THE PERSPECTIVE OF A TRANSNATIONAL CONSTITUENCY FOR THE EUROPEAN PARLIAMENT AND ITS EFFECTS ON THE VERIFICATION OF CREDENTIALS

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Abstract

The essay analyses the impact that the introduction of a Union-wide electoral constituency would have on the verification of credentials of MEPs. The case law of the CJEU confirms that verification of credentials of members of the legislature has to be considered as an integral part of electoral rights. However, although addressed also by EU law and CFREU, the protection of these rights has been so far entirely left to the Member States. The claim is that the introduction of a Union-wide electoral constituency would impress a decisive shift in the protection of electoral rights in the European Union, dwelling on the powers that would fall to the future European Electoral Authority.

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1. Introduction

On 16 July 2024, the European Parliament met in the first plenary session of the 10th legislature, following the European elections held between 6 and 9 June. As is well known, even in the current legislature the European Parliament was elected on the basis of the national laws of the Member States, harmonised by the few common principles set out in the Electoral Act: the last amendment approved during the previous legislature was limited to increasing the number of seats and redistributing them among certain Member States[1].

However, it is worth remembering that on 3rd May 2022 the European Parliament approved a proposal for a regulation on the election of its members that would have completely rewritten the Electoral Act and subsequent decisions, introducing a transnational electoral constituency, elected on the basis of a uniform electoral procedure[2]: as we shall see, this aim has long been at the centre of the political and doctrinal debate on the reform of the European elections legal framework, and it is reasonable to assume that the issue will be revisited also in the present legislature, raising the question of its impact on the verification of the credentials of those elected in a transnational constituency.

Until now, attention has so far mainly focused on the impact that the introduction of a transnational electoral constituency would have on the right to vote for the European

[1] The European Council Decision (EU) 2023/2061 of 22 September 2023 establishing the composition of the European Parliament seems to have put an end to the possibility of amending the 1976 Act, as it merely increased the number of seats from 715 to 720, with the 15 additional seats distributed among 12 Member States.

[2] European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL) – 2022/0902(APP)).

Parliament and on political representation in the European Union[3]: as we will try to show in these pages, this proposal is also bound to have significant effects on the right to be elected and on the verification of credentials.

Moreover, it must be stressed that the last proposal on the subject was drafted during a legislature occupied with complex events concerning the verification of the credentials of the Catalan Independence MEPs, the origin of which stems precisely from the lack of homogeneous regulation not only of the right to vote, but also of the successive phases of the electoral process.

The aim of this contribution is, therefore, to analyze the impact that the introduction of uniform electoral legislation would have on the verification of credentials of the European Parliament. As will be discussed in more detail, to date the European Parliament carries out the verification of credentials, based entirely on the work carried out in the Member States. The introduction of a transnational electoral constituency would have at least two effects. First, it would represent a step forward in the construction of a genuine European political representation, detached from the context of individual national elections, in which European elections are no longer a mere summation of national election results, but competition between genuinely transnational European parties. Secondly, as far as the verification of the credentials of MEPs is more closely concerned, it would become necessary to attribute this competence to the supranational level: this could help to standardize the level of protection of candidates and would be decisive in marking a strengthening of the European Parliament both in relation to the

[3] See, A. Duff., *Electoral Reform of the European Parliament. Proposals for a uniform electoral procedure of the European Parliament to the Intergovernmental Conference of the European Union 1996, Report of the European Movement*, The Federal Trust for the European Movement (1996); L. Cicchi, *Europeanising the elections of the European Parliament - Outlook on the implementation of Council Decision 2018/994 and harmonisation of national rules on European elections*, Study for the European Parliament's Committee on Citizens' Rights and Constitutional Affairs, PE 694.199. https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694199/IPOL_STU(2021)694199_EN.pdf; O. Costa, *The history of European electoral reform and the Electoral Act 1976: Issues of democratisation and political legitimacy*', Historical Archives of the European Parliament – European Parliament Research Service, European Union History Series (2016); O. Costa, *Can the Conference on the Future of Europe unlock the EU elections reform? Reflections on transnational lists and the lead-candidate system*, 26(5-6) *European Law Journal* (2020), 460-471.

EU Member States and to the other European institutions. In the background, there is the question of striking a balance between two seemingly contradictory requirements, represented by the need to democratize the European electoral process, on the one hand, and to safeguard the principle of autonomy still recognized by the Member States of the European Union, on the other.

2. The European legal framework on the verification of credentials

The Electoral Act[4], introducing the election of the European Parliament by universal and direct suffrage, devotes few but significant provisions to the verification of credentials.

First of all, according to the German doctrine developed since the 19th century, the verification of credentials refers to two distinct activities: on the one hand, the control of the regularity of the electoral process and, on the other hand, the verification of capacity to acquire and retain a parliamentary seat, in order to ensure the absence of causes of ineligibility or incompatibility of the candidate, whether initial or subsequent.

According to Article 12, «[t]he European Parliament shall verify the credentials of members of the European Parliament»; «it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers»: the Strasbourg Parliament thus decides on the cases of incompatibility governed by Article 7 of the Electoral Act, with the Member States having the competence to declare further cases of incompatibility and ineligibility.

Article 13, on the other hand, regulates the events that may occur after the election of the individual MEP, by providing that each Member State shall have special procedures if a seat becomes vacant during the parliamentary term, with the specification that if this occurs due to a cause of disqualification provided for in

[4] More precisely, we refer to the Act concerning the election of the members of the European Parliament by direct universal suffrage, published in the Official Journal of the European Communities on 8 October 1976, l. 278. This Act was subsequently amended by Council Decision 93/81/Euratom, ECSC, EEC and finally by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002.

national law, the parliamentary term shall expire in accordance with the latter.

Looking at parliamentary sources, Rule 3 of the Rules of Procedure of the European Parliament deals specifically with the verification of credentials, stating that following general elections, the President shall invite the competent national authorities to notify Parliament of the names of the elected Members[5].

In short, the system of verification of credentials outlined by the Electoral Act and the Rules of Procedure of the European Parliament provides that the latter, when verifying credentials, merely takes note of the results proclaimed by the Member States in accordance with their respective national rules, being able to autonomously review only the grounds of ineligibility or incompatibility set out in the Electoral Act.

As can be deduced from the legal framework reconstructed above, the lack of uniform electoral legislation – which also covers the electoral procedure and the regulation of the grounds of ineligibility and incompatibility – has led to a fragmentation of the activity of verification of credentials and, more generally, of litigation on elections to the European Parliament. Given, therefore, the competition of different actors in the resolution of the same type of disputes, it is not difficult to imagine how conflicts can arise between the different levels on which verification of credentials moves.

In the following pages, we will analyse a number of cases relating to the verification of credentials, with particular reference to the proclamation of elected members. This segment of the electoral process is of particular interest because, together with the validation of the elections, it is a characteristic feature of all parliamentary assemblies; secondly, this phase represents the interface between the national and European dimensions, from which the disputes we are going to analyse have emerged; finally, the proposals for the introduction of a transnational constituency all intervene in the context of the proclamation of elected representatives.

[5] Rule 3(1), Rules of Procedure of the European Parliament.

3. The Donnici vs. Occhetto case: a first attempt by the European Parliament to take over the verification of the credentials of its members

The first interesting case about verification of credentials concerns the renunciation – and its revocation – of the parliamentary mandate, and the consequent take-over (or exclusion) of the first of the unelected candidates. In the 2004 European elections, the list "Di Pietro-Occhetto Civil Society" obtained two seats in total in two different constituencies. At first, Mr Occhetto, who was elected in both, renounced his election, but then, two years later, revoked his previous renouncement when Mr. Di Pietro who had been elected to the Italian Parliament in the meantime resigned: the Italian Electoral Office then proclaimed him elected to replace Mr. Di Pietro. Donnici, who was excluded from the election, first lodged an appeal with the Lazio Regional Administrative Court (TAR)[6] and then with the Council of State[7], which overturned the first instance ruling, annulling the proclamation of Mr. Occhetto.

The European Parliament, on the other hand, came to the opposite conclusion: although it had been informed of Donnici's complaints, the Committee on Legal Affairs unanimously confirmed the election of Mr. Occhetto, rejecting the complaint on the grounds that it was based on a national electoral law. However, because of the Council of State's ruling, the Italian electoral office could only take note of the annulment of Occhetto's election and therefore proclaimed Donnici elected. The Strasbourg Parliament, for its part, urged by Mr. Occhetto, confirmed his mandate by decision of 24 May 2007. This act was then challenged in an action for annulment before the Court of Justice of the European Union, which was upheld by the judgment in Joined Cases C-393/07 and C-9/08.

Before the Luxembourg judges, therefore, there were two alternative arguments. On the one hand, Donnici pointed out that the European Parliament should have confined itself to taking note of the proclamation made by the Italian Electoral Office[8]. On

[6] TAR Lazio, judgment no. 6232 of 2006. See S. Rossi, *Parlamento europeo vs. Italia: il caso Occhetto,* Forum di Quaderni costituzionali, Euroscopio - Note dall'Europa, 2-3.

[7] Council of State, sentence no. 7185 of 2006. See S. Rossi, *Parlamento europeo vs. Italia*, cit., 3-4.

[8] CJUE, Joined Cases C-393/07 and C-9/08, ECLI:EU:C:2009:275, paras. 33-34.

the other hand, the European Parliament and Mr. Occhetto argued that the proclamation made by the national authorities had to be respectful of Community law in general. According to the respondents, there was a minimum standard of protection thatshould have been guaranteed by the European Parliament to avoid any distortion resulting from the diversity of national electoral rules. If, on the contrary, the Parliament had had to limit itself to the examination of incompatibility under Article 7 of the Electoral Act, the scope of the verification of credentials vested in it would have been almost emptied of meaning. Faced with a manifest violation of the fundamental principles laid down in the Act – one of which is the prohibition of mandatory mandates, enshrined in Article 6 – the European Parliament would have the duty to act on such a violation[9].

From a subjective point of view, according to the Parliament, Article 6 would also represent a guarantee with respect to the candidate in the ranking list of the unelected, to ensure protection for cases such as Mr. Occhetto's resignation, based on a mere agreement between candidates that would prevent the realization of the mandate conferred by the voters[10]. This teleological interpretation would be corroborated by Article 2 of the Statute for Members of the European Parliament[11], as well as by Article 3 of the Additional Protocol to the European Convention on Human Rights[12].

The Court of Justice first excludes the applicability of the prohibition of compulsory mandate in Article 6 of the Electoral Act to unelected candidates.[13]

Excluding the confirmation of Mr. Occhetto's mandate based on Article 6 of the Electoral Act, the Court examines Article 12, invoked as the legal basis for the verification of the European Parliament's powers. The provision cited identifies two limits:

[9] CJEU, Judgment in Joined Cases C-393/07 and C-9/08, ECLI:EU:C:2009:275, paras. 35-36.
[10] Ibidem, para. 37.
[11] «1. Members shall be free and independent. (2) Any agreement to resign from office before the expiry or at the end of the parliamentary term shall be null and void.»
[12] «The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature».
[13] CJEU, Judgment in Joined Cases C-393/07 and C-9/08, ECLI:EU:C:2009:275, paras. 41-46.

first, «European Parliament […] shall take note of the results declared officially by the Member States»; second, the competence to decide on challenges is limited to those «may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers». For the Court, the Parliament could not have considered Community law in its entirety but, on the contrary, should have confined itself to taking note of the proclamation made by the Italian Electoral Office as a result of the judgment of the Council of State[14].

For the above-mentioned reasons, the contested decision is annulled, with the consequent invalidity of Mr. Occhetto's mandate.

The annulment judgment of the Court of Justice, however, is not convincing, with particular regard to the restrictive interpretation of Article 6, according to which the prohibition of compulsory mandates should be limited only to elected Members who intend to resign their seat on account of commitments previously entered into (Rule 4(3) of the Rules of Procedure) or to those who, having been elected, intend to resign (Rule 3(5))[15]. As we have seen, the Court notes that Rule 6 expressly refers to Members of Parliament; it cannot therefore also apply to candidates on the non-elected list. If that were the case, however, it would be inconsistent with the aforementioned articles of the Rules of Procedure: Rule 3(5) also protects those who are not yet Members of the European Parliament; Rule 4(3), on the other hand, lays down the formal requirements for resignation or renunciation of the parliamentary mandate.

The Court, in interpreting the above provisions in a strictly literal sense, did not take into account either the "spirit" of the Act, explicitly referred to in both articles, or, more generally, the Rules of Procedure of the European Parliament. It would not have been, contrary to what was claimed, a hermeneutical reversal but, more simply, a teleological interpretation of the principle of the free parliamentary mandate.

It is to be noted, then, that these provisions, while forming part of an internal legislative act, contribute to specifying and implementing the *ratio* of the general and hierarchically superordinate rule expressed in Article 6, concretizing its

[14] Ibidem, para. 55.

[15] See S. Curreri, *Ancora sul caso Occhetto: finale di partita?,* (2009) 3 *Forum di Quaderni costituzionali,* 2.

meaning and scope. Indeed, there is more: the interpretation proposed by the European Parliament, if the comparison is permissible, could be said to be "constitutionally oriented", if one considers the principles of independence and freedom of the parliamentary mandate as values acquired in the European constitutional heritage. Through it, inessence, it would have been possible to remedy the infringement of these principles by the national authorities, which, in the domestic election validation procedure, did not consider the aforementioned values, justifying the intervention of the European Parliament[16]. Nor, on the other hand, does the Court's reference to the Le Pen case[17] appear pertinent: in that case, in fact, it was a simple acknowledgement of a disqualification that had already occurred, due to ineligibility following the loss of passive electoral capacity, because of a criminal conviction, in accordance with the provisions of Article 13(3) of the Electoral Act[18].

4. The saga of the Catalan independentist MEPs: the picture in the aftermath of the European elections on 26 May 2019

The most recent case on the verification of credentials in the European Parliament that deserves to be analyzed concerns, in a nutshell, the moment of acquisition of the office of MEP trough the proclamation of elected candidates, and the subsequent operation of parliamentary immunity. The facts take as their starting point the election to the European Parliament settled on July 2, 2019, of some of the leaders of the Catalan independence parties.

In facts, Spanish legislation provides[19], as the last stage of the electoral process, that those elected to the European Parliament, when accepting their mandate, must swear an oath

[16] See S. Curreri, *Ancora sul caso Occhetto,* cit., 4.

[17] CJEU, Judgment in Joined Cases C-393/07 and C-9/08, ECLI:EU:C:2009:275, para. 55.

[18] See S. CURRERI, *Ancora sul caso Occhetto,* cit., 3.

[19] This obligation has no direct basis in the Spanish Constitution of 1978. Article 70 states that the requirements for access to the status of deputy are the validity of the verification of credentials and the absence of causes of incompatibility. The obligation to take an oath is in fact regulated by Articles 108 and 224(2) of the *Ley organica del regimen electoral general* (LOREG) of 19 June 1985, as well as by Article 20(1)(3) of the *Reglamento del Congreso de los diputados*.

on the national Constitution[20] before the *Junta Electoral Central* in Madrid[21]. Here the first problem arises: Carles Puigdemont i Casamajó, former Catalan president in exile in Belgium and newly elected to the European Parliament, had he returned to Spanish territory, would likely have been arrested, as he would have been charged with rebellion and sedition for the events that took place in Catalonia at the end of 2017, culminating in the unilateral declaration of independence. In addition to Puigdemont, former Councilor for Health Antoni Comín i Oliveres, who is also in exile in Belgium, and former Catalan Vice-President Oriol Junqueras i Vies, in pre-trial detention in Spain and accused (and subsequently convicted) before the *Tribunal Supremo*, were also elected.

The official electoral results were published on the Boletin Oficial de Estado on 13 June 2019 – including the names of the Catalan independents – and the swearing-in before the *Junta Electoral Central* took place on 17 June, in the absence of the three Catalan MEPs: as a result, that body communicated to the European Parliament the definitive list of those elected, comprising only fifty-one names, compared to the fifty-four seats due to Spain. Consequently, the three excluded candidates wrote to the President of the European Parliament, Mr Tajani, to have their status as MEPs recognized: the President, invoking Article 12 of the Electoral Act, which requires the Strasbourg Parliament to take note of the election results proclaimed in the Member States, referred the decision on the legality of the electoral rules and procedures to the national legislation.

Puigdemont's and Comín's lawyers brought an action before the General Court of the European Union against the refusal of the President of the European Parliament to admit the appellants to the reception service for newly elected members and to recognize the appellants' status as MEPs[22].

At the same time, the *Tribunal Supremo*, before which the

[20] See E. Gonzales Fernandez, *Juramento y lealtad a la Constitución*, 60 Revista de derecho politico (2004) p. 185; A. Basurto Barrio, *"Por imperativo legal": el acatamiento de la Constitución por diputados y senadores,* in hayderecho.expansion.com (24 maggio 2019).

[21] This body, part of the electoral administration, is composed of most magistrates of the Supreme Court (8 members) and professors in the fields of law, political science or sociology (5 members).

[22] CJEU 1 July 2019, Case T 388/19 R, *Carles Puigdemont i Casamajó e Antoni Comín i Oliveres v European Parliament*, ECLI:EU:T:2019:467.

criminal proceedings against Junqueras were pending, raised a reference for a preliminary ruling to the Court of Justice of the European Union concerning the content and limits of the immunity arising from the European parliamentary mandate[23]. Shortly afterwards, the *Junta Electoral Central* definitively ruled that, in the absence of an oath, the three Catalan Independents cannot acquire the status of MEPs.

4.1. The verification of credentials of MEPs between national and European dimensions

According to the Court that examined the appeal brought by Puigdemont and Comín, the expression «takes note of the results officially proclaimed by the Member States» means that, in the context of the verification of the credentials of its Members, the Parliament must rely on the declarations made by the competent national authorities in accordance with the procedures laid down at national level by each Member State, without any margin of discretion[24].

The crux of the matter therefore seems to be as follows: the results officially proclaimed by the Member States referred to in Art. 12 of the Electoral Act, on the basis of the results of the elections of 26 May, must be identified in the list of candidates proclaimed elected by the national authorities and published in the *Boletin Oficial de Estato* on 13 June 2019, or, alternatively, must they be identified in the list of elected candidates that each Member State sends to the European Parliament, which in the Spanish case is the list of candidates of 17 June sent after the oath of allegiance to the Spanish Constitution, in which the names of the Catalan independence MEPs do not appear[25]?

According to the Court, the publication of the results of the elections of 13 June cannot be regarded as the official declaration referred to in Article 12, which constitutes an intermediate act in the electoral process[26]. Similarly, it is not for the European Parliament to determine whether the national authorities should have allowed the applicants to take the oath on the Spanish

[23] *Tribunal Supremo de Madrid*, II Section, Appeal 20907/2017, Order of 1 July 2019.
[24] CJEU 1 July 2019, Case T 388/19 R, *Carles Puigdemont i Casamajó e Antoni Comín i Oliveres v European Parliament*, ECLI:EU:T:2019:467, para. 33.
[25] Ibidem, paras. 36-37.
[26] Ibidem, paras. 39-44.

Constitution in an alternative way[27].

In the light of the foregoing, the General Court concludes that the Strasbourg Parliament had no reason to verify the applicants' credentials or to grant them provisional admission pending the resolution of any disputes: in the absence of a *prima facie* case, the applicants' application for interim measures is dismissed[28].

4.2. The Court of Justice's response: Judgments C-502/19 and C-646/19

The Court of Justice responds to the questions raised by the Spanish court by emphasizing first of all that, pursuant to Article 10(1) TEU, the functioning of the Union is based on the principle of representative democracy, which is the concrete expression of the democracy referred to in Article 2 TEU: in application of this principle, Article 14(3) TEU provides that the members of the institution of the Union constituting the European Parliament are to be elected by direct universal suffrage, in complete freedom and by secret ballot, for a period of five years. It follows from this provision that the status of Member of the European Parliament derives exclusively from election by direct universal suffrage, in free and secret ballot[29].

According to the Court, it follows from Article 8(1) and Article 12 of the Electoral Act that the Member States remain competent to regulate the electoral procedure and officially proclaim the election results. For its part, the European Parliament does not have the general power to call into question the lawfulness of the proclamation of those results or to verify their conformity with European Union law[30].

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[27] Ibidem, paras. 45-46.

[28] Ibidem, paras. 52-55.

[29] CJEU 19 December 2019, Case C-502/19, *Oriol Junqueras i Vies*, ECLI:EU:C:2019:1115, paras. 64-65. See, C. Fasone, N. Lupo, *The Court of Justice on the Junqueras saga: Interpreting the European parliamentary immunities in light of the democratic principle,* 57 Common Market Law Review (2020), p. 1527 at p. 1554; S. Hardt, *Fault Lines of the European Parliamentary Mandate: The Immunity of Oriol Junqueras Vies*, 16 European Constitutional Law Review (2020), p. 170 at p. 185.

[30] The case arose from the withdrawal of the resignation of a candidate elected to the European Parliament, Mr Occhetto, whose election was confirmed by the European Parliament despite the fact that the national authorities had proclaimed Mr Donnici elected: in this case, the ECJ clarified for the first time that the European Parliament can only take note of proclamations made at

According to the Luxembourg court, it follows from that legal framework that, since it had to take note of the results of the elections officially proclaimed by the Member States, the candidates officially proclaimed elected thus became merely Members of the European Parliament: the status of Member of the European Parliament would therefore be achieved by the mere proclamation of the election results[31]. In this way, the Court of Justice on the one hand seems to neutralize the obligation to swear an oath to the Spanish Constitution and, on the other, does not contradict its own previous orientation, continuing to affirm that European Parliament limits itself to taking note of the results proclaimed by the Member States.

The guarantee of parliamentary immunity thus operates from that moment and, if the elected Member is in a state of pre-trial detention, the competent court has a duty to lift that measure or, if it considers that it should be maintained, it must immediately apply to the European Parliament for the waiver of parliamentary immunity[32].

A similar principle to the Junqueras ruling also applied in the dispute concerning Puigdemont and Comín[33]: on the day following the delivery of the judgment in Case C-502/19, the Court of Justice set aside the order challenged by the appellants Puigdemont and Comín[34].

This order is of great interest for the subject under analysis, as it specifically addresses the verification of the credentials of Members of the European Parliament.

As seen above, the President of the General Court, in assessing the existence of the conditions for the granting of precautionary measures, had considered, prima facie, that the publication of the election results of 13 June constituted an intermediate step within the electoral process, and not the official proclamation[35]: that act was therefore to be found in the communication sent by the Spanish authorities to the European

national level, without any margin of discretion in this matter.

[31] CJEU 19 December 2019, Case C-502/19, Oriol Junqueras i Vies, ECLI:EU:C:2019:1115, paras. 68-71.

[32] Ibidem, paras. 87-92.

[33] CJUE 1 July 2019, Case T 388/19 R, *Carles Puigdemont i Casamajó e Antoni Comín i Oliveres v European Parliament*, ECLI:EU:T:2019:467.

[34] CJUE 20 December 2019, Case C-646/19, *Carles Puigdemont i Casamajó and Antoni Comín i Oliveres v European Parliament,* ECLI:EU:C:2019:1149.

[35] Ibidem, paras. 39-43.

Parliament on 17 June, following the swearing-in of the Spanish Constitution.

The court hearing the appeal emphasized the connection between Articles 14(3) TEU, 223(1) TFEU, 39 of the Charter and 1 of the Electoral Act in order to reaffirm that the elections to the European Parliament are based on the principle of free and secret universal suffrage: that being the case, the court of first instance could not prima facie exclude that the final act of the electoral process had to be identified in the publication of the election results of 13 June 2019[36].

What deserves to be underlined about the order under review is that, although it intervenes in an appeal against the rejection of a precautionary measure, it represents the first application of the principles formulated in the Junqueras judgment.

As has been explained in more detail, at first no margin of discretion was recognised in the decision by the Parliament or the judge in Luxembourg. With the two rulings under review, however, for the first time the Court reviews the decision of a national authority on the acquisition of MEP status: the Court of Justice, however, does not openly disregard its own established case-law, but reinterprets the applicable national provisions by identifying the moment of acquisition of the office of MEP as the proclamation of the election results. This solution has the advantage of avoiding the need for the Court to express an opinion, even if only incidentally, on the compatibility with European Union law of the national provision linking the acquisition of the status to the taking of an oath on the Spanish Constitution.

In this first new phase of the Court's jurisprudence, the balance between the expression of the will of the people and the rules of the electoral process seemed to favour the former. By stating that the proclamation of the election results alone is sufficient for an MEP to be considered elected, the Court had two consequences. Firstly, it gives direct weight to the will expressed by the electorate with regard to the subsequent stages of the electoral process. Secondly, it is clear how the discretion of states in regulating the of states in regulating the electoral process has been inevitably eroded by the by the direction that has just been

[36] Ibidem, para. 74.

taken, since it is only by proclamation that one becomes a member of the European Parliament[37].

Considering the two judgments that have just been analyzed, during its sitting of Monday 13 January 2020, the European Parliament took note of the election of the three Catalan independence MEPs as of 13 June 2019, but it did not at the same time verify the credentials of the three newly elected MEPs[38].

4.3. The backwardness of ECJ case law and the continuing uncertainty of the status of Catalan MEPs

As mentioned above, in the aftermath of former European Parliament President Tajani's refusal to recognise the status of MEPs to the newly-elected Catalan independence activists, they brought an action for annulment before the General Court concerning this refusal[39]: although it was declared inadmissible, the ruling is of particular interest, as it represents the first occasion for European case-law to return to the subject of the verification of credentials after the Junqueras case, but analysing the issue in question independently of parliamentary immunity[40].

The General Court refers to certain passages from the judgment in Case C-502/19 Junqueras Vies (EU:C:2019:1115), on which the applicants' defence is based. In that judgment, the European Court of Justice drew a distinction between the acquisition of the status of Member of the European Parliament and the exercise of the corresponding mandate: whereas the former was acquired at the time of the proclamation of the election results, the latter did not begin until the opening of the first session of the European Parliament[41]. According to the Court, the official proclamation of the Spanish election results was that of 17 June, in the light of the oath of allegiance to the Spanish Constitution, while recognising that parliamentary immunity took effect from the proclamation of 13 June, based

[37] In the same sense, see S. Hardt, *Fault Lines of the European Parliamentary Mandate: The Immunity of Oriol Junqueras Vies*, cit., p. 177.
[38] Plenary session of the European Parliament of 13 January 2020 (P9 PV(2020)01-13 - PE 646.597).
[39] CJUE 1 July 2019, Case T 388/19 R, *Carles Puigdemont i Casamajó e Antoni Comín i Oliveres v European Parliament*, ECLI:EU:T:2019:467.
[40] CJUE 6 July 2022, Case T-388/19, *Carles Puigdemont i Casamajó e Antoni Comín i Oliveres v European Parliament*, ECLI:EU:T:2022:421.
[41] Ibidem, paras. 85-86.

solely on the electoral data[42].

The General Court, reconstructing the system of competences in relation to the verification of the credentials of members elected to the European Parliament, dwells on the meaning of the expression "take note"[43]. As analyzed above with reference to the order of 1 July 2019, this expression indicates the total lack of discretionary power on the part of the European Parliament, as it is the national electoral authorities that designate the elected candidates according to the electoral process regulated by each Member State[44].

As the General Court observes on the basis of the Opinion of Advocate General Szpunar in the Junqueras case[45], numerous events may result in a candidate officially proclaimed elected not assuming office such as, for example, the finding of the existence of a ground of ineligibility or incompatibility[46]. Similarly, several parliamentary systems provide for the fulfilment of formal requirements following the proclamation of the election results. Such appears to be the case in the Spanish system: on the other hand, it was not for the former President of the European Parliament to verify the justification for the exclusion of certain candidates from that list, since it reflected the officially proclaimed election results, after any disputes had been resolved at national level[47].

Of particular interest for the issue of the verification of credentials is an aside inserted by the General Court in the reasoning of the rejection of one of the applicants' arguments. According to the judge, the fact that the three Catalan MEPs were authorized to sit in Parliament does not call into question the rules on the verification of the credentials of their respective members, which, therefore, can only be based on the results officially communicated by the national authorities[48]. In support of this conclusion, the ruling recalled that the European Parliament, during the hearing, specified that following the

[42] Ibidem, paras. 87-91.
[43] Ibidem, paras. 98-100.
[44] Ibidem, paras. 102-103.
[45] CJEU 19 December 2019, Case C-502/19, *Oriol Junqueras i Vies*, ECLI:EU:C:2019:1115, para. 53.
[46] CJEU 6 July 2022, Case T-388/19, *Carles Puigdemont i Casamajó e Antoni Comín i Oliveres v European Parliament*, ECLI:EU:T:2022:421, paras.107-108.
[47] Ibidem, 117-118.
[48] Ibidem, para.121.

Junqueras judgment, it had indeed authorised the applicants to sit in the European Parliament but had not verified their credentials, in the absence of the necessary notification by the competent national authorities[49].

Among the effects that the applicants attribute to the former President of the European Parliament's refusal to recognise them as MEPs, the vacancy of the relevant seats would also fall. Although the judgment ruled out this consequence, it is interesting to note that the Kingdom of Spain specified during the hearing that, in the absence of the oath, those seats would not become vacant, but that the possibility for the elected members to occupy them would be suspended; they would therefore be reserved for the elected candidates for the duration of the legislature, until the holders take the oath.

The appeal judgment of the Court of Justice confirmed the judgment of the General Court, following the same reasoning. It reaffirmed that the European Parliament has no discretionary power in the designation of elected MEPs, which is the sole responsibility of the national authorities[50]. Furthermore, the list of MEPs cannot be challenged even if it does not correspond to the officially announced results[51]. If this were not the case, the European Parliament would be granted the right to verify the conformity of national electoral procedures with European Union law and, consequently, the results of the elections it regulates, contrary to the division of competences laid down in the Electoral Act[52].

On 22 September 2022, the President of the European Parliament contacted the *Junta Electoral Central*, inviting the Kingdom of Spain to designate without delay the number of persons corresponding to the number of seats allocated to it.

In its sitting of 3 November 2022 (Resolution No. 561/89), the *Junta* acknowledges that the Catalan Independents were proclaimed elected on 13 June 2019 but, as they had not fulfilled their obligation to take the oath of allegiance, their seats were temporarily declared vacant, also suspending their prerogatives. The resolution emphasises, albeit incidentally, the constitutive

[49] Ibidem, para.122.
[50] CJEU 26 September 2024, *Puigdemont i Casamajó e Comín i Oliveres c. Parlamento*, ECLI:EU:C:2024:803, paras. 64-65.
[51] Ibidem, para. 67
[52] Ibidem, para. 68.

nature of the fulfilment of this obligation, from which the acquisition of the status of MEP would derive. Consequently, the MEPs in question would not have acquired the office of MEP «for all purposes».

In the light of the above-mentioned statements and acts, it is possible to formulate some reflections on recent developments in the verification of the credentials of Members of the European Parliament. In general terms, the most recent rulings seem to be a step backwards compared to the Junqueras case in terms of the enhancement of the principle of popular sovereignty expressed in the European elections, on the one hand, and the autonomy of the European Parliament, on the other.

The limitation of the principles elaborated in the Junqueras ruling to the sole acquisition of parliamentary immunity (and not to the status of MEP *tout court*) was then exploited by the *Junta Electoral Central* to support its own conclusion, firm in holding that in the absence of an oath to the Spanish Constitution, Catalan MEPs have not acquired full parliamentary status.

A combined reading of the July 2022 ruling and the subsequent decision of the electoral *Junta* reveals a dichotomy between the immunity due to MEPs, which is acquired when the election results are proclaimed, and the full parliamentary status, which would only exist with the announcement of the candidates elected to the European Parliament. This inhomogeneity was then reflected in the uncertainty of the status of the Catalan MEPs, lasted for the whole legislature: the Kingdom of Spain made it clear during the hearing before the General Court that the three seats would not be vacant, but would remain available for the entire legislature should the MEPs in question decide to take the oath; the *Junta*, in its deliberation of 3 November, declared that these seats would be temporarily vacant if they were not sworn in[53]. The situation was further complicated by the

[53] It should be noted that Advocate General Spzunar, in his Opinion in the Junqueras case, pointed out that, once they have acquired the status of MEP, Members of the European Parliament have a mandate under which the Member States may not withdraw or restrict without express authorisation deriving from that law. Apart from cases of resignation or death, the only hypothesis in which the term of office of a Member of the European Parliament ends before its normal expiry date is that of disqualification, which may be the result of the application of national law or the occurrence of a cause of incompatibility. Consequently, national laws cannot suspend the mandate of MEPs, who retain this status from the proclamation of the election results and for the duration of

circumstance that although they have been admitted to the European Parliament by virtue of the Junqueras ruling, their credentials were not verified for the duration of the legislature.

As has been pointed out, this double track generates paradoxical consequences, as we may have elected MEPs who enjoy parliamentary immunity, but whose credentials cannot be verified in the absence of an official proclamation by the electoral authorities of the Member States: the most correct course of action seems to be to follow the path started with the 2019 judgment, by enhancing the political sovereignty expressed in the elections to the European Parliament and by identifying in the proclamation of the election results the moment of acquisition of the office of MEP for all purposes, and not only for the limited purpose of the enjoyment of parliamentary immunity. This, on the other hand, would not be in contradiction with the need to strengthen the role of the European Parliament in the exercise of the verification of powers: it is true that, in the present case, the most correct solution, with the legal framework unchanged, is to enhance the proclamation of the election results of 13 June, precisely because it respects the sovereignty of the people expressed through the vote, rather than the rules on the Spanish electoral process.

5. The introduction of uniform electoral legislation and its impact on the verification of the European Parliament's credentials

As has been pointed out, the cases that have just been analyzed mostly stem from the coordination between the national dimension of the verification of the European Parliament's credentials and the supranational one, with regard to the last phase of the electoral process, coinciding with the proclamation of elected candidates.

To this end, the introduction of a uniform electoral law that also covers the right to vote could resolve many of the issues addressed above: think, for example, of the peculiarities of the Spanish electoral procedure, from which the case of the Catalan independence MEPs originated, which would be neutralized by a

the parliamentary term. Opinion of Advocate General Spzunar, paras. 66-70. C. Fasone, N. Lupo, 'The Court of Justice on the Junqueras saga: Interpreting the European parliamentary immunities in light of the democratic principle', cit., 1533.

common discipline on these aspects[54].

On its part, the introduction of a transnational electoral constituency would raise several issues from the point of view of the verification of credentials, starting with the competent body before which candidatures should be presented, elected persons proclaimed, and electoral disputes resolved.

The first proposal to this effect was contained in the 1998 Anastassopoulos report, which, however, did not consider the verification of the credentials of elected members[55].

The 2009 Duff report, in proposing the introduction of a transnational electoral constituency in which to elect twenty-five MEPs, in point 2 «proposes that an electoral authority be established at EU level in order to regulate the conduct and to verify the result of the election taking place from the EU-wide list»[56]. Consequently, article 12 of the Electoral Act would also have been amended: «The European Parliament shall verify the credentials of the Members of Parliament on the basis of the results declared officially by the electoral authority referred to in Article 2b(2) and the Member States».

Resolution 2035/2015 is the third act submitted to the European Parliament that proposed the introduction of a uniform electoral constituency. Here too, the creation of an electoral authority was proposed, but the tasks of this body are different from the previous hypothesis, since the resolution does not mention the verification of credentials and the electoral dispute for the uniform constituency, although it contains several references to the latter[57].

The report 2020/2220, adopted on 3 May 2022 by the European Parliament, contains a number of provisions aimed at boosting electoral participation in the member states: to this end,

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[54] On the development of the electoral system for the European Parliament, see O. Costa, *The history of European electoral reform and the Electoral Act 1976,* cit.

[55] Report on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament, A4-0212/1998.

[56] Report on a proposal to amend the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976 A7-0176/2011, point 2. The second Duff report also proposes, at the same point 2, the introduction of a European electoral authority A7-0027/2012.

[57] European Parliament resolution of 11 November 2015 on the reform of EU electoral law (2015/2035(INL)), Recital AB.

it is proposed to extend the right to vote to 16-year-olds, without prejudice to existing constitutional orders stipulating a minimum voting age of 18 or 17 and to persons with disabilities, irrespective of their legal capacity[58]; as well as citizens residing in third states, for prisoners, disabled and homeless persons[59]. In the same perspective is the need to regulate postal, electronic or internet voting[60]. Furthermore, to delineate the identity of a pan-European electoral process, it is proposed to establish a single European Election Day common to all member states on 9 May[61].

The most important innovation of the recently approved proposal concerns the creation of a transnational constituency for the election of 28 MEPs, whose candidates would include *Spitzenkandidaten*[62]. For this purpose, each voter shall be provided with two ballot papers, one for the election of candidates in national constituencies and one for the election in the supranational constituency[63]. Each European political entity may therefore present a transnational list, and each national party may be associated with only one list, it being understood that only the symbol and name of the European entity will appear on the ballot papers for that constituency[64].

To ensure geographical, demographic and gender balance, providing that smaller Member States are not at a competitive disadvantage compared to larger ones, it is necessary to introduce «binding geographical representation in the lists for the Union-wide constituency, and encourages European political parties, European associations of voters and other European electoral entities to appoint candidates in the Union-wide lists

[58] Proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that decision, (2020/2220(INL) – 2022/0902(APP)), art. 4.
[59] Ibidem, art. 6.
[60] Ibidem, art. 8.
[61] Ibidem, para. 34.
[62] Proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that decision, (2020/2220(INL) – 2022/0902(APP)), art. 15.
[63] Ibidem, art. 12.
[64] Ibidem, art. 15, para. 4 e para. 5.

coming from all Member States»[65].

The proposal deals in detail with the establishment of a European electoral authority, resulting from the introduction of a transnational constituency. Regarding the composition of this body, the proposal provides that each member state shall appoint one member, chosen from «professors of law or political science and other experts in electoral systems on the basis of their professional qualities and respecting gender balance»[66], laying down specific provisions to ensure their independence and impartiality[67]. Their five-year term of office is once renewable[68].

This body would have a number of powers of great relevance for the verification of credentials, which can be divided into two distinct groups: regulatory activities, ensuring the correct application of the regulation, defining the procedure applicable under Article 10(2) for the electoral constituency at Union level and regulating the challenges that may be raised under the regulation; and the management of the electoral process at Union level, from the submission of the lists to coordination with the contact authorities of the Member States, up to the publication of the election results. The European electoral authority may also aid in case of difficulties related to the interpretation of the lists submitted by the national authorities[69].

In addition to the European Electoral Authority, the proposal invites Member States to designate individual national contact authorities, whose main function would be the mutual exchange of information on the compilation of national electoral rolls, to avoid the phenomenon of "double voting"[70].

Looking in detail at the powers of the European Electoral Authority, of utmost relevance to this subject is the competence attributed to it concerning the proclamation of the election results, both in the supranational constituency and in the national ones, after notification of the contact authorities[71]: it is worth recalling that the current legal framework provides since the time

[65] Ibidem, para. 18.
[66] Ibidem, art. 28, para. 4.
[67] Ibidem, art. 28, para. 4.
[68] Ibidem, art. 27, para. 4.
[69] Ibidem, art. 28.
[70] Ibidem, art. 18.
[71] Ibidem, art. 20.

of the direct election of the European Parliament that the elected persons are proclaimed by the competent national authorities according to the domestic law. The proposal explicitly mentions the proclamation of the results of the elections and not of the elected candidates: it could therefore be assumed that it intends to grant the status of Member of the European Parliament on the basis of the election results declared by the Member States and proclaimed by the European electoral authority, thus neutralising all the post-election formalities provided for by some national laws.

Consequently, the draft regulation also modifies the legal framework on the verification of credentials, stating that this will continue to be carried out by the European Parliament on the basis of the results officially declared by the Member States and proclaimed by the European Electoral Authority.

Equally interesting are the provisions on the vacancy of seats because of death or resignation. The draft regulation stipulates that in such a case the President of the European Parliament shall inform the competent authority of the Member State concerned, as well as the European Electoral Authority[72]. In the event of a vacancy occurring in the seat of an MEP elected in the transnational constituency, the President of the European Parliament shall only inform the European electoral authority, which shall proclaim the next candidate on the electoral list[73].

6. Open questions concerning the verification of credentials

The competences attributed to the European electoral authority could reshape the structure of the verification of the European Parliament's credentials with regard to the proclamation of elected members, the phase of the electoral procedure from which most of the cases analyzed in this work stemmed, resolving some of the problems highlighted and, however, leading the way to new problematic scenarios.

Regarding pre-election litigations, of great interest is the competence of Article 28(1)(b), according to which the European electoral authority will have to define the procedures for lodging complaints for non-compliance with democratic procedures,

[72] Ibidem, art. 27, para. 5.
[73] Ibidem, art. 27, para. 6.

transparency and gender equality before the same authority or the competent national authorities, in accordance with Article 10(2). As can easily be guessed, this is no small competence, since it would have a decisive impact on the electoral litigation system of the Member States and would also call into question the system of candidate selection and the internal democracy of both European and national political parties.

The proclamation of elected members is the main problem that this proposal seeks to resolve by centralizing the attribution under consideration in the European electoral authority, which would proclaim the list of elected members on the basis of the results provided by the contact authorities of the individual Member States and see to the publication of the complete list of elected members in the Official Journal of the European Union: as seen above, it would appear that the European electoral authority should proceed to proclaim the election results on the basis of the results transmitted by the national authorities, but it is not clear whether this means the election results alone or the list of candidates elected on the basis of the national electoral procedures. If the first interpretation is accepted, a situation like that of the Catalan MEPs – who were elected considering the election results but were not proclaimed by the *Junta* – could not happen again. It is true that, in that case, the problem was resolved by the first judgment of the Court of Justice which, in fact, neutralized the effectiveness of any national provision that required further formalities for the acquisition of the office of MEP, the proclamation of the election results having been deemed sufficient for that purpose. However, if this proposal were to be approved, the expression of the will of the people would be given priority over an express regulatory choice. If the second interpretation were to be valid, little would change with respect to the current situation and, therefore, national electoral laws would continue to play a decisive role in the selection of elected candidates.

Related to the previous point, a further problem that would remain open even with this proposal concerns the acquisition of the office of MEP (and the resulting parliamentary immunity). According to the wording of Article 20 of the proposal, the election results are proclaimed by the European electoral authority, on the basis of the information transmitted by the contact authorities: it therefore seems to be possible to

assume that this status is acquired only with the publication of the election results (as established by the December 2019 ruling). However, Article 23 – devoted to the verification of the credentials of elected members – seems to distinguish two distinct moments, when it states that the European Parliament verifies the credentials of elected members on the basis of the results *declared* by the member states and *proclaimed* by the European electoral authority. Notwithstanding this apparent inconsistency between the various provisions, it is reasonable to assume that, in line with what the Court of Justice decided in the Catalan Independence MEPs cases, the status of MEP is acquired at the moment of the declaration of the election results in the Member State of election and, in the case of those elected in the supranational constituency, from the moment of the publication of the election results: again, there is a risk of introducing a different regime for MEPs elected in the transnational constituency[74].

Even in the case of the replacement of a MEP who has resigned or died the same inconsistency seems to arise. According to Article 27(5), if a seat becomes vacant, the President of the European Parliament shall inform the competent authorities of the Member State and the European authority: it is not clear from the wording of the provision which of the two bodies is responsible for identifying the successor and proclaiming the relevant election, since situations of conflict between the European and national dimensions could also arise in the future. In this case, the conflict would arise between the newly established European electoral authority and the national authorities: compared to the previous arrangement in which the European Parliament, by express provision of the Electoral Act, could only take note of what was decided at national level, the introduction of an ad hoc European authority could lead to a strengthening of the supranational dimension. Indeed, it is true that the election results will continue to be announced by the authorities of each member state, but they will be proclaimed by an autonomous authority that is distinct from both the European Parliament and the national authorities.

The most relevant issue in view of the introduction of a

[74] O Costa, C. Fasone, *The law and politics of electoral reforms*, in M. Ceron, T. Christiansen (eds.), *The Politicization of the European Commission's Presidency:* Spitzenkandidaten *and Beyond*, (Palgrave 2024).

supranational constituency that is not touched upon by the proposal analyzed is a uniform regulation of the rules on candidacy and eligibility, a requirement that has actually been present for a long time in view of the possibility of standing as a candidate for the European elections in the Member State of residence, even if different from the Member State of citizenship: this aspect becomes even more stringent when it is proposed to introduce a transnational constituency, in which citizens from all EU Member States will stand as candidates.

In the light of the analyzed proposal, one might wonder whether it has introduced a uniform electoral procedure for the election of the European Parliament in addition to the seats allocated to the transnational constituency. On the one hand, one cannot help but notice how the proposal under scrutiny would lead to a centralization of the proclamation of election results, which was previously left to the individual national systems. As has been discussed in more detail, it will be the contact authorities that will transmit the election results in each Member State; however, only the application of the rules in question will tell whether the national dimension will prevail or whether, on the contrary, it will be the European electoral authority that will consolidate and expand its role, leading the electoral authorities to follow increasingly similar procedures for the announcement of election results.

For the time being, therefore, it cannot be said that the last proposal has introduced a uniform electoral law on electoral procedure and litigation, even though it has centralized the phase of candidate proclamation on the European electoral authority.

The possibility of introducing uniform provisions also in this area in the future would therefore remain open: it is worth recalling that, according to Article 223 TFEU, amendments to the Electoral Act must be unanimously approved by the Council and transposed by each Member State according to their respective constitutional rules, in the same way as an international treaty.

The introduction of a transnational electoral constituency could represent a moment of constitutional value for the European Union, since not only would it be a first and important step towards the construction of a genuinely supranational political representation, but it would also lead to the conduct of the entire electoral process in the European legal system, untying it from the national dimension: the actual legal framework clearly

outlines a vision of European elections – and, consequently, of supranational political representation – as a summation of the election results of the individual member states, configuring the Strasbourg Parliament almost as an assembly composed of national delegates and, therefore, more representative of the member states than of the citizens of the European Union[75].

Since this is an innovation of constitutional rank, even if introduced by means of an amendment to the Electoral Act, the opinion of those who consider that the introduction of a transnational constituency would first of all require an amendment to the Treaties, insofar as it provides that the allocation of seats in the European Parliament to the Member States must be based on the principle of degressive proportionality, thereby favouring the political representation of those Member States with a smaller population, does not seem to be without foundation. However, it became apparent that several proposals seemed to give way to this requirement by providing for a minimum representation, divided on a national basis, even within the transnational lists, even though this would be partially at odds with a supranational logic, because it would continue to emphasise the element of national citizenship of the candidates.

The construction of a European political representation will depend on overcoming the European elections as the summation of the results of individual national elections, an objective that will depend on the introduction of a uniform and transnational electoral law and by a strengthening of the transnational character of the regulation of European political parties: in this perspective, it will be necessary to overcome the principle of allocating seats on a basis that is digressively proportional to the population of the member states, a rule that underlies the current construction of the European elections and whose overcoming would entail a rethinking of the mechanism for allocating seats in the various constituencies, while balancing the objective of strengthening the democratic nature of the European Parliament through the transnational character of its election with the role of

[75] K. Reif, H. Schmitt, *Nine Second-Order National Elections. A Conceptual Framework for the Analysis of European Election Results,* 8 *European Journal of Political Research* (1980), p. 3; S.B. Hobolt, J. Wittrock, *The second-order election model revisited. An experimental test of vote choices in European Parliament elections*, 30(1) *Electoral Studies* (2011), p. 29.

the Member States in the electoral process[76].

One of the characteristics of directly elected parliamentary assemblies is that they are – at least in part – judges of the validity of the titles of their members, quite apart from the role of the electoral authorities and possible judicial review. In the case of the European Parliament, on the other hand, both conditions are lacking: not only is this body not the holder of a full verification of credentials, but electoral litigation takes place in a different system – the national one – and outside the European dimension.

However, in the light of the numerous failures the proposal aiming to the introduction of a transnational constituency has met with, it is essential to make the most of the existing legal framework, which would allow the European Parliament to claim the exercise of its parliamentary prerogatives, starting with the verification of credentials, as demonstrated by the position upheld in the dispute between Occhetto and Donnici, in which the parliamentary assembly sought to obtain the validation of the former, by balancing the verification of credentials with the protection of the freedom of the parliamentary mandate. The same did not happen in the case of the Catalan Independence MEPs, where it would have been legally tenable to recognise their status as MEPs from the beginning of the legislature, relying on the proclamation of the election results.

If the European Parliament were to become more aware of the exercise of the verification of powers, its role as a parliamentary assembly vis-à-vis both the other EU institutions and the Member States would be strengthened, helping to detach the parliamentary debate in Strasbourg from the national dimension, starting with the very issue of validating the elections of its members.

To date, much of the public and doctrinal debate on the rules for the election of the European Parliament has focused almost exclusively on the right to vote, rather than on the

[76] On the compatibility of a seat allocation mechanism on a digressively proportional basis in relation to the population of the Member States even in the presence of a transnational constituency, see J. Habermas, *Citizen and State Equality in a Supranational Political Community: Degressive Proportionality and the* Pouvoir Constituant Mixte, 55(2) *Journal of Common Market Studies* (2017), p. 171-182.

procedure and the stages following the election: nevertheless, as we have tried to highlight in these pages, the verification of credentials of the European Parliament constitutes the instrument for certifying the regularity of the electoral process, the maintenance of the eligibility requirements of those elected and, ultimately, the correct expression of the will of the people, contributes to the legitimisation of the European legal system and, in the future perspective, will represent a fundamental building block for the construction of a genuinely supranational political identity.