

The telecommunication data retention

With January 1st of 2008 the Federal Government of Germany has introduced the systematic logging of the telecommunication behaviour of the whole population - independent of suspicion. With the mobile phone use the respective location was also held on. Then from beginning of 2009 all connecting data of the use of the Internet were also being logged.

In the name of the crime fight it should be grasped and be stored who has been in the contact with whom during the last six months by phone, mobile phone or e-mail.

The data retention offends against the basic right on private sphere and informational self-determination and deeply intervenes in the secrecy of telecommunications (article 10 of German Constitutional Law).

The data retention affects confidential professional activities (medicine, church, right, journalism), but also political engagement and enterprise-activities. It offends against the principle of a state under the rule of law of the innocence supposition and can be avoided by criminals easily. She is expensive and loads the economy and consumer.

With this conviction more than 34,000 people got together and wrote the participation-strongest constitutional complaint of the German legal history – against the legal basis of the data retention.



And they got right: The German Federal Constitutional Court condemned the data retention in March 3rd 2010 in her practise as unconstitutional and declared his legal bases null and void.

Recently german conservative politicians kick a media campaign off to build up pressure and to move in addition the public in order to introduce the telecommunications data retention as quickly as possible again.

The German Federal Constitutional Court to the telecommunication data retention



In its judgment from the March 3rd of 2010 the German Federal Constitutional Court in Karlsruhe has condemned the regulations of the telecommunication data retention as unconstitutional.

In the judgment it says that such a data retention is to be agreed only under special editions with the German Constitutional Law.

The court judged as follows:

- A data retention independent of suspicion of the communication data of all citizens is an especially heavy intervention in secrecy of telecommunication.
- The accumulated data admit conclusions on the personality of the people and, hence, can affect her private sphere.
- The court refers to the manifold abuse possibilities of such a compilation of data and requires the conversion of the highest standards for the protection of the data.
- The hurdles for the access to the accumulated data are too low in the available legal regulations: Only with serious criminal offences data-access should be allowed.
- „Effective transparency regulations“ are demanded, so that the people are not hindered by the feeling of "diffuse intrusion into privacy" in the development of her personality.
- Any data abuse must be able to be booked with sanctions.
- All up to now accumulated data had to be extinguished with immediate effect.

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Telecommunication data retention in Germany

Revival of an inefficient and unreasonably hazardous concept?

„The state must do everything to protect his citizens!“ - Must it?

We opine: No.

We have nothing against the fact that the police tries to find delinquents according to valid right and to get them to a fair hearing.

It is our belief that thinking, it is according “the state“ to protect "his" citizens completely against 100% risks of life, is a lapse.

There is no fundamental right on security!



A society which must submit to varied supervision measures loses its innovation ability.

The dignity of the person and his fundamental rights anchored in the basic law lose their meaning and character if the free development of the personality is affected.

„can a state generally have an image of the ideal citizen? where from does it know how the right citizen has to think and has to do and in what his security is consisting of?

a state doesn't have any intelligence, at most interests. and he has so many citizens as he has inhabitants. 'the citizen' in itself doesn't exist. that's a flowery phrase, excellently suitable to distract from the topic, namely the single citizen of the federal land.

every citizen is an individual, has its own agenda and lives his own life, alone, together with others, in a community, his life exists from action, behaviour, but not in conforming to laws. the law-obedience is essential for community, however, it is no aim in life. every citizen develops its existence on its own way.“



(otl aicher - philosoph, designer, furthermore member of the "white rose", 1988)

The "safety-gap" campaign of german conservative parties

The Federal Constitutional Court did not demand the reintroduction of the telecommunication data retention.

And by no means the underlying EU directive looks so compelling as some politicians show this: There are 68 other clinging breach of contract procedures against Germany whereof nobody really gets excited about. Moreover, Germany has the right to deviate for reasons of the protection of its Constitutional Law from such a directive without having to fear a breach of contract procedure.

Nevertheless, in October 2010 german conservative parties began a media campaign with which they try to influence the public opinion. Within the scope of this offensive the politicians invented the new campaign concept of the "gap of safety".

To elucidate heavy criminal offences police there wouldn't be any other way than the immediate reintroduction of telecommunication data retention.



Besides, the police criminal statistics of 2009 books exactly the opposite: the elucidation rate of internet criminal offences of all branches was (also with the pursuit of child-pornography-actors and -traders) in the times of the data retention **lower** than at times without data retention. Exactly the other way round it had been predicted by all advocates over and over again!

And even the German Federal Criminal Police Office ("BKA") is not a pity to provide pseudo-scientific arguments for the support of the data retention advocates with the help of obviously specific indiscretions, to attend chronologically suitable to the media campaign.

The german jurist and specialist of police-law, Prof. Dr. Christoph Gusy, explains to it:
"Whether the cases enumerated by the Federal Criminal Police Office had been solved if one had the possibility for the data retention, no one knows at all."

And the specialist of media-law and judge in a higher regional court, Prof. Dr. Thomas Hoeren, means:

"The Federal Criminal Police Office list is the least serious what one can fancy."

The „AK Vorrat“ - What's that?

The "AK Vorrat" is one for everybody open group, which is independent from any political party. Its members met in 2007 with their common aim to initiate the constitutional complaint against german telecommunication data retention law.

We are against the full capture of the connecting data of all telephone calls, SMS, mobile phone connections, internet visits and e-mail-postings, **because:**



- We hold it for basically wrong that „the state“ mistrusts innocent citizens and supervises them so extensively.
- We fear that such a supervision measure has a bad influence on society and democracy. Many people will not dare any more to express themselves in talks with phone spiritual guidance, AIDS hotline or journalists openly and honestly.
- We are to the opinion that there can never be a 100% safety. Not with and not without data retention. The life is associated with risks and any “full-assurance-mentality” of some politicians may not come to a not reversable downsizing and degeneration of our fundamental rights many generations have been fought and worked for.

Get up, inform yourself critically and also from us independently and with this form your own opinion.

Get involved in the AK Vorrat – in local groups, on the internet in one of the numerous mailing lists on the most different subjects or by taking part or moving your own idea to draw the attention to the menace of the civil rights and human rights in Germany and Europe.

More informations:
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