

The case of Khalid al-Masri

German government complicit in the criminal activities of the CIA

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After considerable hesitation and a string of excuses, three German ministers made statements on Wednesday on the kidnapping of German citizen Khalid al-Masri by the US secret service, the CIA. Foreign Minister Frank-Walter Steinmeier (Social Democratic Party, SPD) gave a report to the Foreign Affairs Committee, Justice Minister Brigitte Zypries (SPD)—who occupied the same post in the previous government led by Gerhard Schröder—answered questions in the Legal Affairs Committee, and Interior Minister Wolfgang Schäuble (Christian Democratic Union, CDU) reported to the Interior Committee.

However, all of the statements made by government representatives were aimed above all at appeasement. The real questions involved were not even posed, never mind answered. Germany's grand coalition, comprising the SPD, CDU and CSU (Christian Social Union), is seeking to ride out the affair and try as quickly as possible to ensure that the incident no longer dominates media headlines.

Steinmeier and Schäuble concentrated on rejecting claims that German agencies were involved in the kidnapping of Khalid al-Masri. Both men declared that extensive investigations have failed to indicate that the activities of the CIA had relied on information from German security sources. According to Wolfgang Schäuble, anyone who continued to encourage such speculations and suspicions was acting in an irresponsible and highly negligent manner.

Justice Minister Zypries stressed that she had done everything possible within legal limits. Her ministry had taken up the case at a lower level in June 2004 and at a leadership level since the beginning of 2005. The SPD politician declared everything had been done "which was necessary according to legal procedure."

All three ministers sought to give the impression that what was at stake was a more or less everyday incident and that the main issue was merely to clarify whether the appropriate ministerial level had responded correctly.

The fact is that a German citizen was abducted by the secret service of another country, whisked away to a torture prison, and imprisoned and abused over a period of months. From the time of the kidnapping up until today, and although the incident involved fundamental issues of legality and national sovereignty, the German government has shown not the slightest interest in clarifying the case and demanding an explanation from the offending government.

At the same time, European newspapers are full of reports that the CIA regularly uses German air space and airports to transport prisoners, who have been denied all legal rights, to other countries where, according to many reports, they are liable to be tortured.

Although such activities constitute a blatant violation of German and international law, the German government has not lifted a finger.

One need only imagine what would have happened if the intelligence agency and state involved had not been the CIA and the American government, but the secret service of Iran, Syria or Libya. The German government would have been immediately informed—which in any event was very probably the case with al-Masri—and the ambassador of the country concerned would have been immediately summoned in order to deliver the sharpest diplomatic protest to his government, including threats of consequences and sanctions.

However, because the offenders are the CIA and the US government, the German government is treating the whole matter as if it were a minor offence and have reacted in a thoroughly cowardly and submissive fashion. In doing so, they make themselves the accomplice of actions that flagrantly violate German and international law and can only be regarded as criminal.

Investigations carried out by the public prosecutor's office in the case of Khalid al-Masri confirm statements made by the lorry driver from the German town of Neu-Ulm. On December 31, 2003, al-Masri was detained at the Serbian-Macedonian border while traveling by bus on a vacation from Neu-Ulm to Skopje. He was initially held for a period of three weeks in a hotel in the Macedonian capital.

Three weeks later, on January 23, 2004, he was flown out to Afghanistan in the company of CIA agents and held for four months in the notorious "Salt Pit" secret prison. According to his account, on a number of occasions he was violently assaulted, kicked and humiliated and subjected to a series of interrogations. His wife and four children learned nothing of his whereabouts. After endless interrogations, a hunger strike and constant avowals of his innocence, al-Masri was finally flown back to Albania on May 28, 2004.

The CIA had evidently concluded that they had imprisoned the wrong man—i.e., a completely innocent person. On May 29, 2004, al-Masri was flown from Tirana to Frankfurt-Main, and from there traveled to his family in Neu-Ulm.

Following his odyssey through Macedonia, Afghanistan and Albania, Khalid al-Masri then undertook an equally demanding and arduous journey through the legal and political jungle in Germany. Despite the obstacles placed before him, he has made clear that he is not prepared to be intimidated or discouraged by bureaucratic hurdles and the evident lack of interest shown by politicians.

Determined to resist his mistreatment and clarify what had taken place, he immediately lodged a complaint against his illegal

abduction, abuse and imprisonment after his return.

As well as instituting proceedings, his lawyer Manfred Gnjdjic also asked the SPD-Green government to intervene and clear up the injustice suffered by his client. To this end, he sent three identical letters to the chancellery, headed at the time by Frank-Walter Steinmeier (now foreign minister), the Foreign Ministry, headed at the time by Joschka Fischer (the Greens), and the Justice Ministry, headed by Brigitte Zypries.

Apart from a formal acknowledgement of receipt of the letters, government sources remained silent. At the same time, however, the government went into action. According to press reports, instructions were given to the German Intelligence Service (BND) to check the information given by al-Masri, which was subsequently confirmed to be largely correct. As the *Süddeutsche Zeitung* reported (December 8, 2005), American secret service agents admitted that the operation had gone out of control. At that point, "At the end of January 2005, the chancellor, the Foreign Office and the Federal Interior Ministry were then probably informed."

In the summer of 2004, Chief Federal Prosecutor Kay Nehm had already checked whether his agency should take up the case. According to German law, the Federal Prosecutor's Office is responsible in the case of a "kidnapping" that has "a special significance." According to its own sources, the Federal Prosecutor's Office concluded on June 29, 2004, that it was not responsible for the case because it did not concern a kidnapping "for political reasons."

According to the German penal code (§ 234a), kidnapping presupposes that someone has been forcibly removed from the territory of the German Federal Republic and thereby exposed to danger of persecution "for political reasons." There was no indication of such political reasons, and therefore the Federal Prosecutor's Office was not responsible.

The Chief Federal Prosecutor was even more explicit in his reasoning in another case. The Egyptian Abu Omar was kidnapped by CIA agents in Italy and flown to Egypt, stopping over on the way at the US Ramstein airbase in Germany. The Karlsruhe prosecutor's office rejected any responsibility in the case by arguing that the abduction was not a "kidnapping," because this criminal offence was historically associated with totalitarian regimes. The *Süddeutsche Zeitung* commented, "However, because behind the act was not a dictatorship but probably the US, the Federal Prosecutor's Office interprets 'political persecution' in the sense it is given in asylum law." This line of argumentation is currently being hotly debated in legal circles.

In the case al-Masri, the Federal Prosecutor's Office referred the affair to the local public prosecutor's office in Memmingen which, however, rejected this line of argumentation, declared the case to be one of kidnapping and handed it over to the public prosecutor's office in Munich.

While Chief Federal Prosecutor Nehm was trying to play down the offence as much as possible, the German government was also seeking to take the heat out of the affair. Otto Schily (SPD), the interior minister at that time, had already been informed at the end of May 2004 by US Ambassador Daniel Coats that al-Masri had been falsely held. Allegedly, Schily declined to pass on his knowledge to other cabinet members or the public prosecutor's office. When questioned on the affair some days ago, the former interior minister arrogantly responded that, firstly, he had agreed in his discussion with Daniel Coats not to say anything and, secondly, it was not his job to act as an investigative assistant for the prosecution office.

The legal and political ramifications of the case have assumed an international dimension following the lodging of legal proceedings in the name of al-Masri against the CIA and its director at that time, George Tenet, by the US human rights organisation, the American Civil Liberties Union (ACLU), on December 6. It is the first legal case that aims to denounce and condemn the practice of "renditions" as a violation of American and international law.

The charge sheet is directed specifically against the CIA director at that time, Tenet, and other CIA officials whom it accuses of being responsible for the "long arbitrary arrest, torture and other cruel, inhuman or degrading treatment."

The case, therefore, is of great significance, because it could throw light on numerous other cases of kidnapping and torture carried out by US authorities. Nobody knows at this point how many persons are affected, who they are, where they are being imprisoned and what has happened to them in the meantime. According to estimations by human rights organisations, at least 3,000 persons have been subject to such illegal practices.

The criminal actions of the American secret service and the arrogant defence of such activities by the Bush administration recall the darkest days of fascist dictatorship when Gestapo agents ran amok in Europe, kidnapping and "rendering" opponents at will.

There is no one inside the German government, parliament and the entire political elite who is seriously prepared to oppose such crimes. Instead of playing down the significance of such issues and proclaiming the value of "shared democratic values," as the German chancellor did during the recent trip to Berlin by the US secretary of state, Angela Merkel (CDU) could have stated that the US government was implicated in activities which flagrantly violate German and international law and would have been entirely justified in refusing to meet with Condoleezza Rice. After pointing out that, in light of its own past experience, the German people were not prepared to accept torture practices and illegal kidnappings, Merkel could have refused any guarantee for the security of the secretary of state should she set foot on German soil because of the risk of being charged and arrested in connection with the criminal activities of her government.

Instead, the German government is working might and main to hush up the entire affair, and by so doing, makes itself a direct accomplice of the regime in Washington.



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