

European Court verdict no obstacle to UK state surveillance

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The European Court of Justice (ECJ) this week ruled that Britain's existing surveillance law is illegal. Portrayed as a "setback" by the media, the reality is that on December 30, this legislation will be replaced by new, even more authoritarian laws contained in the Investigatory Powers Act (IPA).

The ECJ ruled on a case, brought in 2014, challenging the UK's rules on data retention imposed under the Data Retention and Investigatory Powers Act 2014 (DRIPA). In July 2014, the then Conservative/Liberal Democrat coalition rushed DRIPA through as "emergency" legislation after the ECJ ruled that the existing European Union directive on data retention was invalid due to its being so sweeping that it interfered with individual privacy rights.

The ECJ's decision was taken in the wake of the growing public anger at the 2013 revelations by US National Security Agency (NSA) whistleblower Edward Snowden that the US, UK and other imperialist powers were carrying out unrestrained surveillance of the world's population.

Far from reining in their spying operations, the British ruling elite not only carried on as before but brought in new legislation to legalise their hitherto illegal activities. Under DRIPA, the Home Secretary was allowed to order communications companies to retain data for 12 months. This created a dragnet to capture the records of communications of everyone in the UK, including all emails, calls, texts and web activity and other correspondence. The data obtained under DRIPA was accessed by the police and by hundreds of other public authorities at will.

Around half a million requests were granted to access the data each year.

The government was challenged over DRIPA by two

MPs, the Conservative David Davis and Tom Watson, now deputy leader of the Labour Party. They were backed by other groups including Liberty, the Law Society, the Open Rights Group and Privacy International. In 2015, the High Court backed Davis and Watson, ruling that DRIPA was "inconsistent with European Union law" as it "does not lay down clear and precise rules providing for access to and use of communications data."

That ruling was appealed to the ECJ by the Conservative-led government.

The ECJ ruling has now declared DRIPA illegal as it allows "general and indiscriminate" retention of electronic communications. However, the judgment does not oppose the retention of data in principle, stating that under EU law member states can perform "targeted retention of that data solely for the purpose of fighting serious crime."

The court noted that the retained data under DRIPA "is liable to allow very precise conclusions to be drawn concerning the private lives of the persons whose data has been retained... Consequently, only the objective of fighting serious crime is capable of justifying such interference."

Referring to the Charter of Fundamental Rights of the European Union, the ruling states, "Such national legislation therefore exceeds the limits of what is strictly necessary and cannot be considered to be justified within a democratic society, as required by the directive, read in the light of the Charter."

All of this is true about DRIPA and applies even more so to the IPA, which received Royal Assent on November 29 and was described by the Open Democracy group as the "most sweeping surveillance powers ever seen, not just in the UK, but in any western European nation or in the United States."

IPA was the flagship policy of Prime Minister Theresa May when she was Home Secretary under the previous prime minister, David Cameron. With the expiry, due to a “sunset clause,” of DRIPA in December this year, IPA was advanced as its necessary replacement.

The IPA is an unprecedented attack on the rights and privacy of every UK citizen. It gives the security services the power to gather information on millions, and to process, profile and store the results. Internet Service Providers will be compelled to keep Internet connection records for 12 months for access by the police and state security services. Every arm of the state is free to raid the data of all citizens, including the domestic Security Service (MI5), the international Secret Intelligence Service (MI6), Government Communications Headquarters (GCHQ), the Ministry of Defence, the Police, Ministry of Defence Police, Royal Navy Police, Royal Military Police, Royal Air Force Police, the National Crime Agency and the Home Office.

The ECJ ruling has been sent back to the UK court of appeal, supposedly to be resolved in terms of amending UK legislation.

According to Richard Cumbley, partner at law firm Linklaters, “The provisions in the two laws are extremely similar so it is perfectly logical that the rationale will apply equally to the new [act], and it will have to be amended.”

Liberty made similar claims, while the *Guardian* headlined its article on the ECJ ruling, “EU’s highest court delivers blow to UK snooper’s charter.”

Given the UK governments record on stepping up—not relaxing—its mass surveillance dragnet in response to its illegal activities being uncovered, there is zero chance of any such retreat.

The *Financial Times*, long-time advocate of such powers being made law, noted that while, “Lawyers believe the ECJ’s ruling will force the hand of the UK government to amend the law and limit its remit... Large swathes of the Investigatory Powers Act will remain unaffected by the ECJ ruling... including the ability to ‘bulk hack’ citizens’ communications and force technology companies to create a backdoor into their products so that communications can be accessed.”

There is no constituency within the ruling elite—in the UK, Europe or anywhere else—for a defence of

democratic rights.

While the ECJ makes a token ruling against DRIPA, the constituent governments of the EU are up to their necks in the surveillance of their populations.

This month, WikiLeaks revealed 2,420 sensitive documents (90 gigabytes) relating to the burgeoning cooperation between the German foreign intelligence agency—the Bundesnachrichtendienst (BND)—and the spying agencies of the US.

Davis, the right-wing Thatcherite who has long posed as a defender of civil liberties, ditched the case against DRIPA as soon as he became a cabinet minister in May’s government in July. As Minister for Exiting the European Union, he will preside over the UK’s repudiation of the authority of the ECJ—the body which has just ruled in favour of his original challenge!

An even more hypocritical stance was taken following the ruling by Labour’s Watson. He stated, “Most of us can accept that our privacy may occasionally be compromised in the interests of keeping us safe, but no one would consent to giving the police or the government the power to arbitrarily seize our phone records or emails to use as they see fit. It’s for judges, not ministers, to oversee these powers.”

The line about “judges, not ministers” is a cynical diversion to conceal the fact that this is exactly what Labour has just signed up to in supporting the IPA and ensuring its passage through both Houses of Parliament. As May sought support for the legislation, Labour’s then-Shadow Home Secretary Andy Burnham solidarised with the Conservatives, saying parliament “must give them [the police and security services] the tools to do their job.”



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