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EUROPEAN PARLIAMENT

# Working Documents

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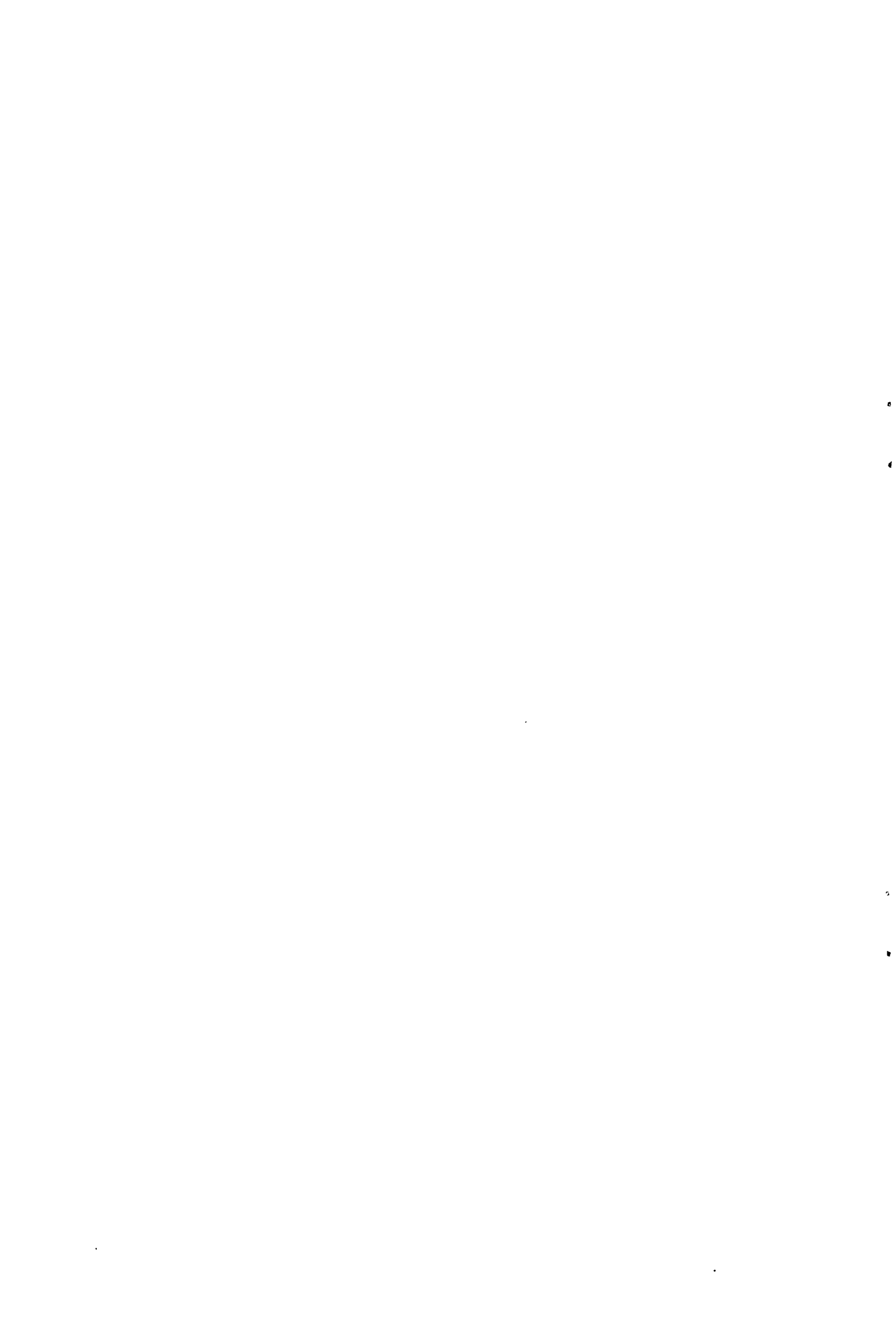
## Report

drawn up on behalf of the Legal Affairs Committee

on a request for the parliamentary immunity of a Member to be waived

**Rapporteur: Mrs F. GASPARD**

1.2.1



At its sitting of 14 October 1980 Parliament referred to the Legal Affairs Committee, pursuant to Rule 51 (2) of the Rules of Procedure, a request for the immunity of Mr Anselmo GOUTHIER to be waived.

On 26 November 1980 the Legal Affairs Committee appointed Mrs GASPARD rapporteur.

At its meetings of 27 October 1980 and 22 and 23 January 1981 the Legal Affairs Committee considered in depth certain procedural matters connected with the waiving of the immunity of Members of the European Parliament.

At its meeting of 25 February 1981 the Legal Affairs Committee heard Mr Gouthier, pursuant to Rule 51 (4) of the Rules of Procedure.

At its meeting of 16 March 1981 the Legal Affairs Committee considered the draft report drawn up by Mrs Gaspard and unanimously adopted it.

Present: Mr Ferri, chairman; Mr Turner and Mr Chambeiron, vice-chairmen; Mrs Gaspard, rapporteur; Mrs Cinciari Rodano, Mr Dalziel, Mr D'Angelosante, Mr Goppel, Mr Irmer (deputizing for Mr Donnez), Mr Janssen van Raay, Mr Malangré, Mr Peters (deputizing for Mr Megahy), Mr Plaskovitis, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade, Mr Vetter and Mr Zecchino (Deputizing for Mr Gonnella)

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ANNEX: Article 68 of the Constitution of the Italian Republic

The Legal Affairs Committee hereby submits to the European Parliament the following proposal for a decision, together with explanatory statement:

PROPOSAL FOR A DECISION

on a request for the parliamentary immunity of a Member to be waived

The European Parliament,

- having received from the permanent Italian representative to the European Communities, by letter of 19 September 1980, a request for the immunity of Mr Anselmo Gouthier to be waived,
- having regard to Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 and to Article 4 (2) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage of 20 September 1976,
- having regard to the judgment of the Court of Justice of the European Communities of 12 May 1964<sup>1</sup>,
- having regard to Article 68 of the Italian Constitution,
- having regard to Rule 51 of the Rules of Procedure,
- having regard to the report of the Legal Affairs Committee (Doc. 1-72/81),

1. Decides not to waive Mr Gouthier's immunity;
2. Instructs its President immediately to forward this decision and the report of its committee to the responsible authority of the Italian Republic.

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<sup>1</sup> CJ EC, 12 May 1964 (Wagner/Fohrmann and Krier, Case 101/63), Volume 1964, p. 195

EXPLANATORY STATEMENTI. - THE FACTS

1. Mr Gouthier is accused of the offence referred to in and punishable under Article 18 of the single text of the laws of the Italian Republic on public safety, that is, of having spoken at a public demonstration in favour of peace and disarmament, which was held on 24 December 1979 in Portogruaro (Province of Venice) without the authorization of the appropriate authorities.

2. Since Mr Gouthier is a Member of the European Parliament, elected to represent the second constituency (North-East), the 'Pretore' of Portogruaro has suspended the proceeding instituted against him.

3. The request for Mr Gouthier's parliamentary immunity to be waived was drawn up by the public prosecutor of the Republic at the Venice Court of Appeal and forwarded by the Ministry of Justice to the Permanent Representative of Italy to the European Communities, who consulted Parliament.

II. - TEXTS GOVERNING THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT

4. Article 4(2) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage of 20 September 1976 states: 'Representatives shall enjoy the privileges and immunities applicable to members of the Assembly by virtue of the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities'.

5. Article 10 of this Protocol, which is a repetition of Article 9 of each of the protocols annexed to the Treaties establishing the ECSC, the EEC and the EAEC, states:

'During the sessions of the Assembly, its members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to members while they are travelling to and from the place of meeting of the Assembly.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the Assembly from exercising its right to waive the immunity of one of its members.'

6. The Court of Justice has in the past been required to interpret the words 'during the sessions of the Assembly' (judgment of 12 May 1964 (Wagner/Fohrmann and Krier, Case (101/63), Volume 1964, p. 195).

7. This judgment rules that the European Parliament holds an annual session during which, and during also the periods of adjournment of the session, its Members enjoy the immunity provided for in the above protocol<sup>1</sup>.

8. Since the case involves events which occurred on the territory of the Italian Republic and since he is a Member of the Italian Parliament, Mr Gouthier enjoys the immunities accorded to Members of the Italian Parliament as laid down in Article 68 of the Italian Constitution<sup>2</sup>.

### III. - JUSTIFICATION OF THE PROPOSED DECISION SUBMITTED TO PARLIAMENT

9. The Legal Affairs Committee has established that the events which led to the accusation against Mr Gouthier are linked to the exercise of his parliamentary mandate and are clearly, and exclusively, of a political nature.

The Legal Affairs Committee has also established that the Chambers of the Italian Parliament do not grant the authorization provided for in Article 68 of the Italian Constitution, in other words they refuse to waive immunity, in the case of events of a clearly and exclusively political nature. This may not however prejudice the final decision to be taken by the European Parliament in accordance with the Treaties.

10. Having discussed the reasons for and against the waiver of immunity, pursuant to Rule 51(5), second subparagraph, of the Rules of Procedure, the Legal Affairs Committee has decided to recommend Parliament not to waive Mr Gouthier's immunity.

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<sup>1</sup> This judgment is not affected by Article 10(3) of the Act of 20 September 1976, which, without prejudice to Article 22 of the ECSC Treaty, Article 139 of the EEC Treaty and Article 109 of the EAEC Treaty, fixes the date when the Assembly meets, without requiring to be convened, following a general election.

<sup>2</sup> Article 68 of the Italian Constitution is annexed.

Article 68 of the Constitution of the Italian Republic

'Article 68

Proceedings may not be constituted against Members of Parliament for opinions expressed or votes given in the exercise of their duties.

No member of Parliament may, without the authority of the Chamber to which he belongs, be subjected to criminal proceeding, nor be arrested or otherwise deprived of his personal liberty, nor subjected to search warrants on his person or in his home unless he be caught in the act of committing an offence for which an order of arrest is compulsory.

A similar authority is required to arrest or keep in a state of detention a member of Parliament in the execution of a sentence even if it be irrevocable.'