Berlin police powers strengthened

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The changes agreed in late March to Berlin's "General Security and Public Order Act" (ASOG), strengthen the powers of the police and undermine fundamental civil liberties. They are another step on the government's road to a police state.

The first change concerns the automatic mass scanning of vehicle license plates, which is now permitted in Berlin. The plate number recognition cameras, which can be used both in mobile and stationary applications, read the license plates of all passing cars and compare them automatically with the databases of the police and the EU's Schengen Information System II. In this way, the identities of countless innocent people can be profiled utilizing almost no personnel.

The use of license plate recognition cameras, which are already used in various federal states, means the monitoring of the general population has taken on new dimensions. Since 2006, the cameras have been used on Bavarian motorways, where they collect eight million vehicle license plates monthly and forward these to a computer that compares them with the "INPOL" database.

The trigger for the rush in ruling circles for more and more comprehensive monitoring of the civilian population was the September 11, 2001 attacks. The dragnet introduced in Germany for so-called "sleepers" caught up many foreign students as so-called "terrorist suspects". Following an appeal made in 2006, the Supreme Court ruled that such measures were unconstitutional because no "concrete threat situation" existed.

The use of number plate cameras has also led to constitutional challenges, initially against the states of Hesse and Schleswig Holstein. In 2008, the Supreme Court also ruled in these cases that the "groundless" recording of plate numbers was unconstitutional. In Berlin, therefore, the cameras should only be used when "grounds" exist. But the police have been given broad discretion in defining such grounds.

The Supreme Court ruling has also been further softened.

In 2012, the Bavarian Administrative Court rejected an action brought by a motorist against the violation of his "fundamental right of informational self-determination". As a result of the error rate of the devices, the court viewed the mass collection of data of innocent people as a trivial matter without any fundamental relevance to democratic rights. The deterrent effect of mass plate number recording, however, was welcomed as a desirable outcome, e.g., "before participating in a demonstration".

In 2014, the Federal Administrative Court also rejected the same case. This higher court took the view that the constitution was not affected, because the captured data would be immediately deleted after adjusting for mismatches. Data acquisition through technical errors was also irrelevant here, the court ruled.

The Federation of German Detectives (BDK) is now demanding access to the motorway tolls database. In future, private companies might present another potential data source. License plates are automatically recorded in many German parking garages, camping site access roads and car washes, and on company parking lots. The cameras used to control modern traffic lights are technically able to capture license plate details and pass them on to a central monitoring station.

The second amendment in the Berlin legislation relates to preventive detention. So-called "preventive detention" authorizes the police to hold people on mere suspicion without a trial, and without an offence even being committed. The official claim is that the measure is used for the "prevention of crime". In Berlin, the possibility of using preventive detention was extended from two to four days. In other federal states it is

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usually higher, sometimes up to 14 days.

The European Court of Human Rights (ECHR) has always rejected this current German practice. Preventive custody without prosecution, or rather, imprisonment without trial are inadmissible, the ECHR says. However, in 2013 the court defended the detention for several hours of a German hooligan leader during a football match on the grounds that the measure served to enforce the norm of behaving peacefully.

The third important change concerns foreign missions by the Berlin police and missions by foreign police officers in Berlin. Using foreign police to provide support for the local police is standard practice. For example, this is the case for international football matches, official visits and other international events.

To date, foreign police officers were considered to be "observers", and could not make arrests or carry weapons. The use of French elite police officers during protests in 2010 against the transport of nuclear waste met with outrage. At least one police officer had raised his baton against demonstrators. Under the amended Act, this is no longer illegal in Berlin. This also applies to the use of arms by Berlin police abroad.

The changes to Berlin's police powers reveal a mentality that places so-called security needs above the protection of civil liberties. Even now, the government is authorized under the claim of "preventing hazards" to severely restrict the civil liberties of persons deemed to be "dangerous individuals", or to override them completely. This abrogates any presumption of innocence.

The mass "preventive verification" of car license plates, preventive detention or the exercise of police special powers in certain "risk areas" defined by the police themselves are also included. The federal government's new anti-terror law permits the withdrawal of passports on suspicion and prohibits travel to certain countries.

Attorney Udo Kauss, who led the constitutional challenges against the states of Hesse, Schleswig Holstein and Bavaria, and has again been involved since January in the mass plate number recording case at the Supreme Court, warns of a "one-sided fixation on the state interest in intervention". Fundamental democratic rights were thus being placed under "state reserved powers". No longer does the state have a duty towards its citizen, but, conversely, citizens have to undergo a permanent "security assessment".

The denial that the error-prone mass plate number scanning process represents any encroachment on fundamental rights, according to the lawyer, means, "with consistent implementation, that the state can, without legal basis and without any limitation, record and analyse information about human behaviour". That means the end of any privacy.

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