UK High Court rules in favour of spy agencies

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The mass surveillance of the UK population has been legitimised by the High Court in a ruling against a suit brought by Liberty, the civil rights organisation. Liberty sought changes to the Investigatory Powers Act (IPA, known as the Snoopers Charter) to reduce the ability of the secret services to carry out mass surveillance.

The ruling last month by Lord Justice Singh and Mr Justice Holgate rejected the challenge by Liberty.

Since the introduction of the IPA, the UK has already become the surveillance capital of the world's developed countries. It is now legal for state agents to hack into large numbers of electronic devices, without any grounds for suspicion, on the say-so of judges (given the title of Judicial Commissioners).

Liberty, supported by the National Union of Journalists, argued that such "bulk powers" were incompatible with European human rights law, due to the lack of adequate safeguards against abuse of powers to access the private data of innocent people.

In a preliminary hearing, Liberty stated that documents disclosed to it by the government showed that MI5 has engaged in "extraordinary and persistent illegality" in the way it retains personal data obtained under the IPA.

Lord Justice Singh and Justice Holgate dismissed the claim, ruling that "the totality of the suite of interlocking safeguards" meant the Act did not breach human rights law. The judges added, "We have reached the conclusion that the safeguards in IPA are sufficient to prevent the risk of abuse of discretionary power and the Act is therefore not incompatible with the European Convention on Human Rights on the ground that it does not comply with the concept of law."

In June, Liberty's barrister, Martin Chamberlain QC, outlined the scale of surveillance the IPA allows. It "provides for a wide expansion of 'bulk' secret surveillance powers," which "permit the interception or obtaining, processing, retention and examination of the private information of very large numbers of people—in some cases, the whole population.

"They also permit serious invasions of journalistic and watchdog organisations' materials and lawyer-client communication."

Over the course of the hearing, MI5 said it had even lost control of how it stored the mass surveillance data it had collected. The intelligence agency admitted that there were "ungoverned spaces" on its computers in which it was not sure what was stored.

MI5 kept its illegal behaviour secret for three years, meaning that it has never complied with the meagre restrictions applied to it in the IPA. During that period, it applied for—and received—authority to carry out an undisclosed number of warrants for mass surveillance. The judges referred to this in their final ruling but without describing it as illegal, quoting a summary that MI5 had "inadequate control over where data is stored; [REDACTED]; and the deletion processes which applied to it."

It was revealed in court that the spy agencies may collect, store and use data related to communications between journalists and their sources, with (in the words of the challenge to the IPA by Liberty) "an absence of effective safeguards relating to material which was subject to legal professional privilege."

The judges claim that so long as this is not the primary aim of the mass surveillance, it is to be considered acceptable—as if MI5 would admit that its motives were not honourable!

One has only to imagine how the learned judges would respond to any other defendants in the dock who justified their actions in the same way as MI5, highlighting their total disregard for the rights of the millions of people being spied on, with their data harvested and kept illegally.

One explanation for the admission by MI5 that it is

acting outside the provisions of the IPA is that it is providing itself with an insurance policy against any future leaks. The ruling effectively allows it to brush off its illegal behaviour as a temporary problem that was recognised and fixed. Meanwhile, the court can play its prearranged role, publicly telling MI5 to mind its behaviour while allowing it to carry on without so much as a slap on the wrist.

The ruling declared, “We should stress that we do not under-estimate the seriousness of the matters which have been raised on behalf of the claimant as a result of the recent disclosure of documents.”

But this was just the preamble to giving MI5 a clean bill of health: “We are not persuaded that the evidence which has now been made available to the court in fact proves that the safeguards created by IPA are insufficient to prevent abuse of the powers under challenge,” the judges state.

The ruling declares that “now this problem has been ventilated, MI5 appear to be using every endeavour to correct the failings of the past and to secure compliance.”

The surveillance state apparatus is growing ever more massive and at an accelerating rate, with powers that would have made the Stasi in Stalinist East Germany green with envy.

The claim of Conservative Home Secretary Sajid Javid that the breaches of the IPA “do not relate in any way to the manner in which MI5 acquires information in the first instance or the necessity and proportionality of doing so” is a lie.

Not only is MI5 collecting data on millions of people without having any trace of suspicion against them, it is also storing that data in an uncontrolled way. This raises many questions relating to who gets access to the data, whether it is copied, and whether and when it gets deleted.

While it is right to point out the flagrant disregard of European Union (EU) legislation—under which the UK is bound until it exits the bloc—which states that EU citizens have a right to privacy, no confidence should be placed in the institutions of the EU to protect the rights of 500 million people who populate its member states. Although the UK is out in front, as part of the Five Eyes global network in alliance the US, Canada, Australia and New Zealand, when it comes to use of mass surveillance the EU countries are all moving in the same direction.

In a statement replying to the ruling, Liberty said, “We will challenge this judgment in the courts, and keep fighting for a targeted surveillance regime that respects our rights. These bulk surveillance powers allow the state to hoover up the messages, calls and web history of hordes of ordinary people who are not suspected of any wrongdoing.”

Any policy, such as that outlined by Liberty, limited to pressuring the state into retracting its claws flies in the face of all known facts and experience. The High Court ruling shows the extent to which the various institutions are going to *expand* their powers, not narrow down their use.

The requirement of the ruling elite for mass state surveillance must be understood in the context of preparation for mass repression amid growing class tensions. The High Court ruling testifies to the fear of the ruling elite to the emergence of a mass movement of the working class in opposition to austerity, militarism and war.