Germany: State attorney launches investigation of Foreign Minister Fischer

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The public prosecutor's office in Frankfurt/Main has launched a criminal investigation into Germany's Foreign Minister Joschka Fischer (Green party). This signals a new stage in the continuing debate about Fischer's past as a "street fighter" in the militant demonstrations of the late 1960s and early 1970s. What becomes ever clearer is the direct political campaign being mounted by right-wing circles in the Christian Democratic Party aimed at forcing Fischer to resign and destabilising Germany's Social Democratic Party-Green party coalition government.

The subject of the criminal investigation is the testimony Fischer gave recently as a witness during the so-called "OPEC trial", at which Hans Joachim Klein had to answer charges about his participation in the attack on the 1975 OPEC conference in Vienna that left three dead. Klein received a comparatively mild sentence of nine years imprisonment, a sentence that took into account the fact that for some time he had disassociated himself from terrorism. Klein had been a member of Fischer's protest group in the early 1970s in Frankfurt and it was in this connection that the foreign minister was called in mid-January as a witness at Klein's trial before the Frankfurt regional court.

In response to the question posed by public prosecutor Volker Rath whether Fischer had at any time shared an apartment with the former terrorist Margrit Schiller, the foreign minister answered, "No, I have never lived with her."

The public prosecutor's office is now trying to show that by making this statement Fischer committed perjury. They are basing this on Schiller's autobiography, in which she describes her meeting at that time with Daniel Cohn-Bendit (a leading member of the German Green party and close confidante of Fischer in the seventies). Cohn-Bendit suggested she stay overnight in the shared apartment, and it was there she also met Joschka Fischer.

During the Klein trial, the chairman of the judges, Heinrich Gehrke, made it clear to the foreign minister that this question did not have anything to do with the legal proceedings, and that he was completely free to answer the question or not. Now that the public prosecutor's office has initiated a preliminary criminal investigation into Fischer concerning this completely secondary question, Judge Gehrke has come out in public and criticised the actions of the public prosecutor's office in an unusually sharp tone.

Firstly, according to Gehrke, in the context of the cross-examination of witness Fischer, the question asked was inadmissible. Secondly, Fischer had not taken any witness oath before he gave his testimony. Perjury is punishable only if it is committed deliberately; the perpetrator must seek to give "an objectively false testimony", Gehrke said, quoting the legal commentary to the penal code. Thirdly, the testimony concerned events that lay almost 30 years in the past, and the subjective element was never provable. From a legal point of view, the investigation into Fischer was "completely ridiculous".

To the question of whether this preliminary investigation could be politically motivated, Judge Gehrke gave a revealing answer to the *Süddeutsche Zeitung* newspaper: "Naturally, everyone knows the background against which this whole affair is taking place."

No less vehemently, the Hessen state prosecutor general, Hans-Christoph Schaefer, rejected any suggestion that the proceedings against Fischer were politically motivated. He said he would not abide "a judge's appraisal in an affair that is exclusively the province of the state attorneys".

Heinrich Gehrke, the chairman of the judges in the court of assizes at the Frankfurt regional courts, is no beginner when it comes to the law. In the past he has conducted some of the most sensational trials to take place in Germany. Twelve years ago he received threatening letters after acquitting a physician who had been charged with sedition for citing the German writer Kurt Tucholsky's saying, "All soldiers are murderers". In his verdict Gehrke said the use of the quotation was covered by the right to freedom of expression.

During the trial of the building contractor and billionaire bankrupt Schneider, he drew attention to the irresponsible behaviour of the major banks, which had offered Schneider generous credits even when his dubious business dealings and looming bankruptcy could already be foreseen.

In his written judgement in the recent OPEC case, Gehrke made no secret of the fact that he was quite favourably inclined to the political aims and views of many of the demonstrators in the late 1960s and early 1970s, and was not prepared to sentence the accused as violent criminals motivated by base motives. He said: "It was reasonable to demonstrate as they did. It was not surprising that the occasional small stone was thrown."

Gehrke's indication of a political background to the investigation of Foreign Minister Fischer received a new impetus when press reports revealed that the proceedings against Fischer had been planned and agreed upon in the Hesse state Ministry of Justice. According to the *Süddeutsche Zeitung*, a high-ranking delegation from the public prosecutor's office in Frankfurt drove to the Christian Democratic-led Ministry of Justice in the state capital Wiesbaden on January 26. Apart from the department's leader Hans Christoph Schaefer and a few experts from the criminal law department, those participating included the public prosecutor Volker Rath, who had questioned Fischer a few days earlier during the OPEC trial. The meeting was led by Under-secretary of State Herbert Landau, who is well known as an energetic party man in the Christian Democratic Union (CDU).

The *Süddeutsche Zeitung* writes: "The meeting discussed whether a preliminary investigation should be initiated against Fischer on suspicion of committing perjury." The CDU-led ministry thus took "the preliminary decision against the Green party politician". In the meantime, a ministry spokesman has acknowledged that such a meeting did take place, but he did not want to attach any significance to it. It was a routine meeting, he said, typical of meetings held in the course of complicated proceedings.

That is obviously not correct. In contrast to widespread propaganda

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concerning the independence of the judiciary—in fact, Germany's leading public prosecutors are subject to directives and speak to the Ministry of Justice about important questions—this “independence” is generally limited to the fact that the public prosecutor makes his decisions independently and informs the ministry of them. However, every now and then government representatives exert influence on the prosecuting authority to prevent unwanted investigations against persons or institutions close to the governing party.

For example, it is well known that Landau, the very same under-secretary of state, became involved in 1999 in proceedings when the Giessen public prosecutor's office launched an investigation of the Hesse CDU interior minister and former lawyer Volker Bouffier, on suspicion that Bouffier betrayed his party responsibilities. At the time, Landau requested that state attorneys keep the matter “as low-key as possible”. Shortly thereafter the proceedings against Bouffier were dropped on payment of a fine.

That right-wing CDU politicians inside a ministry should make arrangements with leading state attorneys, instigate a legal campaign against a politician they find unpalatable, and thereby try to destabilise an elected government represents a qualitatively new stage in the utilisation of the judiciary for party-political purposes.

The arrogant and matter-of-fact character of these right-wing political machinations, brushing aside democratic principles such as the oft-quoted division of powers between the legislature, judiciary and executive, throws a sharp light on political relations in Germany. This type of political perversion of the law was well known during Hitler's fascist dictatorship.

Right-wing offensive

If one regards the proceedings against Fischer in their wider political context, they can be seen as part of a political offensive by extreme right-wing circles in the “Union” (the alliance between the Christian Democratic Union and Bavaria's Christian Social Union—CSU), who want to implement their claim to the leadership of the Union by launching the sharpest possible attacks on the “Red-Green” federal government. One of those pulling the strings is Hesse state Premier Roland Koch.

Two years ago, at the beginning of February 1999, Koch won the election in Hesse, a state traditionally governed by the SPD, by channelling growing discontent with rising unemployment and welfare cuts along racist lines. He took to the campaign trail with an aggressive xenophobic campaign against the federal government's proposal to allow foreign residents to take dual nationality, and mobilised a right-wing mob with a petition campaign.

At the time of the scandal concerning illegal CDU party donations, he came under considerable pressure when it became known that the Hesse CDU, of which he is chairman, had for many years kept illegal bank accounts abroad and had financed Koch's election campaign from these dubious sources. Although it was proven that he had not told the truth both in parliament and in the parliamentary committee of inquiry, Koch did not resign. Instead his influence in the CDU grew, as someone who, despite corruption and criminal machinations, defended his claim to leadership and treated democratic committees with contempt.

Almost at the same time as the meeting with state attorneys at the Ministry of Justice took place, Roland Koch made a declaration in which he welcomed the launching of proceedings against Fischer and let it be known there was “yet another file” in which Fischer's name was mentioned. This concerns a report by an undercover secret service agent from 1975 about alleged preparations for a violent assault on the Spanish Consulate General in Frankfurt, which Fischer is supposed to have been involved in 26 years ago.

Although from a legal point of view the statute of limitations long ago expired on the attack on a representative of Franco's fascist regime, Koch's henchmen are once again trying to stoke things up. To this end, the fact that stone throwers injured two policemen at that time and a police car went up in flames is being reinterpreted as attempted homicide.

And if this does not work, the CDU right-wingers have prepared a third line of attack. Over the past few days pictures have been published showing a 20-year-old Fischer in 1969 at a PLO conference in Algiers. Contrary to the claims of his under-secretary of state Ludger Vollmer (Green party), Fischer did not leave the conference after one hour because he was bored, but gave a standing ovation at the end of Yassir Arafat's “inflammatory speech against the Jews”. If that was the case, according to the right wing, Fischer is unacceptable in the role of German foreign minister.

It is not necessary to support either Arafat's or Fischer's politics in order to detect the idiocy of this argument. The PLO conference in Algiers took place one and a half years after the Six Day War—the Israeli blitzkrieg against Jordan, Syria and Egypt. The Israeli occupation of the West Bank, the Golan Heights and the Gaza Strip as a result of this war brought to light the aggressive character of the Zionist regime. Thousands of Palestinians were driven out at that time and since then have been forced to live in refugee camps under almost indescribable social conditions and constant fear of Israeli attacks.

But such facts are of little interest to the CDU right-wingers. They act according to the principle: the bigger and more brazen the falsification, the easier to get it generally accepted. Beside Roland Koch, the Bavarian CSU Chairman Edmund Stoiber has also demanded the setting up of a parliamentary committee of inquiry into Fischer.

When it comes to the right-wing forces pulling the strings in the CDU/CSU, the chairman of the parliamentary faction, Friedrich Merz, should not be overlooked. A few weeks ago he was the guest speaker at the CDU's Hesse state convention. Now Merz has declared that as far as he is concerned, the Green foreign minister is an “extremist left-wing criminal”.

Taking a page from the book of Kenneth Starr

Not only their rejection of democratic rights and norms, but also the aggressiveness with which they pursue their right-wing aims would seem to indicate that Koch, Stoiber, Merz & Co. have taken their cue from the American Independent Counsel Kenneth Starr. Indeed, the actions of the CDU right-wingers strongly call to mind the impeachment proceedings with which the Republicans tried to depose the elected American president Bill Clinton two years ago.

Immediately after Clinton's first election victory, and his timid attempts to introduce some improvements in the health-care system, right-wing circles among the Republicans began a campaign of destabilisation, digging up an old real estate deal from the period when Clinton was governor of Arkansas—the so-called Whitewater affair.

Although Clinton quickly swung over to a conservative political course, his adversaries did not give up. Four years of investigations into Whitewater were followed by proceedings resulting from Paula Jones's allegations of sexual harassment, and finally the Lewinsky affair.

The role of Linda Tripp, who recorded her telephone calls with Monica Lewinsky and passed them on to the independent counsel's office, the deliberate leaking of details from the Starr investigation, the links between the independent counsel and extreme right-wing religious fanatics—all of this pointed to a right-wing conspiracy.

Clinton, too, was accused of giving false testimony concerning an insignificant question, when he tried to keep his relationship with Lewinsky secret.

Some weeks ago, when the same right-wing circles in the US set aside the result of an election, prevented the counting of the votes, and made their man president with the help of the courts, the conservative parties in Germany loudly applauded. In a greetings telegram, the CSU regional committee chief, Michael Glos, was jubilant, saying Bush's victory would have repercussions for Europe. It sends “a clear signal,” he declared,

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halting “the movement to the left in the Western democracies”.

There is yet another reason why right-wing political forces in Germany are acting in such an impudent and provocative manner. Over two years ago the Red-Green government was put into office by the populace to put a stop to the destruction of social and democratic rights following 16 years of the CDU government under Helmut Kohl. But after being sworn in, the ministers in the Schröder government did the exact opposite of their election promises, going further in many respects than the previous government. Both Foreign Minister Fischer and the Green party played a key role in the dismantling of Germany's system of social welfare, as well as initiating the first military intervention abroad by Germany's armed forces since the end of World War II.

While large sections of the population drifted away and turned their back on the government, the political spectrum as a whole moved to the right. Under such conditions, the most reactionary and limited elements can politically dominate.

Fischer's reaction to the instigation of criminal proceedings against him is to shift his political stance even more rapidly to the right. Apart from Britain, Berlin was the only government in Europe to support the recent bombing of Iraq, knowing full well that the brutal and cowardly military action served to enforce a sanctions policy that has cost the lives of hundreds of thousands of Iraqis since the end of the Gulf War.

Just as America's military strike had a clear significance in relation to American domestic affairs—serving as a warning from a government that is regarded as illegitimate by a majority of the population—so Fischer's support for the Bush government heralds further attacks by the Red-Green government on social and democratic rights. Under the lash of the right wing, Fischer and Schröder see themselves forced to prove that their politics correspond entirely with the interests of Germany's ruling elite.

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