

German government increases police spying powers

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Last Wednesday the cabinet of the German grand coalition government adopted a draft of the so-called BKA law. The law gives the BKA (Federal Bureau of Criminal Investigation) a wide range of powers to monitor and spy on the German population.

The federal agency, originally subordinate to the interior ministry and responsible for co-ordination between the different state police agencies, is being built into a huge apparatus capable of monitoring and controlling broad sections of the population. The strict separation of the German secret service and the police authorities, which was embedded in post-war German law on the basis of the bitter experience with the Nazi secret police (Gestapo) is also being done away with. The constitutional guarantee that police sovereignty is concentrated at a state level is to be junked in favour of an all-powerful, centralized federal police apparatus.

Democratic freedoms and fundamental rights are being swept aside by the grand coalition (Social Democratic Party, Christian Democratic Union, Christian Social Union) under the pretext of the “fight against the terrorism”. The draft is quite explicit in this respect. The bill reads: “The fundamental rights of the liberty of the person (article 2 Abs. 2 sentence 2 of the Basic Law), letter, post office and communications privacy (article 10 of the Basic Law) and the inviolability of the dwelling (article 13 of the Basic Law) are limited in accordance with this law.”

The bill permits the BKA to hack into private computers. Every time a selected computer goes online the entire contents of its main disk will be sent to the BKA (online search).

The BKA is also allowed to collect and store the personal data of selected individuals or entire companies from all public authorities. The data is selected on the basis of certain broad criteria. Internet providers and telecommunications companies will be required to store all connecting data for a half year and pass on such data to the police and secret services upon request. BKA investigators can then examine cell phone, e-mail and Internet data to determine when and with whom a subject established contact and which web sites he or she visited on the Internet.

Further measures, such as audio and video bugging are planned to facilitate the surveillance of suspects together with the deployment of undercover agents. To this end, BKA agents will be able to break into dwellings in order to install video cameras and microphones. They are also permitted to falsify documents. All of this takes place behind the back of the suspect who will only be informed later of the measures taken in exceptional cases.

Outlines of the new law have already been in circulation for the past year. In particular, the online investigation insisted on by Interior Minister Wolfgang Schäuble (CDU) was subject to debate within the government parties. Originally Schäuble had demanded that BKA agents be permitted to break into the dwellings of suspects in order to install special hacker programs on personal computers.

The SPD initially rejected online searches. In fact, the party was merely waiting for the result of a judgment by the country's Constitutional Court

permitting such online searches. The judgment by Germany's high court allowed the Ministries of Justice and the Interior to tighten the wording of the new law, to make it less open to legal appeals.

Now a suspect's computer can only be spied upon if there are “indications” that he or she is planning some sort of hostile attack. At the same time, the espionage software may only be installed on a domestic PC through e-mail or with the assistance of prepared Internet sites. The BKA is not allowed to break into a living room or bedroom—although such an action is not expressly prohibited in the new law. BKA agents may, however, secretly enter dwellings to hide mini-cameras and bugs. In such cases, it is impossible to check whether agents have also interfered with a suspect's computer.

All decisions to carry out monitoring must be approved by a judge. This is also merely a formality, since judges are ready to automatically sign such applications. At the same time, if the BKA concludes that such surveillance measures are urgently necessary, its agents can go ahead with their activities on the basis of receiving legal justification retroactively. If a judge then refuses to agree to the application, the BKA operation must be broken off.

Any stipulations that collected data be deleted after a certain period of time or in the case of misuse of the data by authorities are basically worthless, under conditions in which digital technology makes it possible to copy and transfer huge amounts of data within seconds.

The decision to undertake online investigations which fundamentally violate individual privacy can be made by just two BKA officials. The only people excluded from such espionage methods are clergymen, lawyers and parliamentary deputies — however, only in relation to their professions, and when they are not deemed a potential “terrorist threat”. Muslim clergy are categorically excluded from this protection.

Along with direct surveillance measures, the security forces also have access to a so-called “anti-terror file,” which has been systematically developed by the BKA since 1 March 2007. This file includes the private data of millions of innocent citizens and gives the security services unprecedented powers.

The BKA appointed 72 specialists to draw up the most comprehensive data base in German history. A total of 38 different authorities are accessed to the “anti-terror file”.

Alongside the BKA, other authorities with access to the data include the Office for the Protection of the Constitution, military intelligence, the Federal Information Service, the Customs Office, as well as state intelligence services and police agencies. All these authorities also draw up their own files which are then fed into the system.

Just one month after the system came into operation, a total of 15,000 files, spread over 334 data bases and 511 logs, had been collected in the “anti-terror file” by the police and customs officials.

It is already clear that such data is not restricted to terrorism suspects. In response to a question in parliament, a government spokesman noted that the anti-terror file included 1,018,815 entries related to DNA information

and 1,289,806 entries related to digitalized finger- and hand-prints.

The information assembled in the 15,000 files does not even include data from the 17 various Offices for the Protection of the Constitution (16 state authorities and one federal), the FIS (Federal Information Service) or military intelligence, which are all permitted to keep their own data secret.

According to a recent report in *Der Spiegel*, new technology is being introduced for such comprehensive monitoring at the central communications centre in Cologne, which is due to start operations in 2009. The new monitoring centre is to be used jointly by all of the various secret service agencies.

Alongside an enormous extension of its surveillance powers, the BKA is also being given extensive new police powers. It can authorise the secret observation of individuals by the police, take suspects into custody and record their identities via, fingerprints, photos, videos, bodily investigations etc. The BKA can also detain persons for “safekeeping”.

Critics have compared the newly empowered BKA with the American FBI, the Nazi Gestapo or the state security service (Stasi) of Stalinist East Germany. *Der Spiegel* compares the new central monitoring station in Cologne with the American National Security Agency (NSA) and the British spy centre Government Communications Headquarters (GCHQ).

There has been no such comparable institution in the post-war history of the German Republic — and for good reason. After the bitter experiences under the Nazi regime, one of the central lessons drawn by those who developed the constitutional basis for the post-war West German state was the necessity to ensure the strict separation of the secret service from the police, as well as allocating sovereignty over police operations to the country’s individual states. These measures were aimed at preventing the emergence of an all-powerful, central police authority.

The BKA was founded in 1951 in order to coordinate the work of the individual state police forces and undertake any necessary international policing tasks. The organisation was controversial from the start because of the high number of former Nazis in its ranks. In 1959, 45 of the 47 leading BKA officials had a past linked to the National Socialists, and no less than 33 were former leading figures in the Nazi secret police — the SS.

The BKA remained, however, relatively small. In 1965, its staff totalled 818. Its expansion began under the government led by Willy Brandt (SPD). For the first time it was allowed to independently carry out police investigations on behalf of the Chief Federal Prosecutor. Issues relating to international crime—drugs, weapons offences, forgery and terrorism—also fell into its competence. The attacks carried out by the Red Army terrorist group (RAF) played an important role in the development of the BKA, and by 1980 the number of BKA employees had increased fourfold to 3,339.

The agency grew further in the 1990’s. Following the dismantling of border controls in line with the Schengen treaty, the BKA was given responsibility for investigating border violations. It also represents Germany within the European Europol police agency and is responsible for coordinating with the police authorities of other countries.

Now armed with the powers to collect huge amounts of data, the BKA has become the central data collection point for the state police. The new BKA law represents a qualitative new stage in the creation of an enormous apparatus dedicated to surveillance and repression. The newest technology employed by the BKA makes a mockery of the GDR secret police, which assembled its information on thousands of cardboard files. The BKA is able to follow and supervise ever step, every movement and every word written and uttered by the individual under surveillance.

All of this is being justified in the name of the fight against terrorism, but in fact the German state has other intentions. In a society plagued by increasing social inequality and under conditions in which all of the established political parties have lost any sort of authority, the massive buildup of the state is primarily aimed at combating future social conflicts and the resistance to the government which will inevitably develop. That

is the real reason for the beefing up of the BKA.

This process was already evident last year during the G8 summit held in Heiligendamm. Peaceful demonstrators were systematically spied upon and intimidated. The sociologist Andrej Holm was even detained in prison for three weeks. He had come to the attention of the security authorities because he used vocabulary in his professional work which had also been used by an organisation connected with anarchist acts of violence. Following a meeting with acquaintances at which he failed to carry a cell phone (!) the Federal Prosecutor’s Office in Karlsruhe accused him of “membership of a terrorist organisation” and he was picked up and detained.

Initially, the new bill had been opposed by the opposition parties — the Free Democratic Party (FDP), the Greens and the Left Party.

Speaking on behalf of the FDP Gisela Piltz, described the BKA as a “super-spy authority”. Volker Beck for the Greens, deplored the “transformation of the BKA into a German FBI” and similar comments were made by two other leading Greens - party chair Claudia Roth and executive member, Malte Spitz. On behalf of the Left Party, Wolfgang Neskovic, said that the bill reminded him of “a central lesson from the experiences of the period of the National Socialists”.

In fact these criticisms by the main opposition parties are entirely hypocritical.

During their period in power between 1998 and 2005, the Greens supported all of the new security legislation introduced by Minister Otto Schily (SPD) following the 9/11 terror attacks. Those anti-terror laws commenced the process of dismantling democratic rights which the grand coalition is continuing today.

The “opposition” of the FDP and the Left Party is limited to criticism at a federal level, where they are in a minority anyway and cannot prevent the new measure coming into force. In those states where they play an active role in government, both parties have supported measures to beef up the powers of the police and intelligence agencies. Together with the CDU, the FDP led the way in introducing online surveillance in the state of North Rhine-Westphalia and sees no reason to reverse this measure — despite the recent judgement by the Constitutional Court.

At the end of November 2007, the Left Party, in alliance with the SPD in the Berlin Senate, also beefed up its state police law. At the heart of the measure is the expansion of police powers for video monitoring and surveillance of cell phones. In the vote over the controversial legislation, 74 parliamentary deputies voted in favour and 73 against. The vote was only carried because two Left Party deputies who had formerly criticised the measures then abstained in the actual vote. When its aid is needed, the Left Party also stands on the side of the state against the population.

Confronted with such a spineless “opposition”, Interior Minister Schäuble already has his next goal firmly in sight — the inclusion of fingerprints in identity cards. This would provide a state-controlled file of the fingerprints of all German citizens. The Interior Minister responded to criticism of this measure by pointing out that the former SPD-Green coalition government had paved the way for it. Schäuble is also intent on using data from motorway detection units in his campaign against “terror”.



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