

Germany: Public prosecutor drops investigation into NSA spying

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The massive spying operation on German citizens and millions of innocent people carried out by US and British intelligence agencies, together with the German Federal Intelligence Service (BND), will have no legal consequences. The Federal Prosecutor General dropped the investigation last week.

The surveillance practices of the secret services were disclosed four years ago by former CIA contractor Edward Snowden and were headline news in Germany for months. Now the Federal Prosecutor General has justified the end of the investigation in a statement of only two paragraphs.

It states that his own investigations, as well as those conducted by a parliamentary committee of enquiry into the activities of the National Security Agency (NSA), “have provided no reliable evidence for activities aimed against the Federal Republic of Germany by an intelligence agency (§ 99 of the penal code) or any other criminal offences.” There was no evidence that “US or UK intelligence agencies systematically and massively monitored German telecommunications and Internet traffic.”

This is an obvious lie. The huge amount of data made public by Edward Snowden, plus additional research by journalists and the parliamentary committee of enquiry launched in March 2014, uncovered a wealth of material documenting illegal and massive surveillance. And this despite the fact that the work of the parliamentary committee was hampered by censored and falsified files, missing statements and numerous other forms of harassment, including the spying on the committee itself.

It has been substantiated that the NSA, over a period of 10 years, stored more than 10 million Internet data units and 20 million—on some days up to 60 million—phone calls a day from Germany during its Eikonal operation. Along with spying on millions of innocent citizens, the collected data was used for economic espionage and the

monitoring of high-ranking European politicians.

However, the NSA did not have to use secrecy or force to gain access to the German telecommunications networks. This access was provided by Germany’s foreign secret service, the BND, which tapped phone lines, passed the data onto the NSA monitoring centre in Bad Aibling and worked closely with the US intelligence agencies in evaluating the data.

Even the approximately 800,000 selectors (IP addresses, email addresses, telephone numbers, etc.) examined by the BND over a period of 10 years and updated several times a day originated from the NSA. The data included information over high-ranking officials from the French government and the European Commission, as well as companies such as EADS (Airbus). Nevertheless, the BND passed the material onto its American partner.

According to a report in *Zeit Online* in May 2015, the BND captured 6.6 billion metadata a month and passed on up to 1.3 billion to the NSA. One hand washed the other. The BND, with the help of the NSA, was able to circumvent the constitutionally protected secrecy of telecommunications. In exchange, the US intelligence services gained valuable data. In October last year the Federal Constitutional Court effectively gave its blessing to this practice by deciding that the German government did not have to hand over the selector lists to the parliamentary committee of enquiry.

The German government not only knew about the illegal espionage activities of the NSA and BND, it supported them. In April 2015, the *Frankfurter Allgemeine Zeitung* cited documents submitted to the parliamentary committee of enquiry confirming that the German chancellor’s office knew that the NSA intended to spy on the populations of Germany and Europe, and let it happen. The *Bild* newspaper quoted one source: “They said, ‘We need information from the Americans, that’s how it goes, we do not want to endanger our

cooperation.”

It is against this background that one has to judge the dropping of all charges by the Prosecutor General. There is no genuine separation of powers at the highest level of the German judiciary. The Prosecutor General himself states on his official web site: “The Federal Prosecutor General at the Federal Court of Justice is not part of the judiciary. Organisationally, he belongs to the executive.” He is a “political official” who must fulfil his tasks in accordance with the views and objectives of the federal government and can be placed in temporary retirement at any time without further explanation.

This means that, in this case, the German government, which controls both the secret services and the Prosecutor General’s office, is investigating itself. There is no democratic control. The secret services which, in terms of organisation and personnel, have their roots in the corresponding bodies of the Nazi Third Reich, represent a state within the state. Even parliamentary committees only receive access to material which the executive permits.

The Prosecutor General does not regard its duty to be the investigation of legal and constitutional violations by the secret services, but rather to cover up for them. This has already been demonstrated during the trial in Munich of the neo-Nazi terror gang, the National Socialist Underground (NSU), in which the Prosecutor General is leading the prosecution.

During the four-and-a-half year trial, all sorts of minor details relating to the personal life of the main defendant, Beate Zschäpe, have been thoroughly investigated. But all attempts by joint plaintiffs to shed light on the role played by intelligence service agents and informers and the police in the activities of the NSU were ruled as inadmissible by the Prosecutor General.

Although it is now clear that more than two dozen informers and undercover agents were operating in the environment of the NSU, in its concluding plea the prosecutor’s office dismissed accusations that such agents had played an active role in the construction and cover-up of the NSU as “unfounded speculation by so-called experts” and “will o’ the wisp” fantasies.

The NSA-BND scandal has already had consequences for the federal government and the German parliament. They have now created a legal basis for what were up to now illegal espionage operations. In June and October 2016, they expanded the powers of the BND. It is now permitted retrieve all data from telecommunications networks with international traffic, also inside Germany.

The web site Netzpolitik.org commented: “The most important consequence is that all the illegal practices of the BND, which have come to light through the work of the parliamentary committee, have been subsequently legalized. The BND now has many more opportunities and money to expand its mass monitoring.”

The secret services, which hitherto shunned publicity, now feel emboldened to undertake a public relations campaign. Last week the heads of the BND, the Federal Agency for the Protection of the Constitution (domestic security, BfV) and the Military Intelligence Service (MAD) jointly addressed a public meeting of the German parliamentary control board. After answering some questions formulated in advance, they all demanded more powers.

Their catalogue of demands includes easier access to messenger services such as WhatsApp or Telegram, the capacity to “hack back” (i.e., cyber attacks), etc. BfV chief Hans-Georg Maaßen also requested access to IP addresses from people who watched videos from certain foreign servers. BND President Bruno Kahl and his MAD colleague Christof Gramm reported a job growth of 10 percent in their agencies.

Echoing Maaßen, Kahl complained about the lack of legal cover for certain IT operations, which are “technically possible”: “When the reconnaissance is completed to the point where hostile structures and causes are identifiable, it would make sense to shut down the source of the attack.” In addition, the BND still needed judicial approval to deploy trojans to conduct telecommunication monitoring and online searches, a power recently approved for the police.

The massive tooling up of the secret services has long since shattered the framework of democratic norms and legality and increasingly assumes the form of an authoritarian police state. This is an international phenomenon that can be observed in all developed capitalist countries—in the US, France and, most recently, Spain. It can only be understood as the reaction of ruling elites to the profound crisis of capitalist society. The ruling class is preparing to forcibly suppress all social and political opposition.



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