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REPORT

drawn up on behalf of the Committee on Legal Affairs and
Citizens' Rights

on the request for the waiver of the parliamentary
immunity of Mr Friedrich-Welhelm GRAEFE ZU BARINGDORF

Rapporteur: Mr G. DONNEZ

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PE 103.065/fin.

On 6 May 1985, the President of the European Parliament referred to the Committee on Legal Affairs and Citizens' Rights, pursuant to Rule 5(2) of the Rules of Procedure, a request for the waiver of the parliamentary immunity of Mr Friedrich-Wilhelm Graefe zu Baringdorf.

On 24 May 1985, the committee appointed Mr Donnez rapporteur.

At its meeting of 17/18 December 1985, the committee heard Mr Graefe zu Baringdorf, pursuant to Rule 5(2) of the Rules of Procedure, and subsequently had an exchange of views on the reasons for and against the waiver of immunity.

At its meeting of 22/23 January 1986 the committee adopted the proposal for a decision contained in the draft report by 11 votes with one abstention.

The following took part in the vote: Mrs Vayssade, chairman; Mr Donnez, vice-chairman and rapporteur; Mr Bonaccini (deputizing for Mr Barzanti), Mrs Fontaine, Mr Garcia Amigo, Mr Hoon, Mr Malangré, Mr Megahy, Mr Price, Mr Rothley, Mr Schwalba-Hoth and Mr Verde I Aldea.

Also present: Mr Pordea.

The report was tabled on 3 February 1986.

A

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

PROPOSAL FOR A DECISION

on the request for the waiver of the parliamentary immunity of
Mr Friedrich-Wilhelm GRAEFE ZU BARINGDORF

The European Parliament,

- having received a request made by the Local Court, Bonn, for the waiver of Mr GRAEFE ZU BARINGDORF's parliamentary immunity, which was forwarded via the Regional Court, Bonn, the Higher Regional Court, Cologne, the Ministry of Justice of North Rhine-Westphalia and the Federal Minister of Justice,
 - 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 Article 46 of the Basic Law of the Federal Republic of Germany,
 - having regard to Rule 5 of the Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights (Doc. A 2-214/85),
1. Decides not to waive the parliamentary immunity of Mr Graefe zu Baringdorf;
 2. Instructs its President immediately to notify this decision and the report of its committee to the appropriate authority of the Federal Republic of Germany.

B
EXPLANATORY STATEMENT

I. The facts

1. The facts and the steps in the procedure taken so far are described in the request for the waiver of the parliamentary immunity of Mr Friedrich-Wilhelm GRAEFE ZU BARINGDORF sent to the European Parliament by the Local Court, Bonn, via the appropriate authorities, as follows:

Mr Friedrich-Wilhelm Graefe zu Baringdorf, Member of the European Parliament, was one of a group of five persons who, at about 3 p.m. on 12.10.1983, during a speech by the Federal Minister for Food, Agriculture and Forestries, unrolled a banner in the diplomatic visitors' gallery of the German Bundestag, inscribed:

"Milch-Kontingentierung Ruin der Kleinen Bauern AG Bauernblatt"	("Milk quotas - Ruin for small farmers - AG Bauernblatt")
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He, along with other intruders, was taken by members of the Bundestag police unit from the gallery to an interrogation room to have his particulars noted. He resisted the witness, Sergeant Hudasch, by holding on to a door handle and physically opposing attempts to lead him away. While being led away he claimed that the officers were using "Nazi methods" and could only beat up people with five men. During his subsequent interrogation Mr Graefe zu Baringdorf described his profession as "Bauer mit B wie Bulle" ("Farmer, with "F" for Fuzz").

Mr Graefe zu Baringdorf has not replied to the charges, although given the opportunity to do so. The above course of events was described in depositions by the police officers involved.

The actions of which Mr Graefe zu Baringdorf is accused are said to constitute the following offences:

- (a) causing a disturbance within the premises of the German Bundestag as laid down by and penalized under paragraph 5 of the Rules (Hausordnung) of the German Bundestag of 11 July 1975 and paragraph 112 of the Law on Misdemeanours;
- (b) two cases of insulting another person, especially by offering resistance to an official in the performance of his duties (see paragraph 53, 113 and 185 of the Criminal Code).

Unaware of the fact that Mr Graefe zu Baringdorf had become a Member of the European Parliament as a result of the elections of 17 June 1984, on 4 July 1984 the court issued a summary sentence against him. An appeal was lodged. On 23 August 1984, when it was realized that he had immunity, proceedings were suspended.

2. Pursuant to Article 10 of the Protocol on the Privileges and Immunities of the European Communities, the judge at the Local Court, Bonn, requests the European Parliament to exercise its power to waive the parliamentary immunity of Mr Graefe zu Baringdorf.

II. Relevant principles governing immunity of Members of the European Parliament and their application in this case

3. During its first electoral period the European Parliament developed a number of general principles governing the treatment of requests for the waiver of the immunity of its Members. These emerge from Parliament's decisions in this area, which have always accorded with the proposals of the Legal Affairs Committee. These general principles were summarized and confirmed in connection with the consideration of the first request for waiver of immunity at the beginning of the second electoral period (see Doc. 2-1105/84). We would hereby refer to those principles.

4. The facts of which Mr GRAEFE ZU BARINGDORF is accused date back to 1983, in other words before he took up office as a Member of the European Parliament. Since the purpose of parliamentary immunity is to guarantee that Parliament and its Members remain independent of other authorities, it follows that this immunity cannot be challenged on the ground that the alleged events occurred before the Member took up office.

5. For the same reason, it follows, in the view of the majority of the members of the committee, that it is irrelevant that Mr GRAEFE ZU BARINGDORF was already a candidate in the elections to the European Parliament at the time when the facts of which he is accused took place, and whether he was already a member of the party which he now represents in the European Parliament. This also follows, moreover, from the conclusion to be drawn from the present situation: Mr GRAEFE ZU BARINGDORF is still not a member of the 'Greens', the party for which he was elected to the European Parliament on 17 June 1984 as the leading candidate.

6. The latter aspect leads to one of the essential criteria for the decision to be taken by the European Parliament, a criterion which was developed in accordance with the above-mentioned general principles with regard to the treatment of requests for the waiver of parliamentary immunity: this is the question whether the offence of which the Member is accused relates to some political activity. In this respect the fact that some kind of loose connection with a political activity can be established is insufficient for the purposes of refusing the waiver of political immunity. On the contrary, it must be a primary political activity which, though not solely the prerogative of Members, is nevertheless characteristically pursued specifically by Members (see Doc. A 2-14/85, page 7).

7. The charges made relate first of all to the unfurling of a banner in the diplomatic visitors' gallery of the German Bundestag. The events occurred during a speech by the Federal Minister for Food, Agriculture and Forestry and the wording on the banner was very definitely directed against the policy pursued by the German Government and the Council of Ministers of the European Community in the milk and dairy products sector and against its alleged consequences. This statement corresponds to a political viewpoint which is and was central to Mr GRAEFE ZU BARINGDORF's political activities. He explained this at the hearing before the Committee on Legal Affairs and Citizens' Rights on 17/18 December 1985 and on that occasion described in detail the political ideas related thereto.

The relevant facts are therefore very closely connected with political activities characteristically pursued by Members: freedom of speech, which is an essential basic right in democracies, ensures that Members of Parliament in particular can influence the formation of opinion in the community. Manifesting one's opinions on unfurled banners is one of the main ways in which a person can participate in the process of the formation of opinions which is a characteristic political activity of Members.

8. The charge made is directed, in addition, against the alleged behaviour of Mr GRAEFE ZU BARINGDORF when he was led away with other members of the group.

It is not for us to examine here whether the charge made against him are correct (Mr GRAEFE ZU BARINGDORF's description at his hearing differs). In principle, in the procedure for considering requests for the waiver of parliamentary immunity the facts alleged by the relevant authority in the request must be accepted: pursuant to Rule 5(2) of the Rules of Procedure, the committee 'shall not go into the merits of the case'.

The charges made, which are therefore of a secondary nature, have no value in relation to the factor considered above. They are ancillary to this factor which covers the main charge and the main activity. Since that activity is the exercise of a political activity, the ancillary activity is also covered by this classification.

9. Inaccurate reports in the local press in the place in which the Member lives and the chronological order of the procedure suggest that a further criterion should be considered, the 'fumus persecutionis' (see Doc. A 2-165/85 in this connection). If this fumus persecutionis is found to exist, it would lead to a refusal of the request for the waiver of immunity (see Doc. A 2-165/85 in this connection).

At least one newspaper in the area in which Mr GRAEFE ZU BARINGDORF lives contained a grossly unjust and defamatory description of the charges made against him.

There are some surprising delays in the chronicle of the procedure:

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| - The events themselves took place on: | 12.10.1983 |
| - Mr GRAEFE ZU BARINGDORF was elected to the European Parliament on: | 17.6.1984 |
| - Unaware of this fact the local court, Bonn, issued a summary sentence on: | 4.7.1984 |
| - When his immunity became known the proceedings were provisionally suspended on: | 23.8.1984 |
| - The Local Court, Bonn, requested the waiver of parliamentary immunity on: | 1.2.1985 |
| - This request reached the European Parliament after being forwarded to various authorities on: | 22.4.1985 |

The question whether there is in fact a fumus persecutionis can however be left open since the above classification of the conduct of the Member as a political activity results in a refusal of the request.

III. Conclusion

10. Following discussion of the reasons for and against the waiver of immunity, pursuant to Rule 5(2) of the Rules of Procedure, the Committee on Legal Affairs and Citizens' Rights recommends, in view of the circumstances described above, that Parliament should not waive the parliamentary immunity of Mr GRAEFE ZU BARINGDORF.

ANNEX

Article 46 of the Basic Law of the Federal Republic of Germany provides as follows:

'Article 46 (Indemnity and immunity of deputies)

1. A deputy may not at any time be prosecuted in the courts or subjected to disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a statement made by him in the Bundestag or any of its committees. This shall not apply to defamatory insults.
2. A deputy may not be called to account or arrested for a punishable offence except by permission of the Bundestag, unless he is apprehended in the commission of the offence or in the course of the following day.
3. The permission of the Bundestag shall also be necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article 18.
4. Any criminal proceedings or any proceedings under Article 18 against a deputy, any detention or any other restriction of his personal liberty shall be suspended upon the request of the Bundestag.'

