

German secret service spies on journalists, employs Stasi methods

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Germany's secret service has systematically spied on journalists for years. The Federal Information Service (BND) not only used its own agents, but also other journalists who were paid to supply reports to the secret service and shadowed colleagues who investigated the work of the BND. The actions of the BND represent a massive assault on the constitutionally protected freedom of the press. Moreover, the BND, whose activities are strictly limited to foreign intelligence matters, has substantially exceeded its authority. The actions were ordered and covered up at the highest government levels.

An investigation by a former judge at the Federal High Court, Gerhard Schäfer, reported in the *Süddeutsche Zeitung*, raises serious criticisms of the BND. Schäfer's 170-page report, which was submitted to the Parliamentary Control Committee (PKG) meeting in secret last Wednesday, details some 25 years of persistent spying on selected journalists. In November 2005, the PKG ordered the former Federal High Court Judge to investigate the shadowing by the BND of Erich Schmidt-Eenboom, a journalist and editor at the news magazine *Focus*.

Schäfer's report casts a spotlight on the illegal intrigues of the BND, which far exceed the agency's powers, dispense with constitutional norms and stand outside all control. Schäfer repeatedly describes the practices of the secret service as "disproportionate" and "clearly illegal." He identifies a blatant "interference with press freedoms."

The report uncovers a dense network of BND informants and shadowing operations targeting various editorial offices, recalling the practices of the Stasi, East Germany's notorious state security agency.

A former *Focus* editor, named as "Wilhelm Di.," operating between 1982 and 1998 under the cover names "the silent one" and "Dali," received 653,000 deutsche marks for some 856 reports sent to the BND. Together with "Erwin De.," pseudonym "Bosch," he spied on *Focus* reporter Josef Hufelschulte. The two reported with whom Hufelschulte met, which contacts he had and trips he planned to make. In addition, Hufelschulte was shadowed by up to eight BND agents, who followed him into underground car parks and to the weekly market.

"I am deeply hurt," the *Süddeutsche Zeitung* quoted Hufelschulte saying. "I was simply doing my job, I committed no criminal offence. But the BND spied on me, and watched me as if I were a public enemy."

Focus also employed a journalist whose cover name was "Kempinski," who was paid a daily stipend of 350DM to procure turncoats for the BND from among journalists.

The BND's illegal shadowing operations lasted at least until autumn 2005. Until then, BND informer Uwe M. (cover name "Summer") spied on Andreas Förster, editor of the *Berliner Zeitung*, who had written a report on the shadowing of Schmidt-Eenboom. "Summer" is said to have been in the service of the spooks since 2002 and to have written several reports on journalists and authors of non-fiction books.

Other journalists are also thought to have been on the BND payroll.

In particular, journalists working for the news magazine *Der Spiegel* were shadowed by BND agents after the magazine had reported in 1995

on a plutonium deal set up by the BND itself.

With "Operation Hades" in 1994, the German secret service had sought to foment panic and expose a worldwide trade in weapons-grade plutonium. The results of an artificially created "successful investigation" were to be released just before federal and state elections to influence the political result. In the end, it turned out that the BND had arranged the whole deal itself and had transported 363 grams of highly poisonous plutonium on a passenger plane from Moscow to Munich, ignoring all safety precautions.

Schäfer found extensive internal material from *Der Spiegel's* editorial office, including details of the work contracts and redundancy payments of individual employees. The victims of this state spying include Hans Leyendecker, who moved in 1997 from *Der Spiegel* to *Süddeutsche Zeitung*, and *Der Spiegel's* editor-in-chief Stefan Aust, whose leisure activities were intensively watched by the BND.

Also in the sights of the BND was former *Stern* editor Wolfgang Kracht, who investigated the Elf Aquitaine affair and is now employed by the *Süddeutsche Zeitung*. Journalists from the *Hamburger Abendblatt* and the *Südwest Presse* were also under observation. In the case of Schmidt-Eenboom, in a form of guilt by association, all the journalist's visitors were placed under observation.

The cases that have so far been exposed in public represent only the tip of the iceberg. Schäfer also notes in his report that the BND has destroyed extensive amounts of material.

Charged with gathering foreign intelligence, there are strict limits on the BND's permitted domestic activities. According to the laws governing the activities of the BND, the agency may collect personal data inside Germany "to protect its staff, facilities, property and sources." But this means only the monitoring of its own staff, and not the permanent surveillance of newspaper editors who write about the BND. Moreover, journalists enjoy special legal protections because of the constitutionally enshrined freedom of the press. They may not be placed under surveillance by either the BND or the domestic secret service.

The BND was not only concerned with locating leaks but influencing reporting in the press. The shadowing was directly aimed at intimidating journalists. In addition, so-called "informal" BND agents were supplied with information in order to positively report on the work of the foreign secret service. The aim of the BND was to control the media as completely as possible, stifling any independent reporting as quickly as possible. This practice was supported in the highest places, and there are no grounds to assume it has been halted.

While for days there have been almost hourly new revelations concerning the "press informers affair," politicians have mutually sought to evade responsibility or push it onto subordinate former civil servants. Those at the top now proclaim their innocence, protest their ignorance and weep crocodile tears about the "errors" made by the BND.

A public spat about who was responsible has developed between Hansjörg Geiger, BND president from 1996 to 1998, and Wolfgang

Schmidbauer, the then secret service coordinator in the chancellor's office and today a Christian Democratic Union (CDU) parliamentary deputy.

It appears that Volker Foertsch was the person at the BND responsible for organising the spying on the media, who headed the department responsible for the BND's internal security since 1994. Foertsch had already given evidence in 1998 in the context of a preliminary investigation into the suspicion of espionage directed at monitoring journalists. According to the *Berliner Zeitung*, which has obtained a copy of his statement, Foertsch confirmed that at that time "he maintained contacts with some media representative, with the agreement of the management of the [secret] service." Foertsch is said to have stated, "the aim of this contact is to avoid damaging stories being published, and to find out where the various media obtain their information about the BND. In some cases this effort was successful."

What is disputed is upon whose instructions Foertsch engaged journalists as informers. According to the *Berliner Zeitung*, he was acting against the orders of the BND president at that time, Hansjörg Geiger, who was said to have forbidden any contact by the secret service with journalists on taking up his post in 1996. Foertsch is supposed to have received permission for collaboration with media representatives directly from Schmidbauer in the chancellor's office.

In a press release, Schmidbauer denied this version of events and threatened the *Berliner Zeitung* with legal action. He claims that in December 1996, Geiger had personally ordered "that a journalist be taken on by department 5 to find out about leaks at the BND." The chancellor's office was not informed about this procedure, he asserts.

For his part, Geiger refuted this account, and stated that he had neither arranged nor endorsed such actions, but merely "accepted" them. He pushed responsibility back onto Foertsch, and thus indirectly onto Schmidbauer. Foertsch is considered to be Schmidbauer's intimate. He is supposed to have bypassed his boss Geiger and had direct access to the responsible person in the chancellor's office.

The controversy between Geiger and Schmidbauer is so explosive because Schmidbauer was a close and trusted friend of the chancellor at the time, Helmut Kohl (CDU). Kohl would certainly have been interested in seeing that certain matters did not come to light in which the BND also had a hand. The suspicion always existed that the notorious "black funds," about which Kohl refused steadfastly to divulge any information, were bribes from the Elf-Leuna affair.

Hansjörg Geiger continued his career after 1998 under the Social Democratic Party-Green Party government, where he worked for seven years as an undersecretary of state in the Justice Ministry under an SPD minister.

Regardless of whether it was Geiger or Schmidbauer who was responsible, one must assume that the spying on journalists received support at the highest levels. After all, this was not a petty affair but a serious offence under the law governing the BND and represented substantial interference with the freedom of the press. All those involved must have been conscious of this. It is obvious that they sought to cover themselves with backing from within the government.

This also applies to the period when the SPD-Green Party coalition held government office. It is hardly credible that August Hanning, who headed the BND between 1998 and 2005, knew nothing about spying on journalists in November 2005 when the surveillance of Schmidt-Eenboom became known. The secret service coordinator with responsibility for the BND was at that time a minister of state in the chancellor's office, Frank Walter Steinmeier (SPD), who is now foreign minister. Steinmeier's former close collaborator Ernst Uhrlau was promoted to BND president last autumn.

Many prominent politicians have hypocritically wrung their hands in indignation about the spying directed against journalists. The chief of staff at the chancellor's office, Thomas de Maizière, stated that the freedom of

the press was one of the most prized possessions of democracy. "I expect the federal intelligence services to be particularly sensitive when dealing with this," he said. Others have gone on the counteroffensive, which suggests that similar practices will be continued in future.

Vice-government spokesman Thomas Steg simply called the intrigues of the BND "dishonourable attempts at infiltration" and even placed doubt over the report by Schäfer, adding, "If it actually existed." He left it in no doubt, however, that the SPD-CDU grand coalition government has no interest in submitting the practices of the BND to public scrutiny, referring to the competence of the PKG, which meets in secret and where the CDU is represented by one of the main suspects, former secret service coordinator Wolfgang Schmidbauer.

At a ceremony celebrating the 50th anniversary of the establishment of the BND, Chancellor Angela Merkel (CDU) also praised the commitment of secret service staff, saying that the work of the secret services should not be allowed to suffer from the work of a committee of inquiry. "We need our intelligence services. There is no alternative."

Interior Minister Wolfgang Schäuble (CDU) provided a vote of confidence in former BND presidents Geiger and Hanning. In the meantime, Hanning now works as an undersecretary of state in his ministry. Schäuble expressly defended the right of the BND to "ensure its own security using intelligence means." The BND should and must prevent a trade being carried on in material from within its own organisation. The interior minister saw "no danger for the freedom of the press" in the massive state surveillance of journalists.

Schäuble's utterances can only be understood as a call to continue with past practices. For years, the freedom of the press in Germany has been attacked using the argument that the spreading of confidential government material had to be prevented. Although journalists have the right to protect their informants, in recent times hundreds of editorial offices and homes of journalists have been searched in the hunt for government leaks.

Two years ago, the magazine *Cicero* was in the headlines when its report into Al Qaeda quoted from a confidential paper of the Federal Criminal Investigation Office. Schäuble's predecessor in office, Otto Schily (SPD), had justified a massive intrusion into the freedom of the press with the words, "The state has a requirement to protect its sphere." According to Schily, the freedom of the press is not a get-out clause that releases journalists from observing the criminal law.

The state authorities increasingly feel they can ride roughshod over democratic rights and the law. This certainly applies to the secret services like the BND, whose work is shielded from public gaze. In the last few months, it has become known that the BND supported America's illegal war against Iraq with its own agents located in Baghdad, and that BND officials have cooperated with Uzbek security agencies, benefiting from confessions extracted under torture. The exposure of the state surveillance and intimidation of journalists now shows that the BND does not shrink from breaking the law inside Germany.

The fact that the government has left the investigation of these practices to the PKG, which meets behind locked doors, shows that there is no intent to stop what the BND has been doing. Such flagrant disregard for constitutional rights should in fact be placed before a court with those responsible facing criminal charges.



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