

German court authorizes police dragnets

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In the aftermath of the September 11 attacks in the US, a German court has now declared the use of controversial police dragnets as a legal means of fighting terrorism. According to information from the *Deutschen Presseagentur* (German Press Agency) the Administrative Court in Mainz justified its decision by saying that the “present and substantial danger” foreseen by the legislature existed following the terrorist attacks in New York and Washington.

The Mainz court thus contradicted the decisions of courts in Wiesbaden, Berlin and Düsseldorf. In these courts, the judges had concluded that the prosecuting authorities had not been sufficiently concrete in showing there was an acute danger of terrorist attacks justifying the use of a dragnet.

Just one week before the court in Mainz rendered its decision, the regional court in Düsseldorf ruled that a dragnet to scrutinise 5 million inhabitants in the state of North Rhine-Westphalia was illegal, as far as it concerned German citizens. The Düsseldorf court argued that it would be sufficient “to limit investigations to those persons, who were nationals of a state considered by investigators to be suspicious, were born there or were followers of Islam.” Only these circumstances, the court claimed, gave rise to any likelihood that danger may arise.

While the court thus declared that the routine examination of 5 million Germans was illegitimate, it had no objections to the further examination of 11,000 persons of Arab origin or those who followed Islam, and rejected the legal complaints of a Jordanian student from Munster and a Moroccan student from Duisburg. The nationality of these two students, the court argued, meant the actions of the prosecuting authorities against them were legal.

The openly racist undertones of the judgement unleashed ferocious criticisms. Student representatives from throughout Germany accused the Düsseldorf court of legitimising the “racist special treatment” of young foreigners. The judgement allows the state authorities to place all foreigners who follow the Islamic faith under the “general suspicion of terrorism”.

Anita Susek, chairwomen of Munster University’s student body, which supported the complaint of the Jordanian student, said of the judgement: “What has happened is

exactly what we always warned about.” The discussion after September 11 had “racist undertones” and “the judgement now goes in the same direction,” she said.

William Achelpoehler, an attorney from Munster who represented several others filing complaints before the Düsseldorf court, expressed harsh criticism of the court’s decision and of the authorities’ methods of investigation in North Rhine-Westphalia. Achelpoehler told the *Sueddeutsche Zeitung* it was “outrageous” that the court spoke of the “situation being similar to a state of emergency” that prevailed in October last year in Germany, whereas both the state and federal interior ministries had denied there was any concrete danger at that time. Moreover, it was “highly questionable” to link all Muslims to this alleged terrorist danger.

Several politicians criticised the judgement for the opposite reason, because it had not unreservedly confirmed the practices of the prosecuting authorities. North Rhine-Westphalia Interior Minister Fritz Behrens, a social democrat, said: “It could well be the case that persons of German nationality were acting as Islamic terrorists. Before launching the dragnet, investigations had shown that many universities had no information in their records about students’ nationality, country of birth and religion. Therefore investigators had approached the residents’ registration office to obtain information about all men aged 18 to 40 to be included in the dragnet. One could not afford any gaps.” Behrens announced there would be no change in investigators’ methods, despite the court ruling.

As a result of the court decisions in North Rhine-Westphalia, Berlin and Hesse, Heiner Bartling and Manfred Puechel—social democratic interior ministers in Lower Saxony and Saxony-Anhalt—demanded their own states amend their laws to make a continuation of the dragnets possible. The recent Mainz judgement has clearly strengthened the actions of the prosecuting authorities.

In a telephone conference immediately after the terrorist attacks in New York last year, state and federal interior ministers agreed on implementing an extensive dragnet, which exceeded all past state monitoring actions and abrogated data protection legislation for a large part of the

population.

The core of the police and secret service operations was the search for so-called “sleepers”. By this, the prosecuting authorities mean above all students taking scientific and technical courses, who are of foreign origin and follow Islam, and who are characterised by many years of inconspicuousness. According to such official definitions, any innocent person could be a sleeper, who is then “activated” to undertake terrorist actions.

The countrywide dragnet, which was launched October 1 immediately after the interior ministers’ telephone conference—or even beforehand in the case of Hamburg—is unparalleled.

Since it was launched, in Berlin some 58,000 sets of data records have been compared, which revealed 109 as “critical”, but without any concrete suspicions. In Saxony-Anhalt, data about 1,292 persons was passed to the Federal Criminal Investigation Office in Wiesbaden for further examination. So far in Schleswig-Holstein, data about 333 people has been filtered out. The state criminal police agency in Bavaria wants to investigate 2,000 persons more closely after the dragnet there, which turned up no concrete suspicions about any so-called “sleepers”. In Hamburg, the dragnet has resulted in 140 students being asked to come to police headquarters to be interviewed.

In North Rhine-Westphalia, Germany’s most populous state, approximately 5 million people fell into the dragnet. Of 500,000 students examined, some 11,000 cases were filtered out for further checks and were passed on to the Federal Criminal Investigation Office.

The criteria applied to the dragnet were extremely wide-ranging. For example, in North Rhine-Westphalia, at the request of the chief of the police, the Duesseldorfer district court had instructed residents’ registration offices and universities, as well as the central aliens’ register in Cologne, to supply records of all men aged 18 to 40 years to police headquarters.

A special commission named “Working Group magnifying glass” then compared the various sets of records. This threw up some 11,000 people, mostly coming from Arab states, who are now to be examined by the different police departments for possible involvement in terrorist activities. The criteria for carrying out a dragnet vary quite considerably in each region, according to state laws.

From the beginning, the political justification for the dragnet revealed xenophobic undertones and encouraged the most backward and reactionary social elements to hurl insults at and even attack those of Arab and Turkish origin. It has also bolstered prejudice against followers of Islam. Rarely before has the state’s encouragement of anti-foreigner tendencies been so clearly demonstrated.

At the end of January, only a few weeks before the Duesseldorf judgement, it became known that ever since the last state elections in North Rhine-Westphalia, some two years ago, there has been no parliamentary control commission responsible for monitoring police and security service operations. The G-10-Commission, as it is also known, has not functioned because the social democrats and Christian democrats could not agree on the composition of this committee, which includes representatives of all the parties in the state legislature.

Consequently, the secret service in North Rhine-Westphalia has been able to plant bugs and listen in on telephone calls for one and a half years without any parliamentary control. For a whole period, and with an SPD majority, the state parliament has failed to establish a commission to examine the most sensitive intrusions into fundamental civil rights.

According to press reports, one bugging operation was extended five times—lasting 15 months from September 2000 until December 2001—without reference to the G-10-Commission, as is legally prescribed.

In a letter to the president of the state legislature, the chairman of the commission, which finally met for the first time a few days before Christmas, expressed his criticism of this omission. The letter talks of the “great surprise and displeasure” of the committee members. Guenther Wegmann, an attorney and the current chairman of the G-10-Commission, wrote that the manner in which the state legislature has dealt with basic rights is constitutionally questionable. He also criticized that at its first meeting the commission had felt “forced” to indicate its “retrospective agreement” to all the bugging operations carried out initially without the agreement of the parliamentary control commission.

It is not possible to conceive of a clearer expression of what can be expected from the much-vaunted parliamentary control of the secret services.



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