

EUROPEAN PARLIAMENT

Working Documents

1982-1983

23 February 1983

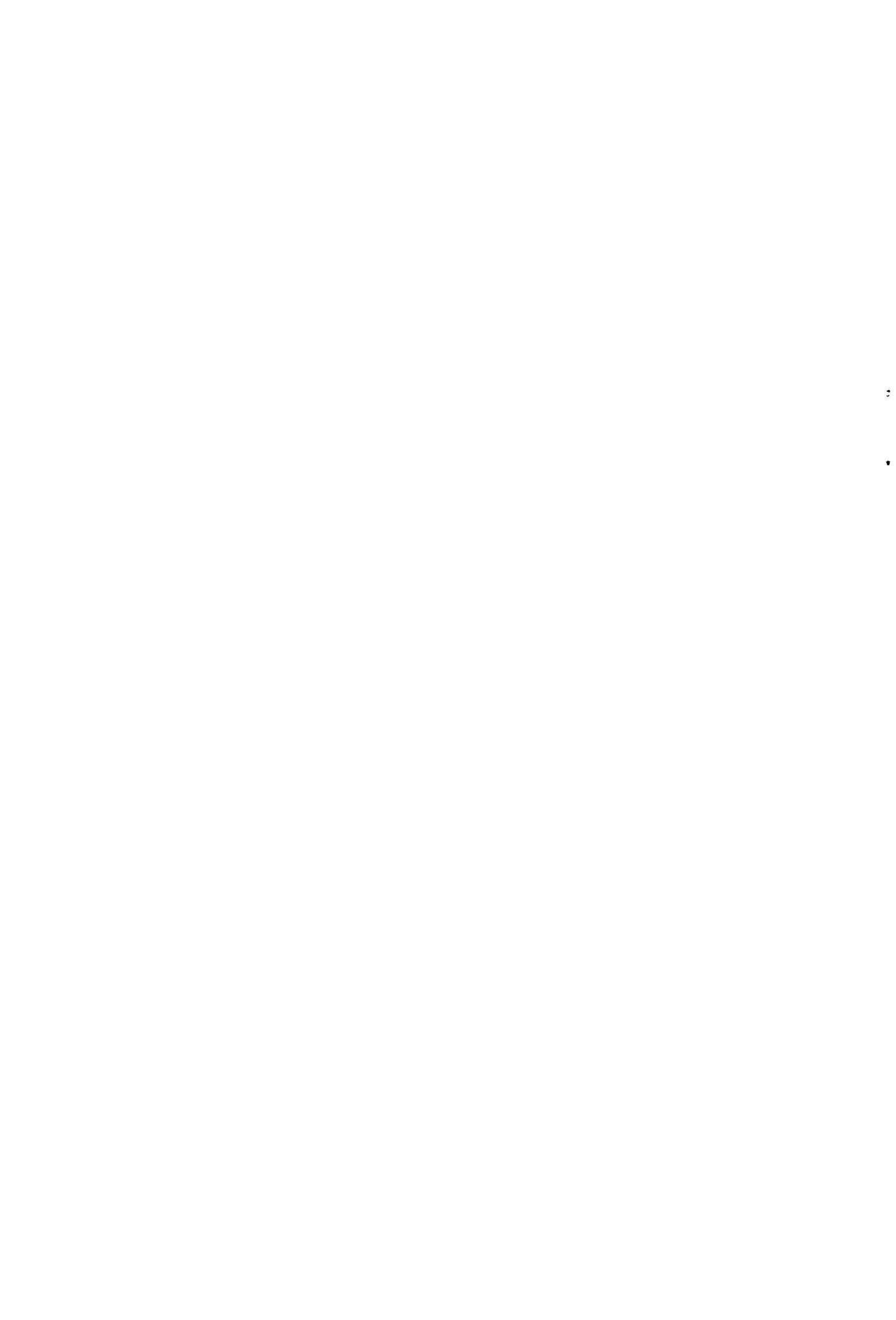
DOCUMENT 1-1311/82

REPORT

drawn up on behalf of the
Legal Affairs Committee

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

Rapporteur : Mr G. DONNEZ



At its sitting of 15 September 1980, the European Parliament referred to the Legal Affairs Committee, pursuant to Rule 5(2) of the Rules of Procedure, the request for the immunity of Mr Giorgio Almirante to be waived for an offence committed under Article 378 of the Italian Penal Code.

On 2 October 1980, the Legal Affairs Committee appointed Mr Donnez rapporteur.

The Legal Affairs Committee was unable to consider the matter until it had been notified of the Camera dei Deputati's decision to waive Mr ALMIRANTE's immunity (see paragraphs 2,3 and 4 of the explanatory statement).

The committee considered the draft report drawn up by Mr DONNEZ at its meeting of 15 and 16 February 1983 and unanimously adopted it. The following took part in the vote : Mrs Veil, chairman; Mr Donnez, rapporteur (and deputizing for Mr Visentini), Mr Dalziel, Mr Forth (deputizing for Mr Tyrrell), Mr Janssen van Raay, Mr Kaloyannis (deputizing for Mr Gontikas), Mr Malangré, Mr Megahy, Mr Poniridis, Mr Prout, Mr Sieglerschmidt and Mr Vié.

C O N T E N T S

	<u>Page</u>
A. PROPOSAL FOR A DECISION	5
B. EXPLANATORY STATEMENT	7
I. THE FACTS	7
II. TEXTS GOVERNING THE IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT	8
III. JUSTIFICATION OF THE PROPOSED DECISION SUBMITTED TO PARLIAMENT	9
(a) Legal ineffectiveness of a reunciation of immunity	9
(b) Statutory limit on the European Parliament's power to begin a preliminary investigation into a request to waive immunity	10
(c) Purpose of parliamentary immunity and period covered thereby	10
(d) The decision of the Camera dei Deputati	10
IV. CONCLUSION	11

ANNEX : Article 68 of the Italian Constitution

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 been requested by the responsible authorities of the Italian Republic to waive Mr Giorgio ALMIRANTE's immunity following a request by the Public Prosecutor of the Republic of Venice for authorization to proceed against him for the offence of persistent and serious aiding and abetting¹.
- 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 of 20 September 1976 concerning the election of representatives of the Assembly by direct universal suffrage,
- having regard to the judgment of the Court of Justice of the European Communities of 12 May 1964²,
- having regard to the decision of the Camera dei Deputati to waive Mr Almirante's immunity³,
- having regard to Article 68 of the Italian Constitution,
- having regard to Rule 5 of the Rules of Procedure,
- having regard to the report of the Legal Affairs Committee (Doc. 1-1311/82),

¹ Assisting a person who has committed a punishable offence ('favoreggiamento personale')

² CJ EC, 12 May 1964 (Wagner/Fohrmann and Krier, Case 101/63), ECR 1964, page 397

³ Camera dei Deputati document IV - 55A - summary record of 1 July 1981

1. Decides to waive Mr Almirante'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.

EXPLANATORY STATEMENTI. THE FACTS

1. Mr Almirante has been accused of persistent and serious aiding and abetting¹ by the Public Prosecutor at the Court of Appeal in Venice.

The charge against Mr Almirante is that, together with other persons, he assisted a right-wing extremist, Mr Cicuttini, (following the events at Peteano in 1972 where 3 police officers died), 'to escape the investigations of the authorities and evade their enquiries by handing over to Cicuttini, by means of a complex financial transaction involving the Società di Banche Svizzere in Lugano, the Chase Manhattan Bank in New York and the Banca di Bilbao in Madrid, a sum of money to be used, inter alia, for a surgical operation on the vocal cords to prevent Cicuttini being identified as the author of the anonymous telephone call which lured the police officers to Peteano where the killing subsequently took place'.²

2. At its meeting of 27 October 1980³, the Legal Affairs Committee decided that, as concluded in the working document (PE 67.868) drawn up by its chairman, Mr Ferri, where a dual mandate was concerned, the European Parliament should not act until the national parliament had taken a decision.

The enlarged Bureau took note of the Legal Affairs Committee's decision at its meeting of 20 November 1980.

3. By letter of 19 December 1980, the chairman of the Legal Affairs Committee, Mr Ferri, informed the President of Parliament that the Legal Affairs Committee would wait for the decision of the Camera dei Deputati before examining the request to waive Mr Almirante's immunity. The President of Parliament therefore asked the President of the Camera dei Deputati to forward the decisions taken by the Camera on the request to waive Mr Almirante's immunity to him as soon as they had been taken.

1 Assisting a person who has committed a punishable offence ('favoreggiamento personale')

2 see Notice to Members No 46/82 - PE 81.181

3 see minutes (PE 68.470, p. 4)

4. At its meeting of 23 and 24 June 1982, the Legal Affairs Committee decided to bring the matter up again with the President of Parliament; following a further approach by the President, the President of the Camera dei Deputati informed him by letter of 30 September 1982¹ that the Camera had decided to waive Mr Almirante's parliamentary immunity at its sitting of 16 July 1981.

This is the background to the Legal Affairs Committee's consideration of the subject.

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

5. Article 4(2) of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage 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'.

6. Article 10 of this Protocol, which restates 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.'

¹ see Notice to Members No 46/82 - PE 81.181

7. The Court of Justice has on a previous occasion been called upon to interpret the words 'during the sessions of the Assembly' (judgment of 12 May 1964 - Wagner/Fohrmann and Krier, Case 101/63 - ECR 1964, page 397).

8. This judgment states that the European Parliament holds an annual session during which and also during the periods of adjournment of the session, its Members enjoy the immunity provided for in the above Protocol¹.

III. JUSTIFICATION OF THE PROPOSED DECISION SUBMITTED TO THE EUROPEAN PARLIAMENT

(a) Legal ineffectiveness of a renunciation of immunity

9. At the sitting of 15 September 1980 when it was announced that a request had been made for his immunity to be waived, Mr Almirante stated that he wished to renounce his parliamentary immunity².

Mr ALMIRANTE confirmed this when he informed the rapporteur that he did not intend to request a hearing with the appropriate committee³, a right open to any Member for whom a waiver of immunity has been requested.

In Mr ALMIRANTE's view it was a case of political persecution; nevertheless he wished to be judged under the laws of his own country even if they were being or might be used to that end.

10. Having been consulted by the President of Parliament on certain matters relating to the waiving of parliamentary immunity, the Legal Affairs Committee found at its meeting of 27 March 1980 that the renunciation by a Member of his parliamentary immunity had no legal effect, and notified its finding to the President of Parliament⁴.

At its meeting of 17 April 1980, the enlarged Bureau adopted the opinion of the Legal Affairs Committee.

11. It should be borne in mind that in the present case, which concerns an Italian member and acts committed in the territory of the Italian Republic, Mr Almirante enjoys the immunity accorded to Members of the Italian Parliament under Article 68 of the Italian Constitution⁵.

¹ 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.

² see Report of Proceedings, Annex to Official Journal No. 260, September 1980, p.1

³ see Rule 5(2) of Parliament's Rules of Procedure

⁴ see minutes (PE 64.548, p.6) and Notice to Members No. 6/80 (PE 64.630)

⁵ Article 68 of the Italian Constitution is annexed.

This provision of the constitution does not allow Members of Parliament to renounce their immunity should they so wish. What it actually says is that no Member may, without the authority of the Chamber to which he belongs, be subjected to criminal proceedings. Moreover, the Italian Chamber of Deputies has consistently said that Members of Parliament may not themselves waive this constitutional guarantee¹.

(b) Statutory limit on the European Parliament's power to begin a preliminary investigation into a request to waive immunity

12. Under Rule 5(2) of the Rules of Procedure, the committee responsible 'shall not go into the merits of the case'.

Moreover, under Rule 5(4) of the Rules of Procedure, the plenary sitting debate 'shall be confined to the reasons for or against the waiver of immunity'.

13. At its meeting of 23 and 24 November 1982, the Legal Affairs Committee - the committee responsible for dealing with waivers of immunity - decided that Rule 5(2) of the Rules of Procedure should be interpreted as meaning that the committee could under no circumstances go into the merits of the accusation and should confine its examination of the case to the circumstances and nature of the offence of which the member is accused.

(c) Purpose of parliamentary immunity and period covered thereby

14. The purpose of immunity is to safeguard the integrity of a parliament and the independence of its Members as regards other authorities. It therefore follows that parliamentary immunity operates throughout the whole of a Member's term of office and is effective against the institution of proceedings, preparatory enquiries, measures for the execution of pre-existing judgments, appeals or applications for judgments to be set aside. In the present case there can be no question of Mr Almirante's immunity being challenged on the grounds that the acts are alleged to have taken place before he became a Member of Parliament.

¹ See Parliamentary Proceedings, first electoral period, p. 36.115

(d) The decision of the Camera dei Deputati

15. On 1 July 1981, the Camera dei Deputati decided by 284 votes to 138 with three abstentions to waive Mr Almirante's immunity. This decision was reached following a debate and in the light of a report by Mr Contu¹.

16. The Legal Affairs Committee has noted the documents forwarded by the Camera dei Deputati. The report on the basis of which the Camera dei Deputati took its decision concluded that the preliminary investigation should proceed so that such a serious case could be fully and completely clarified.

17. During the debate in the Camera, it was pointed out that the Peteano killings were a crime against the State since police officers (representatives of the State) had been killed.

It was a particularly odious crime and could not be termed a 'political crime'.

18. It is therefore in Mr Almirante's interest to exonerate himself before the court of the accusation of having aided the person accused of the crime.

IV. CONCLUSION

19. In these circumstances, the Legal Affairs Committee has decided to recommend that Parliament waive Mr Giorgio Almirante's immunity.

¹ See notice to Members No 46/82 - PE 81.181

ANNEX

Article 68 of the Constitution of the Italian Republic

Article 68 - Members of Parliament may not be proceeded against 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 proceedings, 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.