

January 2, 1966

DER SPIEGEL

The leading German news magazine
Founded 1946 Circulation 640,000
Proprietor Rudolf Augstein Published Hamburg



The Adenauer Affair

THE FORMER Federal Chancellor, Konrad Adenauer, contradicted *Der Spiegel* twice in 1965. And both times his contradictions were, days later, contradicted again by politicians who had succeeded each other as Minister of Justice in Adenauer's Cabinet.

Both cases were concerned with the betrayal of State secrets. In both cases the supreme authority of the Federal Republic in penal matters, the Federal Attorney's office in Karlsruhe, carried on investigations lasting for years. In one case Adenauer was on the side of the accusers; in the other case, he was — though not recognised as such — the accused. Both proceedings were dropped.

The former Federal Chancellor, Konrad Adenauer, 89, an enemy to the Socialist opposition and even more so an opponent of his successor Ludwig Erhard ("I'll reduce him to zero"), committed himself during the so-called 'Spiegel Affair' in the late autumn of 1962, in front of the Federal Diet in such a way that, as a British observer said, in England it could have led to the head of the Government being arrested on leaving Parliament.

The *Spiegel* Affair had begun when, on suspicion of having committed treason because of something they had published, the publisher, the editor and three sub-editors of *Der Spiegel*, two colonels, a lawyer and a Consul General were arrested, two sub-editors imprisoned, and the premises of the publisher and the editorial offices occupied and searched for over four weeks. No hearing by the Court took place because all proceedings but two had to be dropped when the results of the investigations proved negative.

Chancellor Adenauer simply decided that the arrested journalists were guilty and had nothing but contempt for those who were prepared to help the arrested persons.

These statements by the Chancellor, before Parliament, were made in such a way that everyone in Germany would hear of them through television, radio and the newspapers. That Adenauer had, however, also attempted to concern himself actively in the judicial procedure was only published by *Der Spiegel* when the Supreme German Court gave its decision this year that no proceedings would be opened and that the accused *Spiegel* staff would not be prosecuted.

In the course of their search in the autumn of 1962, the prosecutors and detectives found the notes which the Editor-in-Chief made every day about discussions and other business. From these notes it was clear that before publication of the article which gave rise to the charge of treason, a list of extracts from the text had been given to a representative of the Information Section of the German Abwehr (Secret Service), Colonel Adolf Wicht, with the request that his office should examine whether the enclosed statements touched on any secrets. A few days later — and this too was apparent from the notes — Colonel Wicht replied that publication of these facts did not give rise to any misgivings, with one exception; this passage had, however, already been struck out by the Editor.

A possible reaction by the judicial authorities to what they had found would have been to note the care which had been used to exclude the betrayal of State secrets even unconsciously or carelessly. Their actual reaction, however, was different: they arrested Colonel Wicht on suspicion of having himself committed treason.

In the mind of the Head of the Government, Dr Adenauer, who had kept himself informed about the results

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General Gehlen, head of the Secret Service

of the search, the matter had an even more apocalyptic appearance. Adenauer came to the conclusion that the Secret Service must be involved in a plot with *Der Spiegel* against the security of the State.

He asked the disturbed deputies of the Federal Parliament in Bonn: "Ladies and Gentlemen: is it not terrible if a Colonel of the Bundeswehr, after he hears that proceed-



Ex-Minister of Justice Dr W. Stammberger
ings have been commenced against Augstein and the sub-editors of *Der Spiegel*, goes and tells them about it so that any existing proofs may be whisked away?" This was not the only scene which took place exclusively in Adenauer's imagination. In his imagination he also saw the head of the Secret Service, General Reinhard Gehlen, arrested.

On the Chancellor's instructions, two high officers of the Bundeswehr were ordered to proceed to the offices

of General Gehlen in München-Pullach and to escort the head of the Secret Service more than 300 miles to the Chancellery in Bonn.

At the Chancellery, General Gehlen was requested to hold himself in readiness in an adjoining room whilst Adenauer asked for a telephone call to be put through to the Minister of Justice, Dr Stammberger. The call reached the Minister in Karlsruhe, at a time when he was inquiring at the Federal Attorney General's office about the results of the investigation against *Der Spiegel*. The Head of the Government requested him to come to the Federal Chancellery immediately and to bring a senior official of the Federal Attorney General's office with him.

Thereupon Dr Stammberger and Mr Kuhl, Federal Attorney General responsible for the *Der Spiegel* investigations, proceeded to Bonn where the Chancellor received his Minister of Justice with the words: "Dr Stammberger, you must arrest General Gehlen. He is in an adjoining room and you can get hold of him there."

Stammberger: "Mr Chancellor, it is not as easy as all that. I require a warrant. Why should I arrest General Gehlen?"

Adenauer: "General Gehlen advised Colonel Wicht of the preliminary measures taken against *Der Spiegel* and the latter disclosed them to *Der Spiegel*."

Stammberger: "Mr Chancellor, if we have no proof, no judge will give us a warrant."

Adenauer to the Federal Attorney General, Mr Kuhn: "And what have you to say about this?"

Kuhn: "Mr Chancellor, the Minister of Justice has said all that can be said about this matter."

Adenauer: "I too have been an Attorney General in my time. In former times it was quite different."

As a matter of form, Federal Attorney General Mr Kuhn subjected General Gehlen to a kind of interrogation. And then the matter was concluded. The General and the Federal Attorney General returned to their offices.

tary Manager of the C.D.U., Will Rasner. When the details were published by *Der Spiegel* this year, he telephoned the Chief of his party, the former Federal Chancellor Adenauer, and asked him whether there was any truth in this disquieting matter. He learnt from Adenauer that what was reported in *Der Spiegel* was "unfounded and a lie". The party hastened to acquaint the News Service and the journalists with this quotation.

Five hours later, the News Agencies were able to distribute a further declaration, this time by Dr Stammberger. It was laconic and definite. Dr Stammberger said: "If Adenauer says that *Der Spiegel's* report is not correct, I say it is correct."

When, during the *Spiegel* affair (and because of the *Spiegel* affair), Adenauer's Cabinet had to be re-formed, Dr Ewald Bucher took over the office of Minister of Justice from Dr Wolfgang Stammberger. Bucher had also, as was to be seen later,



Ex-Minister of Justice Dr Ewald Bucher taken over from his predecessor the duty of correcting Adenauer in public. On this occasion too suspicion was aroused that treason had been committed, only the investigations were not directed against *Der Spiegel*. The object of denials (by Adenauer) and confirmation (by Bucher) was an article in *Spiegel* about whom it was that the Supreme Penal Court, without knowing it, had been investigating for years regarding an act of treason.

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This was the cause of the proceedings. At the end of August 1962, an American journalist, Julius Epstein, had published "a documentation of the origin of the German-American rift" which was obviously based on knowledge of at least four secret reports sent from German Embassies to the Foreign Office in Bonn.

The article showed that the Kennedy-Rusk administration and the Khrushchev-Gromyko team had commenced negotiations for the relief of tension in Central Europe. Both parties appeared to be prepared, as the price of calm in Berlin, to accept a solution which included the recognition of the present East German frontier (the Oder-Neisse Line), and the setting up of a militarily weakened zone in Central Europe, principally therefore in the German Democratic Republic and the Federal Republic.

The American N.A.T.O. Ambassador, Thomas K. Finletter, asked the German Ambassador to N.A.T.O., Gebhard von Walther, what the attitude of the Federal Republic would be towards such an arrangement. As a consolation prize, a strict American rejection of the somewhat blackmailing Soviet proposal to regroup the Four-Power responsibility for Berlin was mentioned. The Soviets envisaged East Berlin going to the German Democratic Republic and West Berlin being controlled in future by the Four conquering Powers, including, in this way, the Soviet Union.

It was a bitter experience for the Federal Republic that the Kennedy Administration was thinking of obtaining the elimination of tension at the expense of its most loyal ally in Europe, the Federal Republic. The premature publication of a detailed account of the diplomatic activities concerned with this objective appeared, however, to meet the conditions from the judicial angle to support a charge of treason — the betrayal of State secrets, the passing on of which is tantamount to harming the Federal Republic. Dr Gerhard Schröder, the Foreign Minister, therefore laid information, and the Attorney General's office opened an investigation into who could have betrayed State secrets to the American

journalist Epstein. It was not considered expedient to summon Epstein for violating German State secrecy. On the other hand, the German who informed him of these secrets would be liable to imprisonment.

For three years the Attorney General's office endeavoured to find out where the leakage had occurred in the Foreign Office organisation. They interrogated almost the entire staff of the German N.A.T.O. Delegation in Paris, members of the German Embassy in Washington and even a large number of junior officials of the Foreign Office.

It was only at the end of July, 1965, however, when the investigations directed against unknown persons had been stopped, that *Der Spiegel* published in detail what it had already hinted at in a fairly open manner when the proceedings were opened: the prisoner sought was Adenauer who was at that time still the Federal Chancellor.

Adenauer therefore resolved to use the only means open to him against the American-Soviet plans, namely to make the object of these negotiations prematurely known. He allowed the reports of German diplomats to reach the former General Julius Klein, who runs a public relations office in the United States which, on occasion and on the instructions of the Federal Chancellor's office, effects propaganda in Germany's interests.

The American journalist, Julius Epstein, was under contract for some time with this office. About two months after he had left Klein's office, Epstein published his story.

That the Federal Attorney General's office stopped its investigations directed against unknown persons when it discovered how well known the unknown person was, is not due to unreasonable reverence to a monument of German post-war policy but legally quite correct.

The German Penal Code, it is true, defines State secrets as facts "the keeping secret of which from a foreign Government is necessary for the well-being of the Federal Republic" and calls those persons traitors who "openly publish" such a State secret. Both applied in the case investigated.

On the other hand, the Constitution lays down that the Federal Chancellor shall determine "the guiding lines of policy". In doing so it is, however, left to his free decision whether to publish State secrets or not. A State secret which he intentionally reveals to further his policy can no longer be considered a State secret from the penal point of view which defines State secrets as those that must be kept for the well-being of the Federal Republic. Politically, a discussion of the advantages and disadvantages of such a revelation is possible. From the penal point of view, the revelation of a State secret by the Chancellor lies within the scope of his authority to lay down the guiding lines of policy as contained in the Constitution and is therefore not an offence open to prosecution. On the contrary, the Secretary of State of the Ministry of Justice, Professor Dr Arthur Bülow, stated to *Der Spiegel*: "What looked like treason was, in fact, an act of patriotism."

Nevertheless, former Federal Chancellor Adenauer, at present leader of the strongest party in Germany, immediately had the *Der Spiegel* publication contradicted by his office. He, it was stated, never handed over secret documents to General Klein's office.

Ewald Bucher, Minister of Justice in Adenauer's last and Erhard's first Cabinet, acted as though he knew nothing of this declaration. During his period of office, the long and difficult investigations by the Federal Attorney General's office against unknown persons, based on the denunciation by the Foreign Minister, Mr Schröder, had taken place.

"The really painful part of the matter," so Bucher said, "is to be seen in the fact that Adenauer calmly watched the Federal Attorney General's office carry on investigations which lasted for months and years against a large number of officials and employees of the Foreign Service down to comparatively subordinate persons."