

Germany: expansion of DNA testing—a step towards genetic registration

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When observing the latest discussions by German politicians and the media about widening DNA testing, one is reminded of the techniques of conditioned reflexes and the experiments undertaken by the famous Russian scientist, Ivan Pavlov. Like the dog that automatically starts to salivate at a signal that food is present, the German political elite starts to drool each time a crime wins public attention in order to demand tougher laws and penalties and expand mass surveillance of the population. The recent murder of celebrity boutique owner Rudolph Mooshammer is a case in point. The police were able to quickly identify the murderer via a DNA sample, and now the use of DNA analyses is to be drastically increased by the authorities.

On the front line of this campaign are not just the regular law-and-order apologists from the Christian Democratic Union (CDU) and Christian Social Union (CSU)—like the interior ministers from Bavaria and Brandenburg, Günter Beckstein (CSU) and Jörg Schönbohm (CDU)—but also leading figures from the Social Democratic Party (SPD). Along with federal Interior Minister Otto Schily (SPD), the interior ministers from North Rhine-Westphalia and Schleswig-Holstein, Fritz Behrens and Klaus Buß, are all promoting a virtually unrestricted genetic registration of the entire population.

In two separate judgements in 2000 and 2001, the German Constitutional Court placed explicit restrictions on the recording of so-called “genetic fingerprints” of criminal suspects. These hurdles are now to fall by the wayside. The reservations of the judiciary and the restriction of genetic records to criminal cases are now considered to be obstacles by SPD and CDU/CSU politicians.

According to Otto Schily, “DNA analyses” should become “the standard for identification services during investigations.” A DNA test would thereby become the norm, together with “classic” fingerprints and photos. The genetic fingerprint would be conducted and saved—even for misdemeanours. In an interview on German radio, Behrens confirmed these plans: “I’m talking about every possible kind of crime, possibly even break-ins, when there is the danger of repeat of the offence.”

Behrens, Schily and the SPD speaker for national affairs in the Bundestag (parliament), Dieter Wiefelspütz, regard the juridical reservations as completely “superfluous.” Wiefelspütz explained to the *Rheinischen Post* newspaper: “The Federal Bureau of Criminal Investigation (BKA), which would be in charge of this data, is not a branch of the Mafia, but an organisation of the democratic constitutional state.”

The case of Mooshammer proved, however, that the authorities did not adhere to the prescribed regulations. The accused, Herisch H., voluntarily gave a DNA sample to the police years ago during a separate investigation in which he was not charged with any crime. According to the law, his test should have been thereafter erased and not handed over to the BKA. The state attorney in Munich, Peter Boje, belatedly justified the saving of this test, arguing there remained a “suspicion of a repeat offence”—a category that does even exist in jurisprudence.

The planned changes make it possible for the police to make arbitrary decisions about who should submit a sample for the purposes of DNA analysis. Not only could every thief, under the auspices of being a possible repeat offender, find his or her DNA analysis in the offices of the BKA, but also every participant in a demonstration who has been taken into custody by the police. In theory, the samples can be held forever, as time limits for samples are not envisaged by lawmakers. Up until now, the period has been regulated by the internal guidelines of the BKA, which specify that DNA data must be erased after 10 years if the person is no longer suspected of criminal activity. In the case of prisoners, their data has to be deleted on the day of their release.

Notwithstanding the fact that the CDU/CSU-led state coalition governments in Bavaria, Hesse and Hamburg want to introduce their own legal initiatives for the expansion of DNA analyses in the federal upper house of parliament (Bundesrat), their voices have been submerged in a chorus from the SPD government camp calling for more “security.”

The most reactionary forces in politics, such as Beckstein, Schönbohm and the prime minister of Hesse, Roland Koch (CDU), no longer have to push the SPD to the right. The latter have already taken up the policies of their one-time opponents. Fritz Behrens and Klaus Buß are running in upcoming state elections, and for them the debate on “internal security” has come just in the nick of time, allowing them to take the wind out of the sails of the conservative parties. However, even SPD chairman Franz Müntefering and German Chancellor Gerhard Schröder have in the meantime announced their support for the expansion of DNA tests.

The federal minister for justice, Brigitte Zypries (SPD), quickly abandoned her initial opposition, explaining that in principle she agreed with the measures, and announced the introduction of her own bill. According to a report by the *Tagesschau* on the public ARD television network, Zypries is aiming at “a secure, sensible use of genetic fingerprints” and demanded only that the reforms be used “in relation to investigation of a possible future crime.” This would give the police a free hand to arbitrarily carry out DNA tests that could be called up at any time on the mere suspicion that someone might carry out a crime sometime in the future.

The misgivings of Zypries are not based on concerns over the infringement of democratic rights, but rather on the fear that the German Constitutional Court could rule more sweeping changes to the “DNA Identification Law” null and void.

The initial reservations of the German Green Party about the massive attacks against individual liberties have also evaporated. Although the Greens originally argued that they saw no reason for new regulations, they have largely declared themselves ready to support the expansion of DNA testing. The party’s parliamentary speaker, Reinhard Bütikofer, explained that the Greens were essentially in agreement with expanding the catalogue of offences and overcoming juridical objections when the suspect “voluntarily” agrees to a DNA test.

It wasn’t so long ago, in 1998, that the Greens, then in opposition, were

vehemently opposed to the introduction of recording genetic data. At the time, a single criminal case—the murder of Christina Nytsch and the use of mass genetic tests during the investigation—was used to establish a DNA database at the BKA.

Privacy objections to the expansion of DNA testing are simply being brushed aside. Even concerns about errors and misrepresentations are not stopping the hardliners in leading state positions who maintain that the existing state of affairs is a hindrance to effective police work.

In fact, many current investigative procedures permit a DNA test at the same time as regular fingerprints are taken—without having to apply separately for legal permission. In some states, DNA samples are taken for minor thefts. There exists no legal restriction in this regard.

Moreover, Schily, Behrens, Beckstein and Co. argue that genetic fingerprints are no different than other identification methods already in place and would therefore not represent any reduction in individual rights. They reason that only the non-codeable part of the genetic information would be extracted for identification, making it impossible for any connection to be made to other personal characteristics.

The German Constitutional Court, however, sees it differently. They have made clear that the “ascertainment, recording and (future) use of DNA identification samples” encroach upon the “basic right of information privacy.” In other words: the DNA test goes qualitatively beyond the classic fingerprint.

Data-privacy representatives from around the country have also highlighted the fact that the non-codeable parts of DNA can enable one to determine various characteristics about a person, including gender, approximate age and ethnic origin, as well as some hereditary diseases. In an interview with the *Tageszeitung* newspaper, an expert from North Rhine-Westphalia, Bettina Sokol, warned against the weakening of restrictions for DNA testing: “A DNA analysis is similar to a house search or telephone surveillance in the way it represents an attack on basic rights.”

Schily’s argument loses complete touch with the facts when he claims that “the number of DNA analyses of citizens” would “be in the range of a tenth of one percent.”

In reality, the DNA analysis database at the BKA already contains almost 400,000 records, 85 percent of which are for known persons and 15 percent for unknown persons whose samples were taken at crime scenes. Every month, a further 4,000 records are added. In contrast, the current fingerprint records of the police number around 3 million. Should the use of DNA testing become the norm, it means that information on more than 4 percent of the German population would immediately be available to the authorities.

A data-privacy expert from Bavaria, Reinhard Vetter, warned in an interview with the *Tageszeitung* against a “highhanded expansion of data analysis.” He said this was just the first step towards the registration of the entire population. Such demands are already being explicitly made. The interior minister for Brandenburg, Jörg Schönbohm (CDU), proposed the recording of genetic fingerprints for every male living in Germany.

The public is being led to believe that DNA tests are preventive measures and will simplify investigation by prosecutors. During the politics evening talk show “Sabine Christiansen” on ARD, Günter Beckstein claimed that tens of thousands of crimes could be solved and hundreds of sexual crimes prevented. He was supported by such right-wing criminologists as Christian Pfeiffer from the Lower Saxony Research Institute for Criminology.

The preventive effect of genetic fingerprints is nothing but a pipe dream. Regular fingerprints and surveillance cameras can be avoided through the wearing of gloves and facemasks. Likewise, DNA traces can be made unusable through the littering of skin and feather particles and the hair of other persons at the crime scene. DNA analyses would not prevent any crimes; in the end it is not a preventive but rather a reactive instrument.

Furthermore, it enormously increases the danger of abuse by police authorities: misuse of data to the detriment of the defendant has already occurred in the United States.

It is not just the risks of false prosecution that make genetic fingerprints one of the most dangerous instruments in the arsenal of the investigative authorities. Their use also reverses the principle of presumption of innocence. Innocent bystanders who unwittingly find themselves at the scene of a crime could suddenly find themselves prosecuted by police due to traces of DNA they have left behind. Irrespective of the concrete circumstance, DNA analyses would be viewed as undeniable proof of complicity. An incorrectly accused person would then be in a situation of having to prove his or her innocence, in contrast to basic legal principles.

It will not be long before DNA tests are covered to include even the most minor of offences, with politicians and the media arguing that “new” criminology studies have shown that sexual and violent criminals commenced by committing lesser crimes.

Here too, an expansion of DNA testing would not change anything, let alone restrain violent criminal activity. Such knowledge has been already been known for decades; only the forms of investigation have changed.

Until the beginning of the 1970s, it was widely seen that specific social conditions—material want, an inadequate education system, poor social infrastructure and a bleak outlook for the future—were the main factors behind criminal activity. Such influences are increased manifold by the nature of the prosecution and penal system itself, which actually reduces the potential for rehabilitation. Based on these presumptions, concerns for rehabilitation were brought to the foreground in the treatment of criminals. It was during this period that theories emerged arguing that a comprehensive social policy was the best form of crime prevention.

The situation today is completely different. Instead of social causes, personal characteristics are made responsible for criminal pursuits. Such an argument logically leads to a biological portrait of humans, according to which social problems such as poverty, poor education, alcoholism and criminality are explained away as the consequences of specific gene deficiencies.

The demand for an extensive DNA database not only arises from this conception of humans, but is also designed to distract people from their own social grievances. The promise of a high rate of solved crimes with DNA analyses serves to divert attention from the social causes of crime. It is not the social system that produces poverty, crime, violence and brutalisation that should be viewed as sick, but rather the single “anti-social” individual, who, with the help of a central database, can be identified, registered and weeded out. However, humans are social beings, and it is absolutely absurd to look for abnormal behaviour like crime in genes.

Nor is it a biological reflex, like that of Pavlov’s dogs, that impels the ruling elite to call for more surveillance and attacks on democratic rights, but rather an attempt to retain their grip on power. At the same time that massive cuts are being made in Germany to social welfare, unemployment benefits, the education and health systems, and the entire infrastructure of society, in order to satisfy the appetites of the international finance markets, the ruling elite is prepared to hand out hundreds of millions of euros for the strengthening of the police, the construction of prisons and the establishment of a universal gene database to monitor and control the population.

To maintain control of enormous social problems, which are the product of the deepening crisis of the capitalist system, the German establishment relies increasingly on repressive and authoritarian forms of rule. The argument that violent crimes can be contained through a gene database is only the pretext used for the dismantling of democratic rights and the imposition of police-state measures.



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