of legal property. The crimes punished by Article 472 cannot be compared to an unarmed uprising composed of citizens and politicians so these events cannot be associated with the crime of rebellion[98].

In addition, also the condemnation of sedition must be re-considered in this case since it is negatively connected to the rights of protest including freedom of assembly, expression and participation. In order to provide transparency for what regards this element, the Spanish Supreme Court stated that if the insurrection is substantial, vastly diffused and previously prepared, it can be considered a case of sedition.

Luis Marti proposed the example of the Indignados movement, in Catalonia, which occupied squares and protested without the use of violence and showed that many administrative provisions were infringed because of disobedience. They were not accused of sedition in this case although they opposed physically to the Spanish police forces and fulfilled the three conditions established by the Supreme Court. What is necessary to be analyzed is the political scope of the actions according to the Supreme Court[99].

The rights of protest and contest are essential and must be permitted in a democratic political system and guaranteed by the authorities and legal norms. Especially in Spain, these rights are prioritized as compared with all other parliamentary provisions including the Spanish Criminal Code.

According to José Luis Marti, the sentence regarding the pro-independence Catalan leaders was unjust and incorrect since it did not solve the conflict but, instead, increased the tensions in the country.

Moreover, it could be considered as unconstitutional because democratic rights including freedom of expression were violated. Many Catalan politicians were put under provisional custody unjustly, including Junqueras, and this contributed to render the political dimension more complex.

This judgement was very hard: in fact, the accused individuals have been sentenced with various crimes including sedition, disobedience, misappropriation of public funds, years of reclusion, payment of a penalty of sixty thousand euros and disqualification of any public office.

It is true that they have been discharged from the accusation of rebellion, but they have been condemned as if they committed a homicide.

The judicial qualification of the facts could be reviewed although this sentence could be appealed since it infringed human rights.

According to the analysis of the contents and length of this judgement, it is possible to notice that the forty per cent of the text confirms that there has been no violation of any fundamental right during the process.

Luis Marti thought that the annulment of the accusation of crime of rebellion represented a just path since it required a specific kind of violence, as provided

[98] Ibid.
[99] Ibid.

in Article 472 of the Spanish Penal Code, and it was well known that the pro-independence uprisings were peaceful.
Concerning the accusation of misappropriation of public funds, he believed that, although technical and specific competence was required in order to judge this field, no confirmation or testimony was sufficient to confirm that the way in which the accused individuals acted was unlawful[100].
The use of public funds clarified the fact that Junqueras was convinced to undertake everything he did including the trial and he was in a powerful position which convinced the Members of the *Generalitat*. He knew all the possible risks, and, despite this, he decided not to comply with the Spanish constitutional system. His primary purpose was not complying with his parliamentary functions but to overthrow the political and territorial order.
The central problem was the case of sedition, which is not included in countries including the United Kingdom or Belgium, in fact, is not present in such penal codes. Article 544, Title XXII, of the Spanish Penal Code states that:

> conviction for sedition shall befall those who, without being excluded in the felony of rebellion, public and tumultuously rise up to prevent, by force or outside the legal channels, application of the laws, or any authority, official corporation or public officer from lawful exercise of the duties thereof or implementation of the resolutions thereof, or of administrative or judicial resolutions.

This Article provides the crime of sedition which is found in the section dedicated to crimes of public disorder and not those which are unconstitutional. Moreover, all the other crimes associated with public disorder, including the use of violence, are sentenced with five or less years of prison while those linked to sedition are condemned with ten to fifteen years.
This definition led to many debates regarding the real meaning of tumultuous uprising: in fact, most of the scholars argued that it must include some component of violence, which was not the case of Catalonia. The sole real act of violence was conducted by the police who hurt citizens in order to stop them from voting in the referendum.
In this case, the Spanish Supreme Court started from a scarce interpretation of this type of crime instead of considering the principles of *ultima ratio* and *in dubio pro reo* in order to discharge the accusation.
As it was argued before, the right to protest must be considered since it is in contrast with the crime of sedition and there have been many cases in which the Court did not condemn anybody to the latter kind of crime.
José Luis Marti underlined the fact that the right to protest is an exotic right which can be found in the essence of any type of democracy[101].
His position has been criticized by other scholars including, e.g., Pablo De Lora, who stated that it was true that Catalan voters were subject to harm, but

[100] Ibid.
[101] Ibid.

it was unjust that the possibility to express the vote of the rest of Spanish citizens was bypassed. In addition, in some cases, including the racial segregation in the United States of America, the use of legal force can be justified, if necessary[102].
Others believed that José Luis Marti's point of view must have been revised since the themes under discussion are extremely complex and it seemed that it led to more skepticism rather than information. In addition, it is not clear if there are some exemptions or limits to the right of protest discussed by the professor.
His view regarding the peaceful purpose of the protests raised by the pro-independence movement was not convincing for many intellectuals, who believed that there was factual evidence that violence was at the basis of this movement including the example of the terrorist group named *Terra Lliure.*
The professor Luis Marti continued to support his reasonings and concluded that the questions analyzed by the Spanish Supreme Court are critical and difficult to clearly understand so there is necessity of transparency and clarity[103].

3.2 Case C-502/19: Academic Examination

The CJEU judgement of 19th December 2019 had important implications for what regards both the Junqueras case and the European parliamentary immunity system.
It is important to analyze the European Court's conclusions: a variety of scholars commented this case to focus the attention on the most salient points. Generally, one of the most important critics of the immunity system is the excessive scope of protection which may led to corruption and the fulfilment of personal rather than collective objectives. Moreover, the immunity dilemma is based on the idea that these immunities are indispensable but at the same time has exceptions to the usual application of the law limiting the citizens' rights who cannot implement them against a Member of Parliament. This is a problem for the concept of equality before the law because the MEPs are the only individuals who benefit from this system[104].

3.2.1 European Parliamentary Immunity Regime

According to the majority, the administration of European elections shows many inequalities between Member States due to the discriminatory system of parliamentary immunity. In fact, the electoral procedures of European countries show differences regarding the minimum age for voting or standing for elections, the requirements for the selection of candidates and the

[102] Opinion of Pablo De Lora in J. L. MARTI (2019).
[103] J. L. MARTI (2019).
[104] S. HARDT (2013: 6).

distribution of the seats which are declared vacant during the electoral session[105].

The EU Court's choice to opt for the immunity of the second paragraph of Article 9 reflects the fact that the first paragraph of the same Article is recognized as inherently discriminatory and problematic. In fact, the immunity gap between re-elected members and newly elected ones could have been solved only in some Member States at different degrees if the Court considered the first paragraph. This is caused by the fact that it provides different material scopes for each European country[106].

This can be demonstrated by imaging the same situation of Junqueras if he would have been in the Netherlands, where only freedom of speech is guaranteed and, therefore, he would not enjoy the other immunities. In other nations, such as Greece, he would instead enjoy a stronger regime of immunities as the one provided in Spain. In Austria, the application of immunity relies on the decision to attribute the condemned acts to the parliamentary activity.

The problem is that the European Union has limited competence regarding the regulation of the electoral procedure and the official declaration of electoral results of each State. The role of the EP during and after the electoral process is to verify the credentials of the elected Members and take note of the results. Once the official electoral results are declared, national regulatory competence ends removing all the doubts concerning Article 7(2) of the Electoral Act of 1976.

The European Parliament cannot challenge the validity of the electoral results declared by national forces or verify their compliance with EU jurisdiction. The pre-condition for the EP to assess the credentials of MEPs at the beginning of the first meeting is the election[107].

In the case in which a European deputy is accused of criminal utterance, such as hate speech, the enjoyment of immunity depends on where he is elected and prosecuted and whether he is travelling to or coming back from the EP[108].

Another element which is not clear in the European immunity regime is the material scope provided in the second paragraph of Article 9 of the Protocol because its exact nature is not offered. In order to link the immunities provided in the national territories to those of the MEPs who are travelling to the EP, there could have been an additional reference regarding travel in the first paragraph of the Article or the second one could have been ignored.

The fact that the EU Court turned the 'immunity while travelling' into a 'right to travel' to the EP has underlined that this provision protects MEPs' right to travel without considering their nationality. This is defined as the 'art of the possible' made by the CJEU since it addressed the immunity provision which is consistently implemented and did not changed among MEPs. The CJEU

[105] R. PANIZZA (2019).
[106] S. HARDT (2020: 6).
[107] C. FASONE, N. LUPO (2020: 1536).
[108] S. HARDT (2020: 7).

interpretation of the second paragraph can extend the privilege guaranteed by many MEPs[109].
Another problem, highlighted also by the European Court, is that Article 9 does not define the concept of MEPs which leads to many possible interpretations. It can be said, considering the Treaty of the European Union and its provisions, that the parliamentary status is acquired after elections because European citizens express their opinion through vote.
The main issue is that the European community has knowledge of these flaws in the European immunity regime but the various attempts to renovate it have been unsuccessful because a sophisticated amendment procedure would be necessary to modify the Protocol[110].
After Junqueras' election in the Spanish House of Representatives, his request to enjoy the European parliamentary immunities could have been accepted by the EP[111] although the national judges believed that the request to remove these privileges was not necessary because the trial started before the elections. Whether the immunities exist and should be waived or not can be determined by the European Parliament without restrictions imposed by the national law or legal opinion.

3.2.2 Spanish Mandatory Oath

What needs to be revaluated in the preliminary ruling is how valid the national provisions requesting the mandatory oath are in order to perform the electoral process. The Court, with its judgement challenged the legal effectiveness of this constitutional requirement.
As it was mentioned in Chapter II, Advocate General Szpunar in his Opinion argued that Member States cannot obstruct, through the requirement of the oath, provided in Article 224(2) of the Spanish electoral law, the acquisition of the status of MEP and the CJEU agreed with this view[112].
However, in this judgement, the EU Court, unlike the Advocate General, avoided to deal with the question of whether the MEPs can be obliged by the Member States to swear before the national Constitution, and which are the implications of refusing to comply with this requirement[113]. This decision was taken because it involves the delicate question of the elections of European parliamentarians which must be uniformed.
The problem is that although a common electoral regime is adopted, the inconsistencies with the national legal provisions of each European country would be exposed.
Moreover, this issue generated a huge debate between those who support a European vision and those who believe in the national sovereignty of each Member State. Although these positions continue to contrast today, the point

[109] S. HARDT (2020: 8).
[110] S. HARDT (2013:45).
[111] Rule 7 of the Rules of Procedure of the EP.
[112] S. HARDT (2020: 5).
[113] C. FASONE, N. LUPO (2020: 1530).

is that European citizens must respect both EU law and the national legislation without considering which one should prevail. A possible solution to avoid the contradiction between the mandatory oath and the European mandate could be proposing alternative interpretations of both legal systems.
It is important to remind that the Spanish Constitution does not require the oath, but it was simply adopted by the Rules of Procedures of the Spanish Parliament in order to avoid Herri Batasuna's party in the institution. In addition, the oath was also reviewed by the Constitution and the Spanish Court declared that it represents just a formality[114].
Challenging the compatibility of the oath with European legislation would represent an offense against the Spanish national system and an attempt to strengthen the Catalan pro-independence requests[115].
The European Court of Justice avoided the problem of the mandatory oath before the Spanish Constitution by establishing the temporal scope of the immunities.
This judgement showed that the EU Court has an important role for what regards the verifications of the powers of MEPs while, in the past, this matter was completely left to Member States. For the first time, the national outcome on the acquisition of the status of MEP and its linked privileges has been challenged and put under discussion.
Lastly, this requirement does not affect the MEPs' mandate although it is still required by the Spanish Electoral Commission for newly elected deputies.
The Spanish Supreme Court did not care about the fraud or abuse of rights in presenting candidates who are under trial and have been accused of certain crimes for the elections of the EP.
Finally, although the EU Court concluded that the national judge could abolish the provisional custody after having consulted the EP, there is no legal norm in the EU Law which regulates the release from prison after the recognition of immunity to the accused deputy[116].

3.2.3 Why is the CJEU Judgement innovative?

The decision to declare Junqueras' seat vacant represented a threat to popular sovereignty and representation and the European Union should establish a set of common provisions regarding the requirements for any parliamentarian.
The fact that the official declaration of electoral results implies the acquisition of the status of MEP, according to the EU Court, makes this judgement innovative since the popular will is considered as the most important element that must always prevail.
This sentence is useful in order to reconsider national provisions and electoral systems that establish the rules that must be followed in a system in which

[114] C. FASONE, N. LUPO (2020: 1551).
[115] D. SARMIENTO (2020).
[116] J. A. VALLES CAVIA (2020: 206).

many other countries are involved. It represents a primary step towards the adoption of a uniform electoral procedure for all European countries[117].
The harmonization of the legal status of MEPs coming from different European nations is necessary and demanded. Moreover, this sentence marked essential steps towards democracy and European parliamentarism because it included both national and international questions.
Before the Junqueras case, the employment of the rules concerning parliamentary immunity for MEPs was not very implemented by EU law.
Szpunar's approach, followed by the CJEU, regarding the enjoyment of the European parliamentary immunities is coherent with the scope and the character of the immunity, including the democratic principle of popular representation.
In addition, the conservative reading of the legal provisions would lead to the immunity gap between the official declaration of electoral results and the first meeting of the newly elected Parliament and the jeopardization of electoral equality by the disparate national provisions concerning the acquisition of the status of parliamentarian[118]. This issue was solved by the EU Court which distinguished the parliamentary mandate or office from the membership of the EP considering the original provision of the Electoral Act of 1976.
The problem is not to establish the exact period in which the immunities provided in the Protocol are acquired by an elected deputy but, instead, to adjust the national systems, in this case the Spanish one, in order to represent the will of the population.
There should be no uncertainties regarding the democratic representation in Parliament of every European citizen and, in order to avoid them, the popular expression and the credential verification systems must be jointly considered.
The principle of inviolability is necessary to ensure the right functioning of the EP and its independence helping the fulfilment of its functions and purposes and the right to take office and start the mandate obtained through elections[119]. These conclusions must be considered in cases such as the Junqueras one in which an elected Member of the EP was deprived of its right to travel to attend the first sitting.
Free speech is defined as the epitome of parliamentarism by Hardt because absolute freedom of expression is necessary for controversial parliamentary debate. The lack of a material link between Parliament as an institution and the act for which a Member is to be arrested or prosecuted constitutes the element that makes inviolability different from non-accountability[120].
In general, parliamentary immunity must be considered functional and institutional because its purpose is to protect deputies and senators in case of attempts to obstruct the functioning of both Chambers and, therefore, citizens' right to vote[121].

[117] A. DI CHIARA (2020).
[118] S. HARDT (2020: 4).
[119] C. FASONE, N. LUPO (2020: 1543).
[120] S. HARDT (2013).
[121] J. A. VALLES CAVIA (2020: 203).

This judgement must not be perceived as an attack against Spanish national sovereignty but as a mechanism which ensures the correct application of rights and a guarantee of the effective judicial protection[122].
The EU Court conveys the decision regarding Junqueras' immunities to the referring court without considering the principle of sincere cooperation and the *leitmotifs* of the sentence. Therefore, it cannot be stated that the Spanish Supreme Court acted unlawfully, according to Hardt[123].
The conclusions of the case C-502/19 had no practical implications for Junqueras, in fact he is still in prison today and his mandate has never been preserved, and this highlights the necessity of a transparent and unequivocal European mandate and immunity system.
Although the CJEU judgement was clear about the limitation of national laws that obstruct the acquisition and start of the European mandate, the formalities provided by the national systems are not abolished leaving a certain degree of uncertainty[124].

3.3 Junqueras Case Evolution from 19th December 2019 until today

After the case C-502/19 in which the EU Court answered the preliminary questions referred by the Spanish Supreme Court regarding the immunity provided in the Protocol, Ms Riba i Gener, who was a deputy in the EP, asked the President of the institution to apply urgent measures in order to validate the application of the immunity attributed to Junqueras.
The Central Electoral Commission decided on 3rd January 2020 that he could not hold office because of the Spanish Supreme Court's sentence which imposed a period of imprisonment to him, and he replied with an application delivered to the Spanish Supreme Court to suspend this decision.
On 9th January 2020, a ruling on the effects of the case C-502/19 on the criminal proceedings concerning Mr. Junqueras was submitted by the Spanish Supreme Court which held that the travel to the place of the first meeting of the EP, his liberation and the request to waive the immunity were not reasonable.
In addition, the Spanish Supreme Court believed that the moment in which the official election results regarding Junqueras were announced coincided with the conclusion of the criminal proceedings brought against him in which the Court was looking for a conclusion. It was concluded that he could not invoke any immunity in order to stop the trial because when he was elected in the EP, the trial phase was already reached by those proceedings.
As a matter of fact, the Spanish authorities did not comply with the CJEU's decision: the immunity provided by the Protocol has no incidence[125].

[122] J. A. VALLES CAVIA (2020: 213).
[123] S. HARDT (2020: 9).
[124] Ibid.
[125] I. PINGEL (2020: 621).

The EP, during the plenary session of 13th January 2020, considered the CJEU judgment of 19th December 2019, the election to the EP, the decision of the Central Electoral Commission of 3rd January 2020 and the order of the *Tribunal Supremo* of 9th January 2020 which declared his seat to be vacant from 3rd January 2020. During this session, his colleague, Puigdemont, attacked this decision made by the Spanish Supreme Court declaring that Spain did not respect EU law and the Catalan crisis was not a Spanish one, but it should have been solved through European dialogue and democracy.
As a response, on 17th January 2020, Junqueras appealed to the General Court of the European Union in order to annul the EP's decision which declared his seat as vacant and rejected the request for urgent measures of 20th December 2019.
His defense lawyer, Andreu Van den Eynde, proposed the petition for provisional actions that would recover his European parliamentary status. The Catalan politician's immunity from prosecution was at the center of this debate and the lawyer asked to the European Court to suspend the repudiation made by the European Parliament in January of a request to implement imperatively the immunity measures that he was entitled of.
Moreover, Andreu Van den Eynde pushed for an action to the EP in order to take all the necessary measures to protect the essential rights of the defendant after the sentence that imprisoned him.
In addition, the defense lawyer encouraged the EU Court to communicate with the President of the Parliament, David Sassoli, to give Junqueras the possibility to occupy his office as an elected Member of the EP until the enactment of a final ruling in the main proceedings. He also asked for the immediate release by Spanish authorities of his client in order to completely stand as a Member of the European institution[126].
Furthermore, he made an application for interim measures which was rejected by the Vice-President of the EU General Court on 3rd March 2020. Junqueras wanted to suspend the rejection of the request of 20th December 2019, but the Vice-President of the General Court argued that it could not be possible because there was no official decision delivered by the EP which impeded this request.
As a response, Junqueras asked the EU General Court to permit the EP to protect and grant his immunities with all possible measures until the judgement on the action for annulment was submitted. This request was in contrast with the principle of division of powers, provided in Article 266 TFEU, because the judiciary cannot interfere with the legislative power, so his request was not permissible.
Afterwards, Junqueras requested the EU General Court to prescribe his nation to release him in order to perform his functions until the judgement on the action for annulment was delivered but the Vice-President stated that it was not possible because it is generally established by rule that directions to

[126] *Petición de medidas cautelares de acuerdo con el artículo 156 de las reglamento de procedimiento y 278 y 279 TFUE* (appeal to the General Court), 17th January 2020.

entities that are not parties to the proceedings such as the Spanish authorities cannot be issued by a judge who hears an application for interim measures.
For what concerned Puigdemont and Comin, in February 2020, the Belgian judge decided to suspend their judgement to wait the decision of the EP about the lifting of the immunity[127].
Lastly, Junqueras asked to suspend the declaration of his seat as vacant, but he failed to show that the granting of this request was justified "*prima faciae*, in fact and in law (*fumus boni juris*)"[128].
The Electoral Act provides that if a Member elected in the EP withdraws his mandate, the latter ends so the vacancy of the seat is declared. National authorities merely inform the EP about the end of the mandate, and it cannot have the competence to challenge the regularity of the seat becoming vacant and the regularity of the national procedure that provoked the withdrawal of the mandate cannot be reviewed by the Parliament itself after the declaration of vacancy.
On 29th July 2020, the President of the EU Court of Justice approved the collaboration between the Spanish State and the European Parliament which asked the Court of Justice to annul Junqueras' appeal and condemn him with the payment of the costs related to this appeal.
He presented before the EU Court of Justice seven grounds of appeal against the Vice-President of the Spanish Supreme Court who had, according to Junqueras, wrongly interpreted the requirement of the *fumus boni juris* and the effects of the Protocol denying his position. He added that the European Parliament did not observe the sentence of 19th December 2019 because no request to suspend his immunity was delivered and the procedure of annulment of the mandate established by the Central Electoral Commission was not reviewed violating the principle of loyal cooperation[129]. As a conclusion, both the European Parliament and the Kingdom of Spain believed that all his grounds of appeal were not admissible.
On 8th October 2020, the Vice-President of the EU General Court established that his appeal would be rejected and both Spain and Junqueras were obliged to pay the costs of the appeal because, as Article 140(1) of the *Reglamento de Procedimento del Tribunal General* states, the Member States or institutions that intervene as aide partners are responsible for the payments of the costs.
In addition, national authorities, after declaring the vacancy of the seat, are responsible for informing the EP about the expiry of the mandate because the European institution cannot review the regularity of the national legislative procedure that revoked the mandate.
Afterwards, it was established by the Catalan Ministry of Justice that the accused could leave prison under police surveillance, and he could participate to the electoral campaign on 14th February 2021 as the President of the ERC (Republic Left of Catalonia) party. During this campaign, he described the

[127] I. PINGEL (2020: 622).
[128] Order of the Vice-President of the General Court in Case T-24/20 R *Junqueras i Vies v Parliament*, 3rd March 2020.
[129] Article 4(3) TEU.

party as an inclusive one which wanted to improve citizens' well-being without criticizing anyone and remarked the fact that there was no Member accused of corruption. In addition, he stated that "if ERC doesn't win, those who always win will do it again"[130] and the exiled ERC member Marta Rovira declared that the purpose of the party was to set up a centralizing political program without establishing a Catalan Republic.

On 2nd February 2021, Junqueras returned to the Catalan Parliament under a more open prison regime that provided him one free day during the week. He had the possibility to meet and exchange opinions about the future of the Spanish nation with Roger Torrent, who was the speaker of the House and component of the list for ERC party.

Although this event has occurred, the political climate around his case has not changed in fact there are still today many tensions.

During the plenary session of 8th March 2021, the European Parliament revoked the immunity from Carles Puigdemont, Clara Ponsati and Toni Comin, which were colleagues of Junqueras and members of the Catalan independentist movement. Through this action, the European Union has clearly expressed his position that the problems linked to Catalonia should be solved at national level and not European one.

The Spanish government declared that a solution must be found through dialogue and negotiation with the Catalan political forces. Puigdemont stated that this decision represents a case of political persecution, so he is willing to bring this case before the European General Court.

Finally, the regime of partial freedom attributed to seven separatist leaders after the 2017 referendum has been abolished so these individuals, including Junqueras, are obliged to stay in prison still today.

[130] Junqueras speech of 14th February 2021.

Conclusion

As it was demonstrated, the Junqueras case is intrinsic and controversial since it involves some unsolved problems: Catalan secessionism, parliamentary immunity regime, the electoral procedure of each Member State for the European Parliament and the sentences against an individual who has been elected as a deputy by citizens. It is possible to see how the Catalan conflict evolved: from an ethnical dispute linked to identity, cultural and economic dynamics to a political and judicial crisis between the European and national systems. The referendum of 2017 along with the subsequent events that shaped the Catalan conflict marked a fundamental step in Spanish history.

In the Junqueras case, the Spanish Supreme Court, which managed the dispute between the central government and the regional one, assumed a crucial role demonstrating the importance of the judiciary within politics. The innovation of the case C-502/19 resides in the clarification delivered for the first time by the EU Court regarding the definition of the essence of parliamentary privileges attributed to MEPs and the precise moment in which their status is acquired. The CJEU declared that Mr. Junqueras enjoyed the immunities connected to his seat in the EP even before its first sitting since the official declaration of the electoral results in Spain marked the acquisition of the parliamentary status. This conclusion is in contrast with the national legal requirement of the mandatory oath before the Spanish Constitution (Article 20(1) Rules of Procedure of the Congress of Deputies) challenging its validity. The equality of European citizens cannot be obstructed by this unwarranted obligation which alters the relationship between Member States and the EU and the functioning of the EP. The European electoral legislation should be revised to avoid any incompatibility with national laws and protect parliamentarians.

Although the CJEU decision represents an *avant-garde* move towards democracy, it did not change *de facto* Junqueras' situation: in fact, today he is still in prison. Therefore, harmonization of the legislative norms that regulate organization and a revaluation of the European standards are necessary. Article 71 of the Spanish Constitution protects deputies from being deprived of their personal freedom instead of provisional measures imposed by the judge: in fact, after being elected in the Spanish Chamber of Deputies, Junqueras' mandate was revoked since he was in custody before the hearings. This resolution must be changed since the European Parliament does not represents nations but citizens and, therefore, the authority of European deputies must be adapted to this evolution. Moreover, the principle of inviolability should be common to all MEPs to enable the EP to administrate its organization and functioning. The immunities linked with the European mandate cannot be obstructed by national provisions, especially in a system which continues to evolve.

The Junqueras case must be used as an example to justify the necessity of a uniform immunity regime for all European Members. The problem is not to establish when or whether the immunity can be invoked but to adjust the

Spanish electoral system to be compatible with citizens' will, which is what always prevails.

Bibliography

A. DI CHIARA (2020), *La Corte di Giustizia dell'Unione Europea riconosce l'immunità degli eurodeputati indipendentisti catalani: un altro passo verso una legislazione elettorale uniforme*, in *DPCE on line*, pp. 889-897.

C. A. TZAGKAS (2018), *The Internal Conflict in Spain: The case of Catalonia*, in *The International Journal of Latest Research in Humanities and Social Science*, pp. 58-63.

C. FASONE, N. LUPO (2020), *The Court of Justice on the Junqueras saga: Interpreting the European parliamentary immunities in light of the democratic principle*, in *Common Market Review*, pp. 1527-1554.

C. K. CONNOLLY (2013), *Independence in Europe: Secession, Sovereignty, and the European Union*, in *24 Duke Journal of Comparative & International Law*, pp. 55-58.

D. SARMIENTO (2020), *MEP immunity and the Junqueras conundrum*, in *EU Law Live online*.

E. ARANDA ALVAREZ (2017), *The Rules of Procedure of the Spanish Congress: Proposals for Reform*, in *Revista de Estudios Políticos*, pp. 22.

EUROPEAN PARLIAMENT (1993), *Parliamentary Immunity in the Member States of the European Community and in the European Parliament*, in *Legal Affairs Series*, pp. 7-147.

F. GHITIS (2017), *Why Spain's catastrophic handling of the Catalonia crisis is a lesson for the world*, in *The Washington Post online*.

G. RICO, R. LIŇEIRA (2014), *Bringing Secessionism into the Mainstream: the 2012 Regional Election in Catalonia*, in *South European Society and Politics*, pp. 257-280.

I. PINGEL (2020), *L'immunité des membres du Parlement européen*, in *Journal du droit International*, pp. 609-624.

I. SERRANO (2013), *Just a Matter of Identity? Support for Independence in Catalonia*, in *Regional & Federal Studies*, p. 525.

J. A. VALLES CAVIA (2020), *La adquisicion de la condicion de parlamentario europeo y el alcance temporal y material de su inmunidad. A proposito de la sentencia del TJEU en el asunto Junqeras Vies*, in *Revista de Derecho Comunitario Europeo*, pp. 189-215.

J. BADCOCK (2017), *Catalonia crisis: Why Basque leaders worry about Spain chaos,* in *BBC News online*.

J. COLOMER (1998), *The Spanish "State of Autonomies": Non-Institutional Federalism*, in *West European Politics*, pp. 40-52.

J. NOGUE, J. VICENTE (2004), *Landscape and national identity in Catalonia*, Girona, pp. 113-132.

J. PEREZ ROJO (2019), *La inmunidad parlamentaria*, in *eldiario.es on line*.

K. LOEWENSTEIN (1986), *Teoría de la Constitución*., Madrid, pp. 255-258.

L. BALCELLS, J. FERNANDES-ALBERTOS, A. KUO (2021), *Secession and social polarization: Evidence from Catalonia*, Washington DC, pp. 1-16.

L. BALCELLS, S. DORSEY, J. TELLEZ (2020), *Repression and Dissent in Contemporary Catalonia*, in *British Journal of Political Science*, pp. 1-13.

M. A. NAVARRO (2003), *Sinopsis articulo 71 online*.

M. REIMANN, R. ZIMMERMANN (2006), *The Oxford Handbook of Comparative Law*, Oxford, pp. 1-1424.

M. VAN DER HULST (2000), *The Parliamentary Mandate: a global comparative study*, Geneva, pp. 6-135.

N. BURROWS, R. GREAVES (2007), *The Advocate General and EC Law*, Oxford, pp. 1-456.

N. JANSEN (2006), *Comparative Law and Comparative Knowledge*, in *The Oxford Handbook of Comparative Law*, pp. 306-336.

O. JUNQUERAS (2019), *Opinion: Spain has no interest in a political solution for Catalonia,* in *The Washington Post online*.

R. A. JACCHIA, D. SCAVUZZO, S. CAPRUZZI (2017), *L'incerto futuro giuridico della Catalogna nello scenario dell'Unione Europea*, Milano, pp. 1-8.

R. PANIZZA (2019), *The European Parliament: Electoral Procedures, Fact Sheets on the European Union*, pp-1-10.

R. SCHÜTZE (2018), *European Union Law*, Cambridge, pp. 159-171.

S. HARDT (2013), *Parliamentary immunity: a comprehensive study of the systems of parliamentary immunity of the United Kingdom, France, and the Netherlands in a European context*, Maastricht, pp. 1-275.

S. HARDT (2015), *Parliamentary immunity in a European context: in-depth analysis,* Maastricht, pp. 7-27.

S. HARDT (2020), *Fault Lines of the European Parliamentary Mandate: The Immunity of Oriol Junqueras Vies: ECJ 19 December 2019, Case C-502!19, Junqueras, ECLI:EU:C:2019:1115,* in *European Constitutional Law Review,* Cambridge, pp. 1-13.

W. MCKAY ET AL. (2004), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament,* Cambridge, pp. 1-373.

Riassunto

Lo scopo di questo elaborato è di esaminare la sentenza del 19 dicembre 2019 (causa C-502/19) della Corte di giustizia dell'Unione Europea (CGUE), la quale ha stabilito che il leader pro-indipendentista catalano Oriol Junqueras poteva avvalersi delle immunità legate allo status di membro del Parlamento europeo, acquisito da quest'ultimo nelle elezioni del 26 maggio 2019. Nella circostanza, la Corte suprema spagnola ha interpellato con domanda di pronuncia pregiudiziale la Corte europea richiedendo di interpretare l'Articolo 9 del Protocollo (N. 7) sui Privilegi e Immunità dell'Unione Europea (UE), che rappresenta la normativa primaria su cui si basa il sistema di immunità dei membri del Parlamento europeo. Tale sentenza costituisce un'importante innovazione legale poiché, per la prima volta, la Corte europea ha chiarito la natura delle immunità attribuite ai deputati del Parlamento europeo e ha stabilito il momento ufficiale di inizio e termine dello status parlamentare.
Dalla nascita dell'Unione Europea ad oggi, il Parlamento europeo ha accresciuto i suoi poteri in particolar modo con l'istituzione del suffragio universale, che consente l'elezione dei suoi membri direttamente dai cittadini. Sebbene siano state proposte varie riforme per rinnovare il sistema di immunità e le procedure elettorali degli Stati Membri, tali regimi non sono mai stati modificati per le elezioni del Parlamento europeo.
I dubbi che sorgono in merito al termine "immunità" sono dovuti al fatto che non esiste una sua definizione comune e quindi può essere sottoposto a diverse interpretazioni.
L'espressione "immunità parlamentare" comprende sia il principio di insindacabilità, ossia la libertà di esprimere la propria opinione e il proprio voto in Parlamento, sia quello di inviolabilità (o improcedibilità), che garantisce la libertà individuale proteggendo, ad esempio, i parlamentari da qualsiasi perquisizione personale o domiciliare.
È importante sottolineare che tale dualità non è presente in tutti gli Stati Membri: ad esempio, nei Paesi Bassi, in Inghilterra o in Irlanda l'inviolabilità parlamentare non è prevista.
Le origini di tale concetto risalgono all'inizio dell'era Anglo-Normanna in cui sia i consiglieri che i membri della famiglia del Re godevano della *pax regis*, che garantiva la protezione a tutto il regno. L'Articolo 9 del *Bill of Rights*, adottato al termine della Guerra Civile inglese nel 1689, tutelava la libertà di espressione di tutti i membri del Parlamento contrastando le interferenze della monarchia al suo interno.
La Francia rappresenta un'altra testimonianza delle origini del concetto di immunità parlamentare: al termine della Rivoluzione francese nel 1789, i membri dell'Assemblea costituente nazionale godevano della libertà di espressione. Negli anni successivi si instaurò un sistema di doppia immunità

che teneva conto anche del principio di inviolabilità e che tutt'oggi è presente nell'Articolo 26 della Costituzione francese.
Nel 1588, i Paesi Bassi adottavano *l'acte van vrijwaring* per la tutela da ogni restrizione della libertà individuale e, dopo un secolo, l'*acte van indemniteit* permetteva ad ogni deputato di esprimere la propria opinione pacificamente.
Tali immunità si sono evolute in tempi e modalità diverse nonostante fossero tutte finalizzate all'ottenimento di maggiore indipendenza del Parlamento.
Il sistema di immunità parlamentare dei membri del Parlamento europeo si basa principalmente sul Protocollo (N. 7) sui Privilegi e Immunità dell'Unione Europea.
L'Articolo 7 di tale normativa prevede che le autorità nazionali non possano imporre restrizioni al diritto di movimento dei parlamentari che si recano alla prima sessione del Parlamento o ne ritornano, e l'Articolo 8 garantisce l'immunità per le opinioni e voti espressi nell'esercizio delle loro funzioni.
L'Articolo 9 afferma che:

> Per la durata delle sessioni del Parlamento europeo, i membri di esso beneficiano:
>
> a) sul territorio nazionale, delle immunità riconosciute ai membri del parlamento del loro paese,
>
> b) sul territorio di ogni altro Stato membro, dell'esenzione da ogni provvedimento di detenzione e da ogni procedimento giudiziario.
>
> L'immunità li copre anche quando essi si recano al luogo di riunione del Parlamento europeo o ne ritornano.
>
> L'immunità non può essere invocata nel caso di flagrante delitto e non può inoltre pregiudicare il diritto del Parlamento europeo di togliere l'immunità ad uno dei suoi membri.

Quest'ultimo Articolo non definisce il concetto di membro del Parlamento europeo e non stabilisce quali siano i termini esatti in cui lo status parlamentare e le immunità correlate vengono acquisiti o terminano.
L'Atto elettorale del 1976 per le elezioni del Parlamento europeo prevede che il suffragio universale diretto, libero e segreto debba essere rispettato (Articolo 1), che il periodo di cinque anni per cui sono eletti gli europarlamentari inizi con l'apertura della prima sessione del Parlamento e che il mandato inizi e termini contemporaneamente a questo periodo (Articolo 3).
Sebbene tale Atto del 1976 individui i termini suddetti, anche la Corte europea ha dovuto esprimersi in tal senso.
L'Articolo 4 della stessa normativa prevede che i privilegi e le immunità attribuite agli europarlamentari debbano essere goduti secondo il Protocollo dell'8 aprile 1965 e l'Articolo 7 stabilisce che ogni paese debba adottare la propria legge elettorale per le elezioni del Parlamento europeo senza compromettere il carattere proporzionale del voto.

Questi due articoli conferiscono agli Stati Membri un forte potere decisionale che spesso mette in contrasto il diritto europeo con quello nazionale: l'adozione di una procedura comune per tutti i paesi europei potrebbe essere una soluzione a tale problema.
Le competenze del Parlamento europeo in merito alle elezioni dei suoi componenti sono limitate: non può contestare la validità dei risultati ufficiali annunciati dagli Stati Membri limitandosi a verificare le credenziali di ogni deputato eletto, come stabilito dall'Articolo 11 dell'Atto elettorale del 1976.
Per una maggiore comprensione del caso esaminato nella sentenza C-502/19, occorre chiarire che il sistema di immunità parlamentare spagnolo prevede che deputati e senatori debbano essere tutelati per le loro opinioni espresse durante il mandato e da qualsiasi forma di detenzione ad eccezione del caso di *flagrante delicto*. Queste norme consentono di preservare l'integrità sia del Parlamento nazionale che di quello europeo e l'indipendenza di ogni suo membro (Articolo 71 della Costituzione spagnola).
Il Tribunale supremo spagnolo è l'organo competente a sottoporre a giudizio senatori e deputati previa autorizzazione da parte delle rispettive Camere.
Il Parlamento stesso ha il potere di decidere la sospensione o l'annullamento del mandato: condizione quest'ultima essenziale per preservare la propria integrità.
L'Articolo 224 della legge elettorale del 1985 stabilisce che i deputati che vengono eletti come membri del Parlamento europeo debbano compiere un giuramento di fronte alla Costituzione spagnola al fine di ottenere lo status parlamentare; se ciò non avviene, il seggio sarà dichiarato vacante e le immunità non verranno conferite.
Questo principio è fondamentale per la risoluzione del caso Junqueras poiché contrasta con i requisiti previsti per l'acquisizione dello status di eurodeputato dal diritto europeo. In tal senso, la Corte europea ha inteso superare questa norma non ritenendola essenziale.
L'Articolo 20 del Regolamento del Congresso dei Deputati in Spagna prevede che i deputati godano delle immunità legate al loro seggio dal momento in cui vengono proclamati i risultati ufficiali delle elezioni a condizione che presentino le credenziali al segretario generale, eseguano la dichiarazione delle attività e soddisfino il giuramento obbligatorio.
Oriol Junqueras è un politico di origini catalane che ha promosso il referendum incostituzionale del 1° ottobre 2017 per l'ottenimento dell'indipendenza della Catalonia durante la sua vicepresidenza al governo regionale, *Generalitat*, guidato da Carles Puigdemont.
Il pubblico ministero, l'avvocato dello Stato e il partito politico VOX avviarono un procedimento penale contro i politici pro-indipendentisti catalani, compreso Junqueras, accusandoli di aver commesso reati di ribellione o sedizione, disobbedienza e malversazione per i quali furono loro imposte le misure di custodia cautelare.

Il 28 aprile 2019, il politico catalano fu eletto nel Congresso dei Deputati in Spagna mentre era detenuto e il 26 maggio dello stesso anno fu anche designato membro del Parlamento europeo.
Così fece richiesta di temporanea scarcerazione per poter ottemperare agli incarichi a lui attribuiti dall'Articolo 224 della legge elettorale spagnola, secondo la quale ogni deputato, per ottenere lo status di membro del Parlamento europeo, deve eseguire il giuramento di fronte alla Costituzione spagnola. Tuttavia, a seguito del diniego della Corte suprema spagnola nell'ordinanza del 14 giugno 2019, il suo seggio fu dichiarato vacante, e gli fu revocato ogni diritto, incluse le immunità.
Dunque, Junqueras decise di presentare ricorso contro tale ordinanza invocando le immunità ottenute con le elezioni nel Parlamento europeo. La Corte suprema spagnola chiese a quella europea l'interpretazione dell'Articolo 9 del Protocollo sottoponendole altresì una serie di questioni avanzate dall'imputato nel ricorso.
Il 14 ottobre 2019 il giudice del rinvio condannò Junqueras ad una pena di tredici anni di detenzione e interdizione assoluta, che comportò la perdita definitiva di tutti gli incarichi pubblici nonché la possibilità di ottenerne di nuovi.
Fu inoltre spiccato un mandato di arresto europeo nei confronti di Carles Puigdemont e altri leader catalani, che, per evitare l'esecuzione di tale sentenza, si rifugiarono in esilio in Belgio.
Questa sentenza contribuì ad aumentare le ostilità, già in atto fin dal nono secolo e motivate da ragioni culturali, economiche e politiche, tra il governo regionale e quello centrale.
La popolazione catalana organizzò manifestazioni non violente nelle strade e nelle piazze di Barcellona, centro politico della regione, per esprimere il proprio dissenso contro le sanzioni imposte dal governo spagnolo centrale. Le forze dell'ordine tentarono di placare le tensioni, ma la posizione assunta dal presidente Sanchez, il quale si congratulò pubblicamente con i giudici per la sentenza emessa, fece scaturire reazioni violente da parte dei cittadini catalani.
José Luis Marti, professore di filosofia del diritto presso l'università di Barcellona, sostenne che questa sentenza fosse iniqua e che, anziché risolvere il conflitto, avrebbe contribuito ad aumentare i dissidi.
Lo studioso ritenne che le pene inflitte agli accusati fossero inadeguate ai reati compiuti in quanto erano le stesse irrogate solitamente per i reati di omicidio. Oltretutto, in almeno il 40% del testo della sentenza, non emerge la violazione di alcun diritto fondamentale.
In conclusione, José Luis Marti ribadì che il diritto di protestare è fondamentale e deve essere garantito da ogni sistema giuridico nazionale.
Il 12 novembre 2019 l'avvocato generale Szpunar pubblicò la sua opinione in merito alla sentenza, nella quale sostenne che l'immunità rappresenta una garanzia per l'indipendenza dei deputati e del Parlamento europeo, e il

conseguimento dello status parlamentare non deve essere ostacolato da qualsiasi tipo di misura restrittiva nazionale.
Non condivise la posizione della Corte suprema spagnola sostenendo che l'unico elemento che determina l'acquisizione dello status parlamentare sia la volontà degli elettori.
Secondo l'avvocato generale, dal momento in cui gli Stati Membri proclamano i risultati ufficiali delle elezioni per il Parlamento europeo, coloro che vengono eletti ottengono lo status parlamentare e le immunità correlate.
Le immunità, dunque, possono essere invocate previamente all'apertura della prima sessione del Parlamento europeo e all'inizio del mandato: i parlamentari possono avvalersi di tali privilegi anche per recarsi presso il luogo di riunione del Parlamento e per tornarne.
Pertanto, deve essere abolita qualsiasi restrizione nazionale come, ad esempio, il giuramento obbligatorio di fronte alla Costituzione spagnola, considerato dall'avvocato una formalità che ostacola il diritto di raggiungere il Parlamento o l'acquisizione dello status parlamentare.
Szpunar concluse nel suo parere che l'unico problema della sentenza fosse la sanzione dell'interdizione dai pubblici servizi di Junqueras.
La Corte suprema spagnola invitò quella europea a sottoporre il rinvio pregiudiziale ad un procedimento accelerato, e tale richiesta fu accolta da parte della Corte dopo aver consultato il giudice relatore e l'avvocato generale.
Dopo l'interdizione da ogni ufficio pubblico, Junqueras chiese di riaprire la fase orale del procedimento alla Corte europea, la quale rifiutò tale richiesta poiché la sospensione imposta dal giudice nazionale non influenzava in modo decisivo la propria.
In merito alla ricevibilità della domanda di pronuncia pregiudiziale, la Corte europea ha stabilito che il giudice nazionale è tenuto a trarre le conseguenze della sentenza e a determinare gli effetti dell'immunità.
Il governo spagnolo dichiarò che qualora Junqueras avesse il diritto di godere dell'immunità, quest'ultima sarebbe stata inefficace poiché la fase dibattimentale dei procedimenti penali era stata aperta prima delle elezioni del Parlamento europeo. La misura di detenzione imposta a Junqueras non poteva così essere revocata in funzione dell'immunità.
Il Tribunale supremo spagnolo presentò tre domande pregiudiziali alla Corte europea, nella causa C-502/19, chiedendo se un deputato, che è stato eletto nel momento in cui si trovava sottoposto ad una misura di detenzione cautelare, godesse già dell'immunità previamente alla prima sessione del Parlamento; in caso di risposta affermativa, se la persona in questione possa sottrarsi ai requisiti imposti dagli Stati Membri per ottenere lo status parlamentare; se fosse necessaria la scarcerazione del membro detenuto per ottenere l'immunità.
Preliminarmente, la Corte europea ha affermato che l'Articolo 9 si riferisce alle immunità attribuite agli eurodeputati e che, allo stesso tempo, non fornisce

una definizione del concetto di membro del Parlamento europeo che perciò, va intesto alla luce del suo contesto e dei suoi obiettivi.
Come evidenziato nell'Articolo 10(1) TUE, il principio di democrazia rappresentativa deve essere rispettato affinché l'UE possa operare correttamente.
La Corte europea, condividendo l'argomentazione dell'avvocato Szpunar, differenziò lo status parlamentare, che si ottiene mediante la proclamazione dei risultati elettorali, dal mandato, che inizia dall'apertura della prima sessione del Parlamento e termina dopo cinque anni.
L'Atto elettorale del 1976 prevede che i deputati godano delle stesse immunità sia quando il Parlamento europeo non è in sessione che antecedentemente al primo incontro del nuovo Parlamento e all'inizio del mandato.
La composizione del Parlamento deve riflettere la libera espressione e volontà dei cittadini europei e qualsiasi misura, che può ostacolare tali principi, deve essere annullata poiché questi assicurano l'indipendenza di tale istituzione e dei suoi rappresentati.
La Corte europea concluse che l'immunità prevista nel secondo paragrafo dell'Articolo 9 del Protocollo è garantita ad un deputato ufficialmente eletto anche se quest'ultimo si trova sottoposto ad una misura cautelare che ostacola l'adempimento dei requisiti previsti dalla normativa nazionale per ottenere lo status parlamentare; che tale provvedimento di detenzione deve essere revocato in modo da permettere all'imputato di recarsi alla prima sessione del Parlamento europeo; che se il giudice nazionale ritiene che tale misura debba essere imposta nuovamente dopo l'incontro, questo deve richiedere al Parlamento europeo di revocare l'immunità.
Perciò, secondo la Corte europea, Junqueras godeva dell'immunità parlamentare dal momento in cui era stato eletto dai cittadini spagnoli anche se, al momento, era sottoposto a misura cautelare.
Sebbene la sentenza del 19 dicembre 2019 abbia avuto un importante impatto mediatico ed abbia avviato dibattiti tra i vari Stati Membri in merito al problema, ad oggi il leader catalano Junqueras si trova ancora detenuto.
In generale, la principale critica contro il sistema di immunità parlamentare sostiene che la sua estensione è eccessiva consentendo la prevaricazione degli interessi personali e non di quelli collettivi.
Il regime di immunità parlamentare europeo è discriminatorio e mostra varie disuguaglianze tra gli Stati Membri: infatti, se immaginassimo la situazione di Junqueras nei Paesi Bassi, la libertà di espressione, secondo la normativa nazionale, non sarebbe garantita.
Come pure, ciascun Stato Membro stabilisce la propria procedura elettorale per le elezioni del Parlamento europeo determinando disparità rispetto all'età minima per votare o candidarsi, ai requisiti per essere selezionati come candidati e alla distribuzione dei seggi dichiarati vacanti durante la sessione elettorale.

È evidente che il godimento delle immunità non può variare a seconda del luogo in cui il deputato in questione viene processato.
L'Unione Europea ha competenza limitata in tale ambito, pertanto, il Parlamento europeo deve solamente prendere atto dei risultati elettorali annunciati dagli Stati Membri, verificare le credenziali di coloro che sono stati eletti e decidere se rimuovere o meno l'immunità agli stessi.
L'intera comunità europea è a conoscenza di tali imperfezioni del sistema ma ancora oggi nessuno è stato in grado di risolverle uniformando le procedure elettorali di tutti gli Stati Membri.
Con questa sentenza, la Corte europea non ha inteso interferire con la normativa spagnola in merito al requisito del giuramento obbligatorio di fronte alla Costituzione nazionale per non addivenire a dispute con lo Stato Membro.
Ancora oggi la visione europeista spesso si contrappone a quella nazionalista ma l'una non deve prevalere sull'altra in rispetto sia del diritto europeo che di quello di tutti gli Stati Membri.
Tale sentenza non va intesa come un attacco alla sovranità spagnola ma bensì come un meccanismo che sostiene la corretta applicazione dei diritti e garantisce la protezione giudiziale.
Del resto, la Corte spagnola stessa, seguendo l'opinione dell'avvocato generale, dichiarò che il giuramento obbligatorio è una formalità che non è richiesta dalla Costituzione ma bensì dalle norme che regolano il sistema parlamentare spagnolo e perciò, non può pregiudicare l'ottenimento del mandato degli eurodeputati.
La sentenza della causa C-502/19 è innovativa poiché la volontà popolare viene considerata come l'elemento più importante che deve sempre prevalere in ogni sistema politico democratico. Ha posto poi l'attenzione da parte di ogni Stato di riconsiderare le proprie leggi, comprese quelle elettorali, nell'ambito di un sistema composto da più paesi. L'adozione di una procedura elettorale comune europea sarebbe un importante passo verso la democrazia.
Il principio di inviolabilità è essenziale per garantire il corretto funzionamento e l'indipendenza sia del Parlamento europeo che dei deputati eletti dalle persone.
Ad oggi la richiesta di annullamento della decisione proposta da Junqueras alla Corte suprema spagnola non è stata accolta; la petizione promossa dal suo avvocato difensore, Andreu Van den Eynde, per il recupero dello status parlamentare e la protezione dei suoi diritti violati è stata rifiutata dal Vicepresidente della Corte europea, David Sassoli; l'ulteriore richiesta di Junqueras di garanzia di immunità da parte del Parlamento europeo è stata anch'essa ignorata poiché si contrappone al principio di separazione dei poteri secondo il quale quello giuridico non può interferire con quello legislativo; anche l'invito rivolto alla Corte europea a mobilitare il governo spagnolo per rilasciarlo non è stato accolto.

L’8 ottobre 2020, il Vicepresidente della CGUE ha stabilito che il ricorso di Junqueras non era valido e che sia la Spagna che l’imputato erano obbligati a pagare i costi di tale ricorso poiché, come stabilisce l’Articolo 140(1) del Regolamento del Procedimento del Tribunale Generale, gli Stati Membri che intervengono come supporto in una disputa sono responsabili per il pagamento di tali spese.

Durante la campagna elettorale per il rinnovo del parlamento regionale del 14 febbraio 2021, Junqueras si è presentato in pubblico sotto sorveglianza della polizia con lo scopo di influenzare il popolo catalano elettore riferendo delle ingiustizie a lui afflitte dal governo spagnolo negli ultimi anni.

L’8 marzo 2021, le immunità di Puigdemont e Comin sono state revocate dall’UE, che ha sottolineato la competenza nazionale e non europea della questione.

Carles Puigdemont ritiene che questa decisione sia un caso di repressione politica e ha dichiarato di aver intenzione di portare tale caso di fronte alla Corte europea.

Attualmente il regime di libertà parziale imposto ai sette leader catalani, tra cui Junqueras, è stato abolito e perciò gli stessi sono obbligati a rimanere in prigione ancora oggi.