ORDER OF THE VICE-PRESIDENT OF THE COURT

24 May 2022(*)

(Appeal – Interim relief – Institutional law – Members of the European Parliament – Privileges and immunities – Waiver of the parliamentary immunity of a Member of the Parliament – Prima facie case – Impartiality of the rapporteur when examining the request for waiver of parliamentary immunity – Urgency – European arrest warrant – Alert on persons wanted for arrest for surrender purposes – Exercise of the mandate of a Member of the Parliament – Balance of interests)

In Case C-629/21 P(R),

APPEAL under the second paragraph of Article 57 of the Statute of the Court of Justice of the European Union, brought on 11 October 2021,

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

Antoni Comín i Oliveres, residing in Waterloo,

Clara Ponsatí i Obiols, residing in Waterloo,

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

appellants,

the other parties to the proceedings being:

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

defendant at first instance,

Kingdom of Spain, represented by S. Centeno Huerta and A. Gavela Llopis, acting as Agents,

intervener at first instance,

THE VICE-PRESIDENT OF THE COURT,

after hearing the Advocate General, M. Szpunar,

makes the following

Order

1 By their appeal, Mr Carles Puigdemont i Casamajó, Mr Antoni Comín i Oliveres and Ms Clara Ponsatí i Obiols seek to have set aside the order of the Vice-President of the General Court of the European Union of 30 July 2021, *Puigdemont i Casamajó and Others* v *Parliament* (T-272/21 R, not published, EU:T:2021:497, 'the order under appeal'), by

which the General Court dismissed their application for suspension of the operation of decisions P9_TA(2021)0059, P9_TA(2021)0060 and P9_TA(2021)0061 of the European Parliament of 9 March 2021 on the request for waiver of their immunity (together 'the decisions at issue').

2 By its cross-appeal, the Kingdom of Spain seeks the removal of the statement of reasons set out in paragraph 43 of the order under appeal.

Legal context

Framework Decision 2002/584/JHA

3 Recital 6 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) is worded as follows:

'The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.'

4 Article 1(1) and (2) of that framework decision is worded as follows:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.'

5 Articles 3 and 4 of that framework decision set out, respectively, the grounds for mandatory non-execution and the grounds for optional non-execution of the European arrest warrant.

6 Article 5 of that framework decision sets out guarantees to be given by the issuing Member State in particular cases.

7 Article 11(1) of Framework Decision 2002/584 reads as follows:

'When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.'

8 Article 12 of the Framework Decision provides:

'When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.'

9 Article 15(1) of that framework decision specifies:

‘The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.’

10 Article 17(1) to (5) of that framework decision is worded as follows:

‘1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.’

Decision 2007/533/JHA

11 Article 24(1) of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ 2007 L 205, p. 63) provides:

‘Where a Member State considers that to give effect to an alert entered in accordance with Articles 26, 32 or 36 is incompatible with its national law, its international obligations or essential national interests, it may subsequently require that a flag be added to the alert to the effect that the action to be taken on the basis of the alert will not be taken in its territory. The flag shall be added by the SIRENE Bureau of the Member State which entered the alert.’

12 Article 25 of that decision provides:

‘1. Where Framework Decision [2002/584] applies, a flag preventing arrest shall only be added to an alert for arrest for surrender purposes where the competent judicial authority under national law for the execution of a European Arrest Warrant has refused its execution on the basis of a ground for non-execution and where the addition of the flag has been required.

2. However, at the behest of a competent judicial authority under national law, either on the basis of a general instruction or in a specific case, a flag may also be required to be added to an alert for arrest for surrender purposes if it is obvious that the execution of the European Arrest Warrant will have to be refused.’

13 Article 26(1) of Decision 2007/533 reads as follows:

‘Data on persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant or wanted for arrest for extradition purposes shall be entered at the request

of the judicial authority of the issuing Member State.'

14 Article 27(1) of that decision provides:

'If a person is wanted for arrest for surrender purposes on the basis of a European Arrest Warrant the issuing Member State shall enter in SIS II a copy of the original of the European Arrest Warrant.'

15 Article 30 of that decision is worded as follows:

'If an arrest cannot be made, either because a requested Member State refuses in accordance with the procedures on flagging set out in Articles 24 or 25, or because, in the case of an alert for arrest for extradition purposes, an investigation has not been completed, the requested Member State must regard the alert as being an alert for the purposes of communicating the whereabouts of the person concerned.'

16 Article 31(1) of that decision states:

'An alert entered in SIS II in accordance with Article 26 in conjunction with the additional data referred to in Article 27, shall constitute and have the same effect as a European Arrest Warrant issued in accordance with Framework Decision [2002/584] where this Framework Decision applies.'

Background to the dispute

17 The background to the dispute is set out in paragraphs 1 to 20 of the order under appeal. It may, for the purposes of the present proceedings for interim relief, be summarised as follows.

18 Mr Puigdemont i Casamajó, Mr Comín i Oliveres and Ms Ponsatí i Obiols were respectively President of the Generalitat de Cataluña (Generalitat of Catalonia, Spain) and Members of the Gobierno autonómico de Cataluña (Autonomous Government of Catalonia, Spain) at the time of the adoption of Ley 19/2017 del Parlamento de Cataluña, reguladora del referéndum de autodeterminación (Law 19/2017 of the Catalan Parliament regulating the referendum on self-determination) of 6 September 2017 (DOGC No 7449A of 6 September 2017, p. 1), and of Ley 20/2017 del Parlamento de Cataluña, de transitoriedad jurídica y fundacional de la República (Law 20/2017 of the Catalan Parliament on legal transition and founding the Republic) of 8 September 2017 (DOGC No 7451A of 8 September 2017, p. 1), and the holding, on 1 October 2017, of the referendum on self-determination provided for by the first of those two laws, the provisions of which had, in the interim, been suspended by a decision of the Tribunal Constitucional (Constitutional Court, Spain).

19 Following the adoption of those laws, and following the referendum, the Ministerio fiscal (Public Prosecutor's Office, Spain), the Abogado del Estado (State Counsel, Spain) and the Partido político VOX (VOX political party) initiated criminal proceedings against a number of individuals, including the appellants, on the ground that they had committed acts coming within the offences of 'sedition'.

20 The appellants subsequently submitted their applications to stand as candidates in the elections for Members of the European Parliament. On 13 June 2019, the Junta Electoral Central (Central Electoral Commission, Spain) adopted the decision declaring the candidates elected to the Parliament at the elections of 26 May 2019, including Mr Puigdemont i Casamajó and Mr Comín i Oliveres.

21 On 17 June 2019, the Central Electoral Commission refused to allow the appellants to swear the oath or to pledge to abide by the Spanish Constitution required by Spanish law and notified the Parliament of the list of candidates elected in Spain, which did not include Mr Puigdemont i Casamajó or Mr Comín i Oliveres. On 27 June 2019, the President of the Parliament informed Mr Puigdemont i Casamajó and Mr Comín i Oliveres that he was not in a position to treat them as future Members of the Parliament.

22 European arrest warrants were issued by the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court, Spain) against Mr Puigdemont i Casamajó on 14 October 2019, and against Mr Comín i Oliveres and Ms Ponsatí i Obiols on 4 November 2019.

23 On 10 January 2020, the President of the Second Chamber of the Tribunal Supremo (Supreme Court) sent to the Parliament a request, arising from an order of the same day made by the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court), seeking to waive the parliamentary immunity of Mr Puigdemont i Casamajó and Mr Comín i Oliveres.

24 At the plenary session of 13 January 2020, the Parliament took note, following the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115), of the election as Members of Mr Puigdemont i Casamajó and Mr Comín i Oliveres with effect from 2 July 2019.

25 On 16 January 2020, the Vice-President of the Parliament sent in plenary session the requests for waiver of the immunity of Mr Puigdemont i Casamajó and Mr Comín i Oliveres, and referred them to the relevant committee, namely the Parliament's Committee on Legal Affairs ('the JURI Committee').

26 On 4 February 2020, the President of the Second Chamber of the Tribunal Supremo (Supreme Court) sent to the Parliament a request, arising from an order of the same day made by the investigating judge of the Criminal Chamber of that court, requesting waiver of the immunity of Ms Ponsatí i Obiols.

27 On 10 February 2020, the Parliament, following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union on 31 January 2020, took note of the election of Ms Ponsatí i Obiols as a Member with effect from 1 February 2020.

28 On 13 February 2020, the Vice-President of the Parliament communicated in plenary session the request for waiver of the immunity of Ms Ponsatí i Obiols and referred it to the JURI Committee.

29 After the appellants submitted their observations to the Parliament and were heard by the JURI Committee, on 23 February 2021 the latter adopted reports A 9-0020/2021, A 9-0021/2021 and A 9-0022/2021 concerning the requests for waiver of the appellants' immunity. By the decisions at issue, the Parliament waived the appellants' immunity on the basis of point (b) of the first paragraph of Article 9 of Protocol (No 7) on the Privileges and immunities of the European Union (OJ 2012 C 326, p. 266; 'the Protocol on the privileges and immunities of the European Union').

Procedure before the General Court and the order under appeal

30 By application lodged at the Registry of the General Court on 19 May 2021, the appellants brought an action for annulment of the decisions at issue.

31 By separate document lodged at the Court Registry on 26 May 2021, the appellants submitted an application for interim measures seeking suspension of the operation of the decisions at issue.

32 By order of 2 June 2021, *Puigdemont i Casamajó and Others* v *Parliament* (T-272/21 R, not published), adopted on the basis of Article 157(2) of the Rules of Procedure of the General Court, the Vice-President of the General Court ordered the suspension of the operation of the decisions at issue until the date of the order terminating the interim proceedings brought before the General Court.

33 By decision of 24 June 2021, the Vice-President of the General Court granted the Kingdom of Spain leave to intervene in support of the form of order sought by the Parliament.

34 By the order under appeal, the Vice-President of the General Court dismissed the application for interim measures brought by the appellants.

35 To that end, in paragraph 38 of that order, the Vice-President of the General Court took the view that it was appropriate to examine whether the condition relating to urgency was satisfied.

36 In that regard, in the first place, it held, in paragraph 42 of the order under appeal, that it was necessary to refer only to the objective effects of the decisions at issue, determined in the light of their content, and that the alleged lack of clarity of those decisions could not suffice to establish that the damage alleged by the appellants was serious and irreparable.

37 In the second place, the Vice-President of the General Court held, in paragraph 43 of that order, that the appellants could not rely on an alleged risk of being arrested when travelling to or from a parliamentary session in Strasbourg (France), in so far as such travel is covered by the immunity provided for in the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union, which the appellants still enjoy.

38 In the third place, the Vice-President of the General Court examined whether the condition relating to urgency could be regarded as satisfied on account (i) of the alleged existence of a risk of the appellants' imminent arrest as a result of the combined effect of the decisions at issue and (ii) of the European arrest warrants issued against the appellants and of the alerts on persons wanted for arrest for surrender purposes to which the appellants are subject ('the alerts in SIS II').

39 In paragraph 45 of the order under appeal, the Vice-President of the General Court stated that the judicial authorities of the executing Member State have the possibility of refusing to execute a European arrest warrant, in particular under the conditions laid down in Articles 3 and 4 of Framework Decision 2002/584 and that the requested person may refuse to consent to surrender, so that it is for the executing judicial authority to make a decision on the execution of the European arrest warrant. He inferred from this that the occurrence of the damage alleged by the appellants depended on the concurrence of multiple factors.

40 In paragraph 46 of the order under appeal, the Vice-President of the General Court found that the appellants had not shown that their arrest or, a fortiori, their surrender to the Spanish authorities was foreseeable with a sufficient degree of probability.

41 In that regard, he held, in paragraph 47 of that order, that the appellants had adduced no evidence that executing authorities, and in particular those of the Member State in which they reside, namely the Kingdom of Belgium, intended to execute the European arrest

warrants issued in relation to them in such a way that the risk of the alleged harm occurring was sufficiently probable.

42 After referring, in paragraphs 48 to 50 of the order under appeal, to the absence of steps undertaken by executing judicial authorities after the adoption of the decisions at issue and to the measures taken by the Belgian authorities, the Vice-President of the General Court stated, in paragraphs 51 and 53 of that order, that the Tribunal Supremo (Supreme Court) had submitted a request for a preliminary ruling to the Court of Justice under Article 267 TFEU, registered as Case C-158/21, which entailed the suspension of the national proceedings until the Court of Justice had given its ruling. He concluded, in paragraph 53 of that order, that the execution of the European arrest warrants issued against the appellants was suspended.

43 In addition, the Vice-President of the General Court found, in paragraph 55 of the order under appeal, that the appellants had adduced no evidence to call into question the finding that that execution was suspended and that, in particular, the fact that the Kingdom of Spain had not removed the alerts in SIS II had no bearing on that finding.

44 In the light of all those considerations, the Vice-President of the General Court concluded, in paragraph 58 of the order under appeal, that the appellants had failed to show that the condition relating to urgency had been satisfied since, as matters stood, the serious and irreparable damage pleaded by them could not be classified as damage that was certain or established with a sufficient degree of probability.

Forms of order sought

Forms of order sought on appeal

45 The appellants claim that the Court should:

- set aside the order under appeal;
- suspend the decisions at issue pending a ruling on the action brought in Case T-272/21;
- in the alternative, refer the case back to the General Court; and
- reserve the costs.

46 The Parliament contends that the Court should:

- dismiss the appeal; and
- order the appellants to pay the costs relating to the interim proceedings before the General Court and the appeal proceedings.

47 The Kingdom of Spain contends that the Court should:

- declare the appeal inadmissible, since it covers events subsequent to the order under appeal or seeks an unwarranted re-examination;
- dismiss the appeal, substituting the grounds of the order under appeal as regards paragraph 43 thereof and the first sentence of paragraph 52 thereof;
- in the alternative, dismiss the appeal; and

- order the appellants to pay the costs.

Forms of order sought in the cross-appeal

48 By its cross-appeal, the Kingdom of Spain requests the Court to remove the statement of reasons set out in paragraph 43 of the order under appeal.

49 The appellants claim that the Court should:

- declare the cross-appeal inadmissible;
- in the alternative, dismiss that appeal; and
- order the Kingdom of Spain to pay the costs.

50 The Parliament contends that the Court should:

- dismiss the cross-appeal as inadmissible;
- order the Kingdom of Spain to pay the costs relating to that appeal.

The appeal

51 In support of their appeal, the appellants rely on two grounds of appeal alleging errors of law committed by the Vice-President of the General Court (i) by disregarding the fact that serious and irreparable damage was liable to occur before any final decision on the execution of the European arrest warrants issued against the appellants and (ii) by concluding that the alleged damage was not foreseeable with a sufficient degree of probability.

52 Furthermore, the Kingdom of Spain and the Parliament request the Court to substitute the grounds.

Admissibility of the appeal

Arguments

53 The Kingdom of Spain disputes, as a preliminary point, the admissibility of the appeal.

54 It contends in that regard, first, that the appellants rely on events subsequent to the order under appeal which cannot validly be relied on in the context of this appeal. Secondly, it maintains that the appellants' claims go beyond the subject matter of proceedings for interim measures, in so far as they seek to obtain the suspension of the European arrest warrants issued against the appellants. Thirdly, some of the appellants' arguments seek to call into question factual findings made by the Vice-President of the General Court. Fourthly, in the event that the Court of Justice sets aside the order under appeal, it should refer the case back to the General Court in so far as the latter examined only one of the three conditions governing the grant of interim measures.

Assessment

55 It should be noted, in the first place, that the arguments of the Kingdom of Spain relating to the reliance on events subsequent to the order under appeal and in relation to the challenge to factual findings made by the Vice-President of the General Court do not concern the appeal as a whole, but only some of the arguments put forward in support

thereof.

56 In those circumstances, those arguments of the Kingdom of Spain are not, in any event, capable of justifying the conclusion that the present appeal is inadmissible in its entirety.

57 In the second place, since the form of order sought in the appeal seeks only to have the order under appeal set aside and, as the case may be, the operation of the decisions at issue suspended, it cannot be considered that it seeks to obtain from the Court of Justice the suspension of the European arrest warrants issued against the appellants.

58 In the third place, even if, as the Kingdom of Spain maintains, the state of the present proceedings does not permit final judgment to be given in the event that the order under appeal is set aside, that would imply, in accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, that the case would, in such a situation, have to be referred back to the General Court. However, that circumstance cannot render the appeal brought by the appellants inadmissible.

59 Consequently, it is not appropriate to dismiss the appeal as inadmissible in its entirety.

The first ground of appeal

Arguments

60 By their first ground of appeal, the appellants submit that the Vice-President of the General Court erred in law by disregarding the fact that serious and irreparable damage was liable to occur before any final decision on the execution of the European arrest warrants issued against them.

61 The appellants argue primarily that several paragraphs of the order under appeal are based on the assumption that only the surrender of the appellants to the Kingdom of Spain would constitute serious and irreparable damage.

62 Thus, the Vice-President of the General Court took into account, in paragraph 45 of the order under appeal, only the damage that might result from the appellants being surrendered to the Spanish authorities. However, serious and irreparable damage would already arise in the event of the appellants' arrest and their continued detention, even for a limited period, especially since such a risk would exist each time that they travel to a Member State. The appellants might be arrested with a view to executing the European arrest warrants issued against them on the basis of the alerts in SIS II. Moreover, their continued detention could subsequently be ordered by the executing judicial authority, pursuant to Article 12 of Framework Decision 2002/584. The arrest and detention of Mr Puigdemont i Casamajó in Sardinia (Italy) on 23 September 2021 show that the appellants' arguments are well founded.

63 Paragraphs 47 to 49, 56 and 57 of the order under appeal are also based on the assumption that the appellants' arrest could not constitute serious and irreparable damage. Similarly, in paragraph 60 of that order, such arrest is described as an example of a situation in which the alleged damage could arise and not as a situation in which that damage had already occurred.

64 In the alternative, the appellants submit that the findings in paragraph 45 of the order under appeal relating to Framework Decision 2002/584 are not such as to establish that the damage resulting from the appellants' possible arrest depended on multiple factors.

65 The Parliament and the Kingdom of Spain contend that the first ground of appeal should

be rejected.

66 The Parliament contends, as a preliminary point, that this ground of appeal relies, in part, on arguments which must be rejected as inadmissible in so far as they are based on facts subsequent to the order under appeal or in so far as they seek to challenge factual findings made by the Vice-President of the General Court. The Kingdom of Spain also claims that the contested findings of the Vice-President of the General Court relate to the assessment of evidence.

67 In addition, the first ground of appeal is based on a misreading of the order under appeal, in so far as the Vice-President of the General Court did not adopt a position on whether the appellants' arrest or their surrender to the Spanish authorities should be classified as 'serious and irreparable damage'. The Vice-President of the General Court was moreover right to hold that the occurrence of the damage alleged by the appellants depended on multiple factors. The decisions at issue are not the decisive cause of that damage.

68 The Kingdom of Spain proposes that paragraph 45 of the order under appeal should be interpreted as meaning that the decisions at issue do not constitute the decisive cause of the damage alleged by the appellants. That damage in fact results from their decision to flee Spain and national measures adopted as a result of that decision.

Assessment

69 It is appropriate, as a preliminary point, to examine the arguments of the Parliament and the Kingdom of Spain seeking to challenge the admissibility of the first ground of appeal.

70 First, it must be recalled that under the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on a point of law only. The General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence placed before it. The appraisal of those facts and the assessment of that evidence thus do not, save where the facts and evidence are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (see, by analogy, order of the Vice-President of the Court of 30 November 2021, *Land Rheinland-Pfalz* v *Deutsche Lufthansa*, C-466/21 P-R, not published, EU:C:2021:972, paragraph 43 and the case-law cited).

71 In the present case, the main arguments put forward by the appellants in support of their first ground of appeal seek to establish that the order under appeal is vitiated by an error in the legal characterisation of the facts in that the Vice-President of the General Court considered that their possible arrest would not constitute serious and irreparable damage. In the alternative, the appellants claim, in essence, that the Vice-President of the General Court was mistaken, on account of a misinterpretation of Framework Decision 2002/584, as to the effects of that framework decision on a European arrest warrant such as those issued against them.

72 It follows that the argument that the first ground of appeal must be regarded as inadmissible in so far as it seeks to call into question findings of fact made by the Vice-President of the General Court must be rejected.

73 Secondly, according to settled case-law of the Court of Justice, since, in an appeal, the jurisdiction of the Court of Justice is confined to a review of the findings of law on the pleas and arguments debated before the General Court, a party cannot raise for the first time before the Court of Justice pleas or arguments that it did not put forward before the General Court (order of the Vice-President of the Court of 17 December 2020, *Anglo*

Austrian AAB and Belegging-Maatschappij 'Far-East' v *ECB*, C-207/20 P(R), not published, EU:C:2020:1057, paragraph 72 and the case-law cited).

74 Accordingly, the appellants cannot validly rely before the Court of Justice on arguments based on facts subsequent to the adoption of the order under appeal. It follows that the argument that the arrest and detention of Mr Puigdemont i Casamajó in Sardinia demonstrate the reality of the risk to which the appellants are exposed must be rejected as inadmissible.

75 As regards the substantive examination of the first ground of appeal, it should be recalled, as the Vice-President of the General Court noted in paragraphs 39 and 40 of the order under appeal, that the purpose of the procedure for interim relief is to guarantee the full effectiveness of the future final decision, in order to prevent a lacuna in the legal protection afforded by the Court of Justice. It is for the purpose of attaining that objective that urgency must be assessed in the light of the need for an interlocutory order to avoid serious and irreparable damage to the party seeking the interim relief. It is for that party to prove that it cannot await the outcome of the main proceedings without suffering such damage. While it is true that, in order to establish the existence of serious and irreparable damage, it is not necessary for the occurrence and imminence of the damage to be demonstrated with absolute certainty, it being sufficient to show that damage is foreseeable with a sufficient degree of probability, the party seeking interim measures is nevertheless required to prove the facts forming the basis of its claim that serious and irreparable damage is likely (order of the Vice-President of the Court of 16 July 2021, *Symrise* v *ECHA*, C-282/21 P(R), not published, EU:C:2021:631, paragraph 40 and the case-law cited).

76 In order to assess whether the condition relating to urgency was satisfied, the Vice-President of the General Court noted, in paragraph 45 of the order under appeal, that the occurrence of the 'damage alleged by the [appellants]' depended on the concurrence of multiple factors.

77 It is expressly apparent from paragraph 41 of that order that the damage alleged by the appellants before the General Court resulted, according to the appellants, from the risk that they would be arrested and surrendered to the Spanish authorities. In addition, paragraph 44 of that order presents the appellants' arguments relating to that damage as being based on the fact that it could not be ruled out that they might be subject to imminent arrest.

78 In that context, paragraph 45 of that order must be understood as meaning that the arrest and surrender of the appellants to the Spanish authorities were dependent on a number of factors coming together.

79 In making such a finding, the Vice-President of the General Court did not therefore in any way rule out the possibility that the possible arrest of the appellants might cause them serious and irreparable damage.

80 It follows that the principal arguments put forward in support of the first ground of appeal are based, in so far as they refer to paragraph 45 of the order under appeal, on a misreading of that order and must, for that reason, be rejected.

81 The same is true in so far as those arguments relate to paragraphs 47 to 49, 56 and 57 of that order, since it follows from paragraph 46 thereof that those paragraphs are intended, inter alia, to establish that the appellants did not demonstrate that their arrest was foreseeable with a sufficient degree of probability.

82 By contrast, it is apparent that paragraph 60 of the order under appeal contradicts the reasoning set out in paragraphs 44 to 58 thereof, by presenting the possible arrest of the appellants as a factor indicating not that the alleged damage has been sustained, but only that the occurrence of that damage is sufficiently probable.

83 However, the error thus committed by the Vice-President of the General Court must be regarded as irrelevant. Paragraph 60 of the order under appeal is included for the sake of completeness, in so far as it seeks not to justify the decision to dismiss the application for interim measures set out in paragraph 59 of that order, but merely to point out to the appellants that that decision is without prejudice to their right to make a fresh application for interim measures based on new facts.

84 Consequently, the principal arguments put forward in support of the first ground of appeal must be rejected as being, in part, unfounded and, in part, ineffective.

85 As regards the arguments put forward in the alternative in support of this ground of appeal, it should be noted that, in order to find, in paragraph 45 of the order under appeal, that the occurrence of the damage alleged by the appellants depended on the concurrence of multiple factors, the Vice-President of the General Court relied (i) on the power of the judicial authorities of the executing Member State to refuse to execute a European arrest warrant and (ii) on the fact that the surrender of the requested person is conditional upon the intervention of a decision of those authorities in the event that that person does not consent to his or her surrender.

86 In so far as paragraph 45 of the order under appeal thus refers exclusively to certain mechanisms provided for by Framework Decision 2002/584, it cannot, contrary to the submissions of the Parliament and the Kingdom of Spain, be understood as finding that the national measures adopted by that Member State, rather than the decisions at issue, constitute the decisive cause of the damage alleged by the appellants.

87 On the contrary, it is apparent from paragraph 78 of the present order that paragraph 45 of the order under appeal must be read as meaning, inter alia, that the mechanisms provided for by Framework Decision 2002/584, which that paragraph mentions, imply that the arrest of the appellants depends on factors other than the waiver of their parliamentary immunity resulting from the decisions at issue.

88 It is apparent from Article 1(1) of that framework decision that the European arrest warrant is a judicial decision issued by a Member State ‘with a view to the arrest and surrender’ by another Member State of a requested person.

89 Furthermore, it follows from Article 11(1) and Article 17(3) of that framework decision that the procedure for the execution of the European arrest warrant normally follows the arrest of the requested person by the authorities of the executing Member State.

90 That interpretation is borne out by the rule set out in Article 12 of that framework decision, according to which, when a person is arrested on the basis of a European arrest warrant, the executing judicial authority is to take a decision on whether ‘the requested person should remain in detention’.

91 It follows, moreover, from Article 12 and Article 17(5) of Framework Decision 2002/584 that, where the executing judicial authority decides to bring the requested person’s custody to an end, it is required to attach to the provisional release of that person any measures it deems necessary so as to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final

decision on the execution of the European arrest warrant has been taken (judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 63).

92 The surrender decision, to which paragraph 45 of the order under appeal refers, is taken, in accordance with Articles 15 and 17 of Framework Decision 2002/584, at the end of the procedure for the execution of that arrest warrant, that is, after the arrest of the requested person and the adoption of decisions on whether to keep him or her in custody or release him or her provisionally.

93 Accordingly, the Vice-President of the General Court erred in law in holding that the powers of the executing judicial authorities referred to in paragraph 45 of that order made it possible to establish that the arrest of the appellants depended on the concurrence of multiple factors.

94 The first ground of appeal must therefore be upheld in so far as it relates to paragraph 45 of the order under appeal.

95 However, since the grounds set out in paragraphs 46 to 57 of the order under appeal are also capable of justifying the operative part of that order, the finding of an error of law vitiating paragraph 45 of that order does not, on its own, mean that that order must be set aside. It follows that it is necessary to examine the second ground of appeal.

The second ground of appeal

Arguments

96 The second ground of appeal is divided into five parts. It is appropriate, at the outset, to examine the first three parts of this ground of appeal together.

97 By the first part of that ground of appeal, the appellants submit that the existence of alerts in SIS II was a sufficient basis on which to conclude that they faced a real risk of being arrested and, as a result, of suffering serious and irreparable damage. In their view, the police services of the Member States which have not added, pursuant to Article 25(2) of Decision 2007/533, a flag on the alerts in SIS II in question will make such an arrest. The Vice-President of the General Court therefore erred in law by rejecting, in paragraph 55 of the order under appeal, the relevance of the alerts in SIS II.

98 By the second part of the second ground of appeal, the appellants claim that the Vice-President of the General Court imposed too high a standard of proof by requiring them to adduce evidence of Member States' intention to arrest them, even though it was established that they were the subject of alerts in SIS II. The only 'step' which the Member States could take to execute those alerts would be specifically to arrest the appellants.

99 By the third part of the second ground of appeal, the appellants submit that the fact that the execution of the European arrest warrants issued against them is suspended does not call into question the likelihood of the risk of the alleged damage occurring. The Vice-President of the General Court relied on what the Spanish authorities ought to do, whereas he should have relied on what they actually did. Even though those authorities should have suspended the alerts in SIS II, the fact that those alerts were still active is sufficient to establish the likelihood of the risk of the alleged damage occurring. Communications from the investigating judge of the Tribunal Supremo (Supreme Court) to the French and Italian authorities confirm that analysis.

100 The Parliament and the Kingdom of Spain contend that the first three parts of the second ground of appeal should be rejected.

101 According to the Parliament, the first three parts of this ground of appeal should be declared inadmissible, at least in part, in so far as, first of all, they seek a simple re-examination of the application submitted to the General Court, next, they challenge findings of fact made by the Vice-President of the General Court and, lastly, they rely on factual circumstances which were not put forward at first instance. Moreover, the first and third parts of this ground of appeal do not refer to the paragraphs of the order under appeal to which they relate.

102 The Kingdom of Spain contends that the appellants did not rely, in the application for interim measures, on the alerts in SIS II or on the need to take account of the risk that they might be arrested in a Member State other than the Kingdom of Belgium, the Kingdom of Spain or the French Republic. Accordingly, it takes the view that the arguments based on those alerts or that risk must therefore be rejected as inadmissible. The same conclusion should be reached with regard to the arguments based on the communications from the investigating judge of the Tribunal Supremo (Supreme Court) on which the appellants rely.

103 The Kingdom of Spain contends moreover that the rules on which the appellants rely are not such as to invalidate the finding of the Vice-President of the General Court that the suspension by the Belgian authorities of the execution of the European arrest warrants issued against the appellants eliminates the risk that they will be surrendered to the Spanish authorities.

104 Furthermore, the Parliament and the Kingdom of Spain contend that the Vice-President of the General Court did not apply an excessively demanding standard of proof and, on the contrary, merely applied the settled case-law of the Court of Justice according to which the damage alleged must be foreseeable with a sufficient degree of probability.

105 In any event, the Parliament contends that the first and second parts of the second ground of appeal are ineffective, since the appellants do not dispute the findings of the Vice-President of the General Court concerning the stay of the criminal proceedings conducted in Spain, whereas those findings are sufficient to justify the dismissal of the application for interim measures.

Assessment

106 As regards the arguments of the Parliament and of the Kingdom of Spain seeking to challenge the admissibility of the first three parts of the second ground of appeal, it should, in the first place, be recalled that, in accordance with Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court of Justice, an appeal must indicate precisely the contested elements of the judgment or order which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal. That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment or order under appeal, confines itself to reproducing the pleas in law and arguments previously submitted to the General Court. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (order of the Vice-President of the Court of 10 January 2018, *Commission* v *RW*, C-442/17 P(R), not published, EU:C:2018:6, paragraph 66 and the case-law cited).

107 In the present case, it is apparent that, by the first three parts of the second ground of appeal, the appellants identify several errors allegedly vitiating the order under appeal and present a series of legal arguments seeking to establish the reality of those errors. It

follows that those first three parts cannot be regarded as seeking a mere re-examination of the application for interim measures submitted before the General Court.

108 The Parliament's argument that the first and third parts of the second ground of appeal should be declared inadmissible on the ground that they do not refer to specific paragraphs of the order under appeal must also be rejected.

109 First, it is absolutely clear from the appeal that the first part of the second ground of appeal calls into question the assessment of the Vice-President of the General Court set out in paragraphs 46 to 57 of the order under appeal according to which the damage alleged by the appellants was not foreseeable with a sufficient degree of probability even though they were the subject of an alert in SIS II.

110 Secondly, it is clear from the appeal that the third part of the second ground of appeal relates to paragraphs 52 to 56 of the order under appeal in which the Vice-President of the General Court set out the effects which should be attributed to the suspension of the criminal proceedings brought in Spain.

111 In the second place, although the Court of Justice cannot, as was recalled in paragraph 70 of the present order, call into question, in the examination of an appeal, the assessment of the facts and evidence made by the General Court, the first three parts of the second ground of appeal cannot be regarded as seeking to challenge such an assessment.

112 First, by the first and third parts of this ground of appeal, the appellants criticise the application, by the Vice-President of the General Court, of the requirement that the damage alleged be sufficiently probable in order to establish urgency. Such an argument, which does not call into question the facts established in the order under appeal, must be regarded as relating to the legal characterisation of those facts in the light of the criteria governing the application of the concept of urgency in proceedings for interim measures (see, by analogy, order of the President of the Court of 29 March 2012, *Gollnisch* v *Parliament*, C-569/11 P(R), not published, EU:C:2012:199, paragraph 27).

113 Secondly, the second part of the second ground of appeal is aimed at challenging the standard of proof that has been imposed on the appellants in demonstrating that the damage pleaded by them is sufficiently probable. It is apparent from the Court's settled case-law that an alleged failure to have regard to the rules of evidence is a question of law, which is admissible in an appeal (judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 44 and the case-law cited).

114 In the third place, it is apparent from the case-law cited in paragraph 73 of the present order that a party cannot raise for the first time before the Court of Justice pleas or arguments that it did not raise before the General Court.

115 Accordingly, the arguments of the parties based on the arrest and detention of Mr Puigdemont i Casamajó in Sardinia and on communications from the investigating judge of the Tribunal Supremo (Supreme Court) referred to in paragraph 99 of the present order must be rejected as inadmissible, in so far as those arguments were not submitted at first instance.

116 On the other hand, it cannot be held that the arguments based on the existence of alerts in SIS II and of the need to take account of the risk that the appellants might be arrested in a Member State other than the Kingdom of Belgium, the Kingdom of Spain or the French

Republic have been put forward for the first time before the Court of Justice. In their application for interim measures, the appellants relied, on several occasions, on the foreseeable effects of the alerts in SIS II and twice mentioned the risk of being arrested by the authorities of any Member State of the European Union. The genuine nature of that risk was, moreover, set out in more detail in the observations made by the applicants at first instance on the statement in intervention of the Kingdom of Spain.

117 It is therefore necessary to assess the merits of the first three parts of the second ground of appeal.

118 It is apparent from paragraphs 46 to 57 of the order under appeal that the Vice-President of the General Court considered that the existence of European arrest warrants issued against the appellants and of the alerts in SIS II were not sufficient to establish that their arrest was foreseeable with a sufficient degree of probability.

119 In particular, after examining the measures adopted by the Belgian authorities to act on the European arrest warrants issued against the appellants and after finding that the execution of those European arrest warrants had been suspended, the Vice-President of the General Court held, in paragraph 55 of the order under appeal, that the fact put forward by the appellants that the Kingdom of Spain had not removed the alerts in SIS II was not capable of demonstrating that the criminal proceedings at issue had not been suspended.

120 On the basis, inter alia, of those findings, the Vice-President of the General Court held, in paragraph 58 of that order, that the damage pleaded by the appellants could not be classified as damage which was certain or established with a sufficient degree of probability and that, therefore, the appellants had failed to show that the condition relating to urgency was satisfied.

121 However, as the appellants claim, the existence in SIS II of alerts concerning persons wanted for arrest for surrender purposes generally entails, by itself, an obligation to arrest persons who are the subject of such alerts.

122 It is apparent from Article 31(1) of Decision 2007/533 on the execution of action based on such an alert, read in conjunction with Article 27 of that decision, that an alert of that nature, accompanied by a copy of the European arrest warrant on which it is based, is to constitute and have the same effect as a European arrest warrant issued in accordance with Framework Decision 2002/584, where that framework decision applies.

123 In addition, Article 24(1) of Decision 2007/533 provides that, where a Member State considers that an alert on persons wanted for arrest for surrender purposes is incompatible with its national law, its international obligations or essential national interests, it may require that a flag be added to the alert to the effect that the action to be taken on the basis of the alert will not be taken in its territory.

124 Where Framework Decision 2002/584 applies, such a flag may, in accordance with Article 25 of Decision 2007/533, be added to an alert in SIS II only where the executing judicial authority has refused to execute the European arrest warrant to which that alert relates or where a competent judicial authority has requested that that flag be added either on the basis of a general investigation or where, in a specific case, it is obvious that the execution of that European arrest warrant will have to be refused.

125 It follows, moreover, from Article 30 of Decision 2007/533 that, where the alert on persons wanted for arrest for surrender purposes has been issued on the basis of a European arrest warrant, the EU legislature envisaged that it was possible to make an arrest only

where a flag has been added in accordance with the procedures set out in Articles 24 and 25 of that decision.

126 It follows that, unless it is established that that decision is systematically ineffective or that a flag has been added by each of the Member States to which the person concerned may travel – circumstances which have not been established in the order under appeal – the existence, in SIS II, of an alert concerning persons wanted for arrest for surrender purposes entails, in itself, a strong probability that that person will be arrested.

127 Since, as was pointed out in paragraph 75 of the present order, in proceedings for interim relief, the condition relating to urgency may be satisfied without the occurrence and imminence of the alleged damage being established with absolute certainty, the occurrence of alleged damage resulting from the arrest of the persons covered by the alert on persons wanted for arrest for surrender purposes must, in principle, in such a situation, be regarded as foreseeable with a sufficient degree of probability.

128 Accordingly, in that situation, the judge hearing the application for interim measures cannot reasonably require the persons concerned by that alert to adduce additional evidence in order to establish the foreseeability of their arrest.

129 In particular, contrary to what was held by the Vice-President of the General Court in paragraph 47 of the order under appeal, those persons cannot be expected to demonstrate that national executing authorities intend to comply with their obligations under EU law.

130 The fact that a judicial authority of a Member State has not, during a specific period, given effect to a European arrest warrant issued against those persons, as the Vice-President of the General Court found with regard to the appellants in paragraphs 48 to 50 of the order under appeal, is also not such as to render those persons' arrest insufficiently probable.

131 First, in the absence of a final decision, that fact does not in any way establish that that judicial authority will not ultimately comply with its obligations under EU law. Secondly, that fact gives no indication as to the attitude which will be adopted by the authorities of other Member States to which the persons concerned may travel.

132 As regards the suspension of the execution of the European arrest warrants issued against the appellants, to which paragraphs 51 to 56 of the order under appeal refer, it must be stated that it has no effect on the foreseeability of the appellants' arrest pursuant to the alerts in SIS II, as long as those alerts have not been withdrawn by the Spanish authorities.

133 Furthermore, assuming that the assessment made by the Vice-President of the General Court, in paragraph 55 of the order under appeal, on the relevance of the alerts in SIS II must be understood as meaning that the Kingdom of Spain was required to remove those alerts following the request for a preliminary ruling made in Case C-158/21, it must be emphasised that the degree of probability of damage occurring cannot, in the light of the subject matter of the proceedings for interim relief, be assessed on the basis that decisions of a Member State which are currently applicable will be withdrawn by that Member State in the near future.

134 In the light of all those factors, it is apparent that the Vice-President of the General Court erred as regards the legal characterisation of the facts by holding, in paragraph 46 of the order under appeal, that the appellants had not shown that their arrest was foreseeable with a sufficient degree of probability.

135 Consequently, the first three parts of the second ground of appeal must be upheld.

136 As regards the consequences of the errors which vitiate paragraphs 45 and 46 of the order under appeal, it should be recalled that it is apparent from paragraph 41 of that order that the appellants pleaded damage arising from the deprivation of liberty that would result from both their arrest and their surrender to the Spanish authorities.

137 It follows that the assessment of the Vice-President of the General Court in paragraph 58 of that order, according to which the appellants failed to show that the condition relating to urgency was satisfied, must necessarily be based on the rejection of the appellants' claim that they are exposed to a foreseeable risk of arrest liable to cause them serious and irreparable damage.

138 Therefore, contrary to what the Parliament contends, that assessment cannot be based to the requisite legal standard on the finding of the Vice-President of the General Court that the risk of the appellants being surrendered to the Spanish authorities has not been established with a sufficient degree of probability.

139 In those circumstances, given that the grounds set out in paragraphs 42 and 43 of the order under appeal do not relate to the risk of the appellants being arrested in a Member State other than the French Republic, it must be held that the errors vitiating paragraphs 45 and 46 of that order deprive the assessment of the Vice-President of the General Court set out in paragraph 58 of that order of a sufficient basis.

140 It therefore appears necessary to determine whether the substitutions of grounds proposed by the Parliament and the Kingdom of Spain respectively are capable of justifying the operative part of the order under appeal.

The Parliament's request for substitution of grounds

Arguments

141 The Parliament, supported by the Kingdom of Spain, proposes that the Court of Justice should, in the event that the Court upholds the grounds of appeal put forward by the appellants, substitute the grounds, by holding that the damage related to the risk of arrest on which the appellants rely does not constitute serious and irreparable damage.

142 It contends, in that regard, that the approach proposed by the appellants is inconsistent with the exceptional nature of interim measures, by making it possible to establish systematically that the condition of urgency is satisfied where the immunity of a Member of Parliament who refuses to cooperate with the national authorities is waived.

143 Furthermore, since parliamentary immunity is intended to prevent any interference with the proper functioning of the Parliament, the appellants were required to establish that the decisions at issue risked hindering the performance of their tasks and that the proper functioning of the Parliament precluded any interference with the exercise of their mandate. However, they have not in any way established that the coercive measures which may be taken by a Member State against a Member of Parliament would undermine the independence and proper functioning of that institution.

144 The appellants claim that the Parliament's request for substitution of grounds should be rejected.

Assessment

145 In accordance with the Court's settled case-law, if a request for substitution of grounds is to be admissible, the party concerned must have an interest in bringing proceedings, in the sense that the request must be capable, if successful, of procuring an advantage to the party making it. That may be the case where the request for substitution of grounds amounts to a defence to one of the applicant's pleas (judgment of 24 February 2022, *Bernis and Others* v *SRB*, C-364/20 P, not published, EU:C:2022:115, paragraph 37 and the case-law cited).

146 As was pointed out in paragraph 75 of this order, it is for the party seeking the interim measure to prove that it cannot await the outcome of the main proceedings without suffering serious and irreparable damage.

147 Therefore, although the Vice-President of the General Court was wrong to hold that the arrest of the appellants was not foreseeable with a sufficient degree of probability, the assessment that the condition relating to urgency was not satisfied must nevertheless be confirmed if that arrest was not liable to cause serious and irreparable damage to the appellants.

148 The request for substitution of grounds submitted by the Parliament must therefore be regarded as admissible.

149 As the Parliament has rightly noted, the immunity of Members of the Parliament is granted exclusively in the interests of the European Union. The purpose of that immunity is more specifically to prevent any hindrances to the proper functioning of that institution and therefore to its competences. Consequently, a Member of Parliament, faced with a decision waiving his or her immunity, can usefully rely, as serious and irreparable harm directly caused to him or her by that decision, only on the adverse effect that that decision would have not solely to his or her right freely to exercise his or her or mandate, but also the proper functioning of the Parliament (see, to that effect, order of the President of the Court of 29 March 2012, *Gollnisch* v *Parliament*, C-569/11 P(R), not published, EU:C:2012:199, paragraph 29).

150 It has therefore been possible to rule out the risk of serious and irreparable harm in a situation where the waiver of the immunity of a Member of Parliament had taken place at an early stage in criminal proceedings brought against him or her, without it being established that the current or expected conduct of those proceedings could specifically impede the performance of the tasks of that Member of Parliament, such as his or her participation in sessions, parliamentary trips or the drafting of reports, and that the interests connected with the proper functioning of the Parliament precluded any interference with the exercise of his or her mandate (see, to that effect, order of the President of the Court of 29 March 2012, *Gollnisch* v *Parliament*, C-569/11 P(R), not published, EU:C:2012:199, paragraph 30).

151 That solution cannot be transposed to a situation in which the criminal proceedings which justified the waiver of the parliamentary immunity have already led to the issuing, in respect of the Members of Parliament concerned, of European arrest warrants and of alerts on persons wanted for arrest for surrender purposes.

152 The measures thus adopted are capable, in the event of waiver of parliamentary immunity, of resulting, pursuant to Framework Decision 2002/584 and Decision 2007/533, in the arrest of the Members of Parliament concerned and their continued detention, possibly for several weeks, pending the adoption of a decision on their surrender.

153 Such deprivation of liberty, which may, moreover, be repeated on several occasions and

occur in several Member States, is liable to prevent the Members of Parliament concerned from carrying out the activities inherent in the exercise of their mandate, such as participation in parliamentary trips or making the journeys necessary in the context of drafting reports, and, therefore, to undermine the proper functioning of the Parliament. In the light of the nature of the activities of a Member of the European Parliament and of the fact that he or she may be called upon to carry out those activities throughout the European Union, the existence of such an obstacle to the exercise of the mandate as a Member of Parliament must be established without the person relying on it being required to produce specific information on the actual activities that he or she might be required to carry out in Member States other than those in which parliamentary sessions take place.

154 It should be added that, since the Members of Parliament concerned are, if the operation of the decisions to waive their immunity is not suspended in such a case, unable fully to continue to perform their duties as Members of the European Parliament until the end of their term of office, the damage thus suffered would be irreparable (see, by analogy, order of the President of the Court of 31 July 2003, *Le Pen* v *Parliament*, C-208/03 P-R, EU:C:2003:424, paragraph 102).

155 Accordingly, it must be held that the arrest of a Member of Parliament and his or her continued detention, possibly for several weeks, pending the adoption of a decision on his or her surrender are liable to cause him or her serious and irreparable harm.

156 In the light of the foregoing, the Parliament's request for substitution of grounds must be rejected.

The Kingdom of Spain's request for substitution of grounds

Arguments

157 The Kingdom of Spain contends that paragraph 43 of the order under appeal is vitiated by an error of law as regards the scope of the decisions at issue and therefore proposes that the Court substitute grounds by removing that paragraph 43.

158 Principally, it alleges that the Vice-President of the General Court exceeded the function of a judge hearing the application for interim measures by adopting an interpretation of the decisions at issue which amounts, in essence, to ruling on one of the pleas put forward by the appellants in their action for annulment.

159 In the alternative, the Kingdom of Spain claims that the decisions at issue waived the appellants' immunity in its entirety and that it cannot be considered that they may still rely on an alleged 'travel immunity', which is not provided for in any way by the Protocol on the privileges and immunities of the European Union.

160 Furthermore, the Kingdom of Spain contends that it is necessary to amend the first sentence of paragraph 52 of the order under appeal, in so far as that sentence contains an incorrect interpretation of its statement in intervention submitted at first instance.

161 The appellants claim that the Kingdom of Spain's request for substitution of grounds should be rejected.

Assessment

162 As was recalled in paragraph 145 of the present order, a request for substitution of grounds is admissible only if it is capable, if successful, of procuring an advantage to the party making it.

163 In the present case, the Kingdom of Spain's request for substitution of grounds seeks the removal of paragraph 43 of the order under appeal and the amendment of the first sentence of paragraph 52 of that order.

164 In the first place, in paragraph 43 of that order, the Vice-President of the General Court held, in essence, that the decisions at issue had not waived the immunity conferred by the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union. He inferred from this that the appellants could not rely on an alleged risk of being arrested when travelling to or from a parliamentary session in Strasbourg.

165 Any substitution of the grounds thus adopted by the Vice-President of the General Court would not be such as to procure an advantage to the Kingdom of Spain in the present proceedings.

166 To take the view, as the Kingdom of Spain suggests, that the decisions at issue waived the appellants' parliamentary immunity in its entirety, or at least did not rule out that they might have such an effect, would lead to a finding that the appellants' arrest is also probable in the territory of the French Republic and that the harm on which they may rely is further aggravated by the fact that the decisions at issue are capable of constituting an obstacle to their participation in parliamentary sessions.

167 However, the substitution of grounds proposed by the Kingdom of Spain would not be such as to compensate for the errors committed by the General Court in paragraphs 44 and 45 of the order under appeal.

168 In the second place, as regards the amendment of the ground set out in the first sentence of paragraph 52 of the order under appeal, it must be stated that it would not be capable of procuring an advantage to the Kingdom of Spain either.

169 That amendment would merely make it possible to correct an error allegedly made by the Vice-President of the General Court in the interpretation of the written pleadings of the Kingdom of Spain, but would have no bearing on the finding of facts made in the order under appeal or on their classification.

170 It follows that the Kingdom of Spain's request for substitution of grounds must be rejected as inadmissible and, accordingly, the order under appeal must be set aside in its entirety, without there being any need to examine the fourth and fifth parts of the second ground of appeal.

The cross-appeal

171 Since the order under appeal is set aside in its entirety, the cross-appeal has become devoid of purpose and there is therefore no longer any need to adjudicate on it (see, by analogy, judgment of 25 January 2022, *Commission* v *European Food and Others*, C-638/19 P, EU:C:2022:50, paragraph 148 and the case-law cited).

The application for interim measure submitted to the General Court

172 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, where the Court of Justice sets aside a decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment. That provision also applies to appeals brought under the second paragraph of Article 57 of the Statute of the

Court of Justice of the European Union (see, to that effect, order of the Vice-President of the Court of 10 September 2020, *Council* v *Sharpston*, C-424/20 P(R), not published, EU:C:2020:705, paragraph 31 and the case-law cited).

173 In the present case, the Court has the necessary information to give final judgment on the application for interim measures submitted by the appellants.

174 In so far as the parties were able, during the proceedings at first instance, to state their position fully on the three conditions governing the grant of interim measures, the fact that the Vice-President of the General Court examined only one of those conditions cannot prevent the Court of Justice from giving final judgment itself on the application for interim measures.

175 To that end, it should be recalled that Article 156(4) of the Rules of Procedure of the General Court provides that applications for interim measures must state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for. Thus, according to settled case-law of the Court, the court hearing an application for interim relief may order the suspension of operation of an act, or other interim measures, if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable damage to the interests of the party making the application, it must be made and produce its effects before a decision is reached in the main action. Those conditions are cumulative, so that applications for interim measures must be dismissed if any one of them is not satisfied. The court hearing an application for interim relief must also, where appropriate, weigh up the interests involved (order of the Vice-President of the Court of 16 July 2021, *Symrise* v *ECHA*, C-282/21 P(R), not published, EU:C:2021:631, paragraph 26).

Admissibility of the main action

Arguments

176 The Parliament expresses ‘serious doubts’ as to the admissibility of the main action. First, each of the three appellants is entitled to seek only the annulment of the decision which concerns him or her and not the annulment of the decisions relating to the other appellants. Second, the appellants do not specify to what extent each of their grounds of appeal applies to each of the decisions at issue.

Assessment

177 It should be recalled that the issue of the admissibility of the main action should not be examined in proceedings relating to an application for interim measures, so as not to prejudge the substance of the case. However, where the contention is that the main action is manifestly inadmissible, it is for the judge hearing the application for interim measures to establish whether there is a prima facie case for finding that there is a certain probability that the main action is admissible (see, to that effect, order of the President of the Court of 26 June 2003, *Belgium and Forum 187* v *Commission*, C-182/03 R and C-217/03 R, EU:C:2003:385, paragraph 98).

178 In the present case, the Parliament has merely referred to ‘serious doubts’ as to the admissibility of the main action, relating essentially to the fact that each of the appellants does not have standing to bring proceedings against the decisions relating to the other appellants and to the submission of some of the pleas in the action for annulment.

179 It is therefore apparent that the Parliament has not claimed that the main action is manifestly inadmissible and that it has also failed to produce any evidence which would make it possible, in the context of a summary examination of the admissibility of the action, which falls within the jurisdiction of the court hearing the application for interim measures, to consider that the action is probably inadmissible in its entirety.

180 It follows that the application for interim measures cannot be dismissed on the ground that the main action is inadmissible.

The requirement to establish a prima facie case

Arguments

181 In order to establish a prima facie case, the appellants rely on eight grounds of appeal submitted in support of the main action.

182 In their arguments relating to the third of those grounds of appeal, which should be examined first of all, the appellants submit, inter alia, that the procedure followed in order to adopt the decisions at issue infringed the principle of impartiality arising from Article 41(1) of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 39(2) thereof.

183 Point 8 of the Notice to the Members of the Parliament's Committee on Legal Affairs of 19 November 2019 laying down the principles for immunity cases provides that the position of rapporteur will be rotated on an equal basis between the political groups, but rules out the possibility that the rapporteur may be a member of the same political group or be elected in the same Member State as the Member whose immunity is under discussion.

184 However, the rapporteur for the decisions at issue was a member of the same political group as the VOX political party, which is acting as 'popular prosecution' in the criminal proceedings against the appellants. That rapporteur also presided over a meeting of that political party in which he supported the slogan 'Puigdemont to jail'.

185 In addition, the Chair of the JURI Committee and the political party to which he belongs displayed fierce hostility towards the appellants and pursued a strategy to prevent them from sitting in the Parliament after their election.

186 The Parliament contends that proceedings relating to the waiver of the immunity of a Member of that institution are political in nature and that they cannot therefore be governed by the same rules as disciplinary or judicial proceedings. Consequently, the fact that the rapporteur and the Chair of the JURI Committee belong to a political group other than that of the Member of Parliament concerned does not in itself constitute an infringement of the principle of impartiality.

187 For the same reasons, the fact that the rapporteur and the Chair of the JURI Committee allegedly made political statements which differed from the political program advocated by the appellants is irrelevant. In addition, the appellants' claims in that regard are not substantiated by tangible evidence.

Assessment

188 According to settled case-law of the Court, the *fumus boni juris* requirement is met where at least one of the pleas in law relied on by the applicant for interim measures in support of the main action appears, prima facie, not unfounded. That is the case, inter alia, where one of the pleas relied on reveals the existence of complex issues of law the solution to which is

not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the court hearing the application for interim relief but must be the subject of the main proceedings, or where the discussion of issues by the parties reveals that there is a major legal disagreement whose resolution is not immediately obvious (order of 17 December 2018, *Commission* v *Poland*, C-619/18 R, EU:C:2018:1021, paragraph 30 and the case-law cited).

189 The parties disagree, in the first place, as to the applicability of the principle of impartiality to the rapporteur and the Chair of the JURI Committee, in the context of proceedings relating to a request for waiver of the immunity of a Member of Parliament.

190 In that regard, it should be noted that that point of law has not yet been settled by the Court.

191 Furthermore, the application to such proceedings of all the procedural requirements generally governing administrative procedures cannot, in the light of the eminently political nature of parliamentary procedures, be regarded as being prima facie obvious.

192 However, where the decision to waive the immunity of a Member of the Parliament deprives him or her of an essential element of the status of Member of the European Parliament which is enjoyed by Members of that institution equally during the entire duration of the sessions of a term (see, to that effect, judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraph 78), the procedure which may lead to the adoption of such a decision must necessarily ensure that the Member of the European Parliament concerned has sufficient individual guarantees.

193 In addition, Article 41(1) of the Charter of Fundamental Rights states that every person has the right to have his or her affairs handled impartially by the institutions, bodies, offices and agencies of the European Union, without making a distinction between the institutions concerned or on the basis of the procedure in which those cases are dealt with.

194 Although the application of that provision to a procedure relating to the vacancy of a seat in the Parliament on account of the disqualification from holding office of a Member of that institution has indeed been ruled out, that solution was based not on the political nature of that procedure, but on the Parliament's complete lack of discretion in the context of that procedure (order of the Vice-President of the Court of 8 October 2020, *Junqueras i Vies* v *Parliament*, C-201/20 P(R), not published, EU:C:2020:818, paragraphs 93 and 94).

195 Given that neither the Protocol on the privileges and immunities of the European Union nor the Rules of Procedure of the Parliament precisely define the cases in which the immunity of a Member of that institution must be waived, the Parliament enjoys a priori broad discretion when deciding on a request for waiver of the immunity of one of those Members.

196 The principle set out in point 8 of the Notice to the Members of the Parliament's Committee on Legal Affairs, referred to in paragraph 183 of this order, according to which the rapporteur must not belong to the same political group or have been elected in the same Member State as the Member whose immunity is at issue tends moreover to confirm that the Parliament's practices are intended to ensure, at the very least, a certain degree of impartiality for the rapporteur.

197 In the light of those factors, it must be held that the applicability of the principle of impartiality to the rapporteur and to the Chair of the JURI Committee in the context of a procedure relating to a request for waiver of the immunity of a Member of Parliament

constitutes a question on which there is a major legal disagreement whose resolution is not obvious.

198 In the second place, if such applicability were established, examination of the third plea in the main proceedings would involve determining whether the evidence put forward by the appellants is sufficient to establish an infringement of the principle of impartiality.

199 In accordance with that principle, it is incumbent upon the institutions, bodies and agencies of the European Union to comply with both components of the requirement of impartiality, which are, on the one hand, subjective impartiality, by virtue of which no member of the institution concerned may show bias or personal prejudice and, on the other, objective impartiality, under which there must be sufficient guarantees to exclude any legitimate doubt as to possible bias on the part of the institution concerned (see, to that effect, judgment of 25 February 2021, *Dalli* v *Commission*, C-615/19 P, EU:C:2021:133, paragraph 112 and the case-law cited).

200 In the present case, the conduct of the rapporteur and of the Chair of the JURI Committee referred to by the appellants is, prima facie, such as to demonstrate bias or personal prejudice towards them.

201 Nevertheless, it will be for the court adjudicating on the substance to assess whether that conduct is actually established, in so far as the Parliament contends that the documents produced by the appellants do not establish it, without, however, denying that that conduct existed.

202 Moreover, it is not disputed that the VOX political party has been placed in a very special situation, since it is directly involved in the criminal proceedings brought against the appellants and it participates directly, on that basis, in the preliminary ruling proceedings in Case C-158/21.

203 Similarly, as is indicated in the annexes to the application for interim measures, it is apparent from the order of 19 November 2020, *Buxadé Villalba and Others* v *Parliament* (T-32/20, not published, EU:T:2020:552), that Members of Parliament belonging to that party brought an action before the General Court for annulment of the Parliament's acknowledgement of the election of two of the appellants as Members of the European Parliament.

204 In those circumstances, it cannot be ruled out, following the summary examination which it is for the judge hearing the application for interim measures to carry out, that the fact that the rapporteur belongs to a political group in which the Members of the European Parliament of the VOX political party sit is such as to create a legitimate doubt as to a possible bias against the appellants.

205 Consequently, without ruling at this stage on the merits of the third ground of appeal, which is a matter solely for the court adjudicating on the substance, it is apparent that that ground cannot be regarded as lacking in seriousness.

206 Given that this ground of appeal is capable, if upheld by the court adjudicating on the substance of the case, of leading to the annulment of the decisions at issue, it must be held that the condition relating to the establishment of a prima facie case is satisfied.

Urgency

Arguments

207 In order to establish that the condition relating to urgency is satisfied, the appellants submit that their probable arrest, followed, as the case may be, by their surrender to the Spanish authorities, would cause them serious and irreparable damage, by undermining their right to perform their duties as Members of the European Parliament.

208 The combination of the decisions at issue, on the one hand, and the European arrest warrants and the alerts in the SIS II issued against them, on the other hand, expose the appellants to a high risk of arrest and surrender to the Spanish authorities on account of the obligations which those European arrest warrants and those alerts impose on the authorities of all the Member States. That risk could materialise during a trip to Strasbourg in order to participate in parliamentary sessions, but also during the numerous activities in which the appellants are required to engage throughout the European Union as Members of the European Parliament.

209 Although Mr Puigdemont i Casamajó was able, in the past, to travel to several Member States without being arrested, that situation is explained by the fact that he was not covered by a European arrest warrant between October 2017 and his election to the European Parliament. He did not travel in a Member State other than the Kingdom of Belgium while he was the subject of such a European arrest warrant until March 2018, which explains why he was then arrested by the German authorities.

210 The Kingdom of Spain's argument that the execution of the European arrest warrants is suspended because the Tribunal Supremo (Supreme Court) has submitted a request for a preliminary ruling to the Court must, moreover, be rejected. Such suspension does not follow from the case-law of the Court of Justice and the Spanish authorities have decided to maintain the alerts in SIS II, thus demonstrating that they still seek to obtain the execution of the European arrest warrants issued against the appellants.

211 Lastly, the appellants submit that any annulment of the decisions at issue would occur too late to protect them against the risk on which they rely and would not therefore be sufficient to enable them to exercise their mandates as Members of the European Parliament.

212 The Parliament contends, in the first place, that the decisions at issue are not the decisive cause of the damage alleged by the appellants. That damage stems from the decisions adopted by the Spanish authorities, since the decisions at issue merely eliminate one of the procedural obstacles to the execution of those decisions.

213 In the second place, the Parliament maintains that the situation in Belgium is of specific relevance, since (i) at least two of the appellants seem to reside there and (ii) Members of the European Parliament partly work there. However, the Belgian judicial authorities have consistently rejected the definitive execution of the European arrest warrants issued against the appellants, even before they were granted parliamentary immunity, and against other persons sought for related offences. A change in the position of those judicial authorities is very unlikely pending the Court's decision in Case C-158/21.

214 In the third place, while the decisions at issue have no effect in Spain, the appellants do not show that they are in fact likely to be arrested and surrendered to the Spanish authorities by Member States other than the Kingdom of Belgium, whereas they travel regularly within the European Union. The link between possible trips to Member States other than the Kingdom of Belgium and their duties as Members of the European Parliament is also not established. In particular, since the immunity provided for in the second paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union has not been waived, they may freely travel to Strasbourg to take part in parliamentary sessions.

215 In the fourth place, the proper conduct of judicial proceedings in a Member State cannot, in any event, constitute a form of serious and irreparable damage.

216 The Kingdom of Spain contends that the decisions at issue do not constitute the decisive cause of the damage alleged by the appellants. Furthermore, since the appellants reside in Belgium and are required to travel to Brussels (Belgium) and Strasbourg in order to exercise their mandates, it is not apparent that the exercise of their mandates as Members of the European Parliament could be impeded by any detention in Spain.

217 Furthermore, no Member State appears to have initiated any procedure for executing the European arrest warrants issued against the appellants. It is highly unlikely that a Member State will execute those European arrest warrants while the preliminary ruling proceedings in Case C-158/21 are pending. The submission of a request for a preliminary ruling under Article 267 TFEU leads to the suspension of the national proceedings, including the proceedings for ruling on those European arrest warrants.

Assessment

218 As was pointed out in paragraph 75 of this order, urgency must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim relief. It is for that party to prove that it cannot await the outcome of the main proceedings without suffering such damage. While it is true that, in order to establish the existence of serious and irreparable damage, it is not necessary for the occurrence and imminence of the damage to be demonstrated with absolute certainty, it being sufficient to show that damage is foreseeable with a sufficient degree of probability, the party seeking interim measures is nevertheless required to prove the facts forming the basis of its claim that serious and irreparable damage is likely.

219 In the present case, it is not disputed that the appellants are each the subject of a European arrest warrant issued by the Spanish judicial authorities and that they are covered by alerts on persons wanted for arrest for surrender purposes.

220 It follows from paragraphs 88 to 92 of the present order that the issuing of a European arrest warrant by a judicial authority of a Member State requires, inter alia, the other Member States to arrest the requested person and to decide on whether he or she should remain in detention pending a surrender decision.

221 Similarly, it follows from paragraphs 121 to 125 of the present order that the existence, in SIS II, of an alert on persons wanted for arrest for surrender purposes generally entails, by itself, an obligation to arrest persons who are the subject of such alerts, unless those persons have been flagged.

222 In addition, a European arrest warrant entails not only the obligation to arrest the requested person but also the obligation to surrender that person to the issuing judicial authority.

223 It thus follows from settled case-law of the Court that Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 37 and the case-law cited).

224 In the field governed by Framework Decision 2002/584, the principle of mutual recognition, which, as is apparent, in particular, from recital 6 thereof, constitutes the 'cornerstone' of judicial cooperation in criminal matters, is put into practice in Article 1(2) of that framework decision, which lays down the rule that Member States are to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 38 and the case-law cited).

225 It follows that executing judicial authorities may therefore, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed by Framework Decision 2002/584 and that execution of the warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 thereof. Accordingly, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 37 and the case-law cited).

226 Neither the Parliament nor the Kingdom of Spain argues that the execution of the European arrest warrants at issue should be refused pursuant to the grounds for non-execution listed in Framework Decision 2002/584 or that the alerts in SIS II have been flagged.

227 Nor is it alleged, or, a fortiori, shown that Framework Decision 2002/584 and Decision 2007/533 are not generally applied by the Member States.

228 Although the Parliament nevertheless claims that the Member States are clearly reluctant to act on the European arrest warrants issued against the appellants, relying on the fact that Mr Puigdemont i Casamajó travelled to several Member States without being arrested when he did not enjoy parliamentary immunity, it must be held that that claim is not supported by any evidence and is formally disputed by the appellants.

229 Similarly, the fact that the Belgian authorities have not surrendered the appellants to the Spanish authorities cannot be used to rule out the high probability of their arrest, for the reasons set out in paragraph 131 of the present order.

230 The argument put forward by the Kingdom of Spain that the damage alleged by the appellants cannot occur on account of the suspension of the execution of the European arrest warrants issued against them, which results from the submission of a request for a preliminary ruling in Case C-158/21, must also be rejected.

231 It follows from Article 23 of the Statute of the Court of Justice of the European Union that the national court which submits a request for a preliminary ruling to the Court suspends the main proceedings.

232 Nevertheless, it is apparent from the request for a preliminary ruling in Case C-158/21 that that request seeks to determine whether the European arrest warrants issued by the Tribunal Supremo (Supreme Court) in respect of a number of requested persons, including the appellants, must be maintained or withdrawn and, more specifically in the case of the appellants, to identify the additional information that should be transmitted to the executing judicial authorities in order to facilitate their surrender.

233 It follows that the decision to stay the main proceedings in Case C-158/21 implies that the Tribunal Supremo (Supreme Court) does not intend to take a decision, before the Court's

answer to the questions referred for a preliminary ruling, on whether the European arrest warrants issued against the appellants will be maintained or withdrawn.

234 However, in the absence of a formal decision of the Tribunal Supremo (Supreme Court) in that regard, it cannot be considered that that court intended to call into question the European arrest warrants already issued or to suspend their execution. Such a suspension, which is moreover not provided for in Framework Decision 2002/584, cannot follow directly from Article 23 of the Statute of the Court of Justice of the European Union, which does not in any way provide that the operation of the measures adopted by the referring court in the main proceedings before the preliminary ruling is made is necessarily suspended pending that ruling.

235 Accordingly, it must be held that the appellants have demonstrated to the requisite legal standard that their arrest and surrender to the Spanish authorities are foreseeable with a sufficient degree of probability if the operation of the decisions at issue is not suspended.

236 It follows from the considerations set out in paragraphs 149 to 155 of the present order that any arrest of the appellants pursuant to a European arrest warrant or to an alert on persons wanted for arrest for surrender purposes would be liable to cause them serious and irreparable damage. The same would apply, a fortiori, to a surrender of the appellants to the Spanish authorities, which could result in a long-term deprivation of liberty.

237 It should also be added that the argument put forward by the Parliament and the Kingdom of Spain that the condition relating to urgency is not satisfied on the ground that the decisions at issue are not the decisive cause of the damage which the appellants may suffer must be rejected.

238 It is true that, when suspension of the operation of an act is sought, the grant of the interim measure requested is justified only where the act at issue constitutes the decisive cause of the alleged serious and irreparable damage (order of the Vice-President of the Court of 17 December 2020, *Anglo Austrian AAB and Belegging-Maatschappij 'Far-East'* v *ECB*, C-114/20 P(R), not published, EU:C:2020:1059, paragraph 54 and the case-law cited).

239 It follows from that case-law that suspension of operation of an act must not be ordered where the alleged harm is essentially caused by factors independent of that act and the decisive contribution of the act to the occurrence of that harm has not been established. In such a case, that suspension of operation cannot be regarded as appropriate for preventing serious and irreparable damage to the party seeking it.

240 In the present case, the parliamentary immunity enjoyed by the appellants before the decisions at issue were adopted formed an insurmountable obstacle to their arrest and surrender pursuant to the European arrest warrants issued against them and to the alerts in SIS II. It follows that the decisions at issue are an indispensable condition for the occurrence of the damage on which the appellants rely and that, in the event that the operation of those decisions is suspended, the occurrence of that damage can be avoided.

241 Consequently, it must be held that the appellants have established that the condition relating to urgency has been satisfied.

The balance of interests

Arguments

242 The appellants claim that it is in the public interest (i) that the composition of the Parliament reflects the free expression of the choices made by the citizens of the European

Union as to the persons by whom they wish to be represented and (ii) that its members may carry out their duties throughout their term of office. It follows that the public interest and the interest of the appellants, relating in particular to their individual freedom and freedom of movement, coincide.

243 Furthermore, the annulment of the decisions at issue would not make it possible to reverse the situation resulting from their application, since, if the appellants were surrendered to the Spanish authorities, they would no longer be protected by the immunity provided for in point (b) of the first paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union.

244 Moreover, the only effect of granting the provisional measure sought would be to delay the further execution of the European arrest warrants issued against the appellants which had already been delayed on account of the withdrawal on two occasions of European arrest warrants previously issued against them and of the long period which elapsed before new European arrest warrants were issued.

245 The Parliament contends that the purpose of parliamentary immunities is not to delay national judicial proceedings or to offer Members of the European Parliament a means of avoiding justice, but to ensure the independence of the Parliament.

246 It is necessary, in accordance with Article 4(2) and (3) TEU, to take into consideration the constitutional interests of the Kingdom of Spain. Since the Parliament has unequivocally decided in favour of waiving the appellants' immunity, the criminal proceedings brought in that Member State would not interfere with the institutional rights of the Parliament.

247 The Kingdom of Spain contends that granting the interim measure sought would call into question the balancing of interests established in the judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115). It follows from paragraphs 91 to 94 of that judgment that the competent national court may decide to maintain the detention measures already adopted and to request waiver of the immunity of the Members of the European Parliament concerned. In that context, once the Parliament has granted the waiver of that immunity, suspension of the operation of its decision would entail an excessive sacrifice of the interests of justice and respect for the rule of law, for actions which clearly predate and are unrelated to the election of the appellants to the Parliament.

Assessment

248 It is clear that, in most interim proceedings, the decision to grant or to refuse the suspension of application sought is likely to produce, to a certain extent, certain definitive effects and it is for the court hearing the application for interim relief to weigh up the risks attaching to each of the possible solutions. In practical terms, this involves, in particular, examining whether or not the interest of the applicant for interim measures in obtaining suspension of the application of the contested act outweighs the interest in that act's immediate implementation. In that examination, it must be determined whether the possible annulment of that act by the judgment on the substance would make it possible to reverse the situation that would have been brought about by its immediate implementation and conversely whether suspension of its operation would be such as to impede the objectives pursued by the contested act in the event of the action in the main proceedings being dismissed (see, to that effect, order of the Vice-President of the Court of 10 January 2018, *Commission* v *RW*, C-442/17 P(R), not published, EU:C:2018:6, paragraph 60, and order of 8 April 2020, *Commission* v *Poland*, C-791/19 R, EU:C:2020:277, paragraph 104 and the case-law cited).

249 As regards, in the first place, the interest in having the interim measures sought granted, it is apparent from the examination of the condition relating to urgency that, if operation of the decisions at issue is not suspended, the appellants may no longer be able to exercise effectively their functions as Members of the European Parliament.

250 In that regard, it should be borne in mind that Article 10(1) TEU provides that the functioning of the European Union is to be founded on the principle of representative democracy, which gives concrete form to the value of democracy referred to in Article 2 TEU. Implementing that principle, Article 14(3) TEU provides that the Members of the Parliament are to be elected for a term of five years by direct universal suffrage in a free and secret ballot (judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraphs 63 and 64).

251 In that context, the immunities granted equally to Members of the Parliament during the entire duration of the sessions of a given term are intended in particular to enable them to perform their tasks (see, to that effect, judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraphs 76 and 78).

252 Those immunities are also intended, in accordance with the principle of representative democracy, to ensure that the composition of the Parliament reflects faithfully and completely the free expression of choices made by the citizens of the European Union, by direct universal suffrage, as regards the persons by whom they wish to be represented during a given term (see, to that effect, judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraphs 82 and 83).

253 It follows that the waiver of the immunity of a Member of Parliament, if carried out improperly and leading to his or her arrest or detention, would be liable to undermine the proper functioning of representative democracy within the European Union.

254 The fact that the Parliament considered, by the decisions at issue, that the appellants' immunity could be waived is not capable of establishing that the immediate application of those decisions would not hinder the proper functioning of that institution, given (i) that the purpose of the main action is to assess the legality of those decisions and (ii) that that action is based on at least one plea which, prima facie, is not devoid of serious foundation.

255 On the other hand, it is not necessary to take into consideration, when weighing up the relevant interests, the interest in preserving the appellants' individual freedom and freedom of movement, since, as was pointed out in paragraph 149 of the present order, a Member of Parliament, faced with a decision waiving his or her immunity, can usefully rely only on the adverse effect that that decision would have not solely on his or her right freely to exercise his or her mandate, but also the proper functioning of the Parliament.

256 In the second place, as regards the interest attaching to the immediate application of the decisions at issue, it must be pointed out that the suspension of the operation of those decisions may impede the conduct of the legal proceedings brought by the Spanish authorities against the appellants, by preventing them from being surrendered to those authorities.

257 Contrary to the Parliament's submissions, that immediate application is not, however, required in order to ensure compliance with Article 4(2) TEU, since parliamentary immunity does not in any way call into question the Member States' entitlement to bring criminal proceedings within the framework defined by their legal system, but merely ensures a balance between that option and the principle of representative democracy laid down in Article 10(1) TEU.

258 As regards, in the third place, the situation which will result from examination of the main action, it should be noted that any annulment of the decisions at issue would not be such as to reverse the situation which would be brought about by their immediate execution, since such annulment would occur too late to prevent the Members of Parliament concerned from having been prevented from fully exercising their functions during a substantial part of their term of office.

259 Furthermore, if the appellants had been surrendered to the Spanish authorities, the subsequent reinstatement of their immunity under point (b) of the first paragraph of Article 9 of the Protocol on the privileges and immunities of the European Union would have no practical effect, since that immunity is not enjoyed by the appellants on Spanish territory.

260 Conversely, in the event that the action in the main proceedings is ultimately dismissed, it is not apparent from the documents before the Court that the delay in the conduct of the criminal proceedings brought against the appellants resulting from suspension of the operation of the decisions at issue would be such as to prevent the completion of those proceedings.

261 It should also be noted that those proceedings have been in progress since 2017 and that the Kingdom of Spain has not disputed the appellants' claim that the duration of those proceedings is partly due to the fact that European arrest warrants previously issued against them were withdrawn on two occasions and that a long period of time elapsed before new European arrest warrants were issued.

262 Moreover, since the grant of the interim measures sought would entail only temporary re-establishment of the appellants' parliamentary immunity, it would ultimately do no more than maintain, for a limited period, the status quo which has existed for several years (see, by analogy, order of the Vice-President of the Court of 2 March 2016, *Evonik Degussa* v *Commission*, C-162/15 P-R, EU:C:2016:142, paragraph 114).

263 In the light of all those factors, the balance of interests leans in favour of granting the interim measures sought by the appellants.

264 In those circumstances, the operation of the decisions at issue must be suspended.

Costs

265 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

266 As regards the costs relating to the appeal proceedings, under Article 138(1) of those rules, which applies to appeals by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. However, although the Parliament and the Kingdom of Spain have been unsuccessful, the appellants have not applied for costs. Accordingly, each of the parties is to bear its own costs relating to the appeal proceedings.

267 As regards the costs relating to the cross-appeal brought by the Kingdom of Spain, pursuant to Article 142 of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 184 of those rules, where a case does not proceed to judgment, the costs are to be in the discretion of the Court. In the present case, since there is no need to adjudicate on the cross-appeal as a result of the setting aside of the order under appeal following the appeal brought by the appellants, it is appropriate to

decide that each party is to bear its own costs relating to the cross-appeal.

268 As regards the costs relating to the proceedings at first instance, it is appropriate to decide, first, in accordance with Article 137 of the Rules of Procedure of the Court of Justice, applicable to appeal proceedings by virtue of Article 184(1) of those rules, that the costs of the Parliament and of the appellants are to be reserved.

269 Second, under Article 140(1) of those rules of procedure, applicable to proceedings on appeal by virtue of Article 184(1) thereof, Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Kingdom of Spain, as intervener at first instance, must bear its own costs relating to the proceedings at first instance.

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

1. Sets aside the order of the Vice-President of the General Court of the European Union of 30 July 2021, *Puigdemont i Casamajó and Others* v *Parliament* (T-272/21 R, not published, EU:T:2021:497);

2. Suspends the operation of Decisions P9_TA(2021)0059, P9_TA(2021)0060 and P9_TA(2021)0061 of the European Parliament of 9 March 2021 on the requests for waiver of the immunity of Mr Carles Puigdemont i Casamajó, Mr Antoni Comín i Oliveres and Ms Clara Ponsatí i Obiols.

3. Orders Mr Puigdemont i Casamajó, Mr Comín i Oliveres, Ms Ponsatí i Obiols and the European Parliament to bear their own costs relating to the appeal proceedings.

4. Reserves the costs of Mr Puigdemont i Casamajó, of Mr Comín i Oliveres, of Ms Ponsatí i Obiols and of the European Parliament relating to the proceedings at first instance.

5. Orders the Kingdom of Spain to bear its own costs relating to both the proceedings at first instance and those on appeal.

Luxembourg, 24 May 2022.

A. Calot Escobar L. Bay Larsen

Registrar Vice-president

* Language of the procedure: English.