

Data retention in telecommunication

On January 1, 2008 the Federal Government of Germany introduced the mandatory logging of the whole populations telecommunication behaviour regardless of any suspicion. With mobile phone communication also the location of the user is logged. Beginning with 2009 they started logging the connections to internet.

The need to store who has been in contact with whom by phone, mobile phones and e-mail for a duration of six months was justified with "fighting crime".

Data retention violates the human right on privacy und informational self-determination and deeply violates the secrecy of telecommunication as laid out in article 10 of the German Constitution. It affects professional activities which rely on confidentiality (health care, church, justice, journalism) but also political activism and business. It further violates the principle of presumption of innocence and is of little use as it can be circumvented easily by criminals. Furthermore it is expensive and is a burden to economy and consumers alike.



For the conviction against the legal basis of data retention more than 34000 people got together and participated in the largest - in number of participants - constitutional complaint in the history of the Federal Republic of Germany.

And they won: The German Federal Constitutional Court condemned the data retention law on March 3rd 2010 as unconstitutional and declared its legal basis null and void.



The German Federal Constitutional Court on data retention in telecommunication



On March 3, 2010 the German Federal Constitutional Court in Karlsruhe condemned the regulations of said telecommunication data retention as unconstitutional.

This conviction ruled that data retention is only possible under very special circumstances to be compatible with basic law (the constitution of Germany).

The court judged as follows:

- Data retention of communication data of all citizens regardless of suspicion is an especially severe breach of secrecy of telecommunication.
- The accumulated data allows conclusions on the personality of the people and hence can affect their privacy.
- The court refers to the manifold abuse possibilities of such a compilation of data and requires the realisation of the highest standards for the protection of the data.
- The obstacles for access to the accumulated data are too low in the available legal regulations: Only for serious criminal offences access to stored data should be allowed.
- „Effective transparency regulations“ are demanded, so that people are not hindered in development of their personality by the feeling of "diffuse intrusion into privacy".
- Any data abuse must be imposed with sanctions.
- The already accumulated data has to be deleted immediately.

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More information about the Working Group on Data Retention "AK Vorrat": www.ak-vorrat.de

Contact via e-mail: kontakt@ak-vorrat.de

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Responsible for this flyer (V.i.S.d.P.)
Michael Ebeling, Kochstraße 6, D-30451 Hannover,
micha_ebeling@gmx.de

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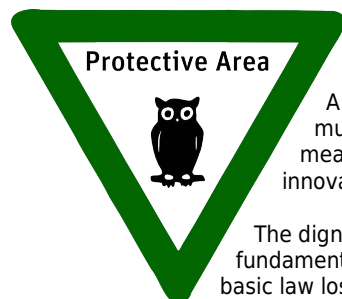


Data retention in telecommunications in Germany

Revival of an inefficient and unreasonable hazardous concept?

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

We are not against the fact that the police tries to find delinquents according with law and put them to a fair trial. But it is our belief that it is not the duty of “the state” to protect “his” citizens against all risks of life.



There is no fundamental right on safety!

A society which submits to a multitude of surveillance measures loses its ability to innovate.

The dignity of each person and its fundamental rights given to it by the basic law lose their meaning and intent

if free development of the personality is affected. The article 8 of the european charta for human rights says that everybody has the right to save the own data.

„can a state actually envision an image of a perfect citizen? how does it know what the perfect citizen has to think and to do and how can he be safe on it? a state posseses no intelligence, interests at most. and it has as many citizens as it has inhabitants. the citizen as such doesn't exist. it is a colorful expression, perfectly suitable to distract from the topic, namely each and every resident of a country.



every citizen is an individual, has its own agenda and lives its own life, alone, with others, in a community, but allways as a single person. its life consists of action, of behaviour, but not in the following of laws. obedience of law is essential for society, but it is no aim in life. Every citizen develops its life in its own way."

(otl aicher - philosopher, designer, furthermore involved in 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 does the underlying EU directive seem so compelling as some politicians describe it: There are 68 other pending cases of proceedings on breach of contracts against Germany which nobody makes a fuss about. In addition Germany has the right to deviate from the directive for reasons of protecting basic rights without having to fear a breach of contract.

Nevertheless german conservative parties started in october of 2010 a media campaign to try to influence the public opinion. Within the scope of this offensive the politicians invented the new campaign concept of the "gap of safety".

They declared there wouldn't be another way to elucidate heavy criminal offences if there wouldn't be an immediate reintroduction of data retention laws.



In contrast the criminal statistics of the police for the year 2009 show exactlt the opposite: the detection rate of internet criminal offences of all kinds was (also with prosecution of child-pornography-offenders and -traders) in times of data retention **lower** than during times without data retention. Exactly the other way round than it had been predicted by all advocates over and over again!

Even the German Federal Criminal Police Office ("BKA") is not to good to provide pseudo-scientific arguments for the support of data retention advocates with help of obviously specific indiscretions. And all this timed perfectly to support the media campaign.

The german jurist and specialist of police-law, Prof. Dr. Christoph Gusy, explains to this:

"Whether the cases enumerated by the Federal Criminal Police Office had been solved, if one had had the possibility of data retention, is unknown."

Specialist of media-law and judge in a higher regional court, Prof. Dr. Thomas Hoeren, says:

"The Federal Criminal Police Office list is the most dubious one can fancy."

The Working Group on Data Retention „AK Vorrat“ - What's that?

The "AK Vorrat" is a group independent from any political party. It is open to anyone. Its members met in 2005 with their common aim to stop the full logging of connection data of all telephone calls, SMS, mobile phones, internet use and e-mails **because:**



- We think it is fundamentally wrong that „the state“ mistrusts innocent citizens and supervises them extensively.
- We alert 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 hotlines or journalists openly and honestly.
- Our opinion is that Life is associated with risks and any “full-assurance-mentality” proposed by some politicians may not result in a not reversible downsizing and degeneration of our fundamental rights many generations have fought and worked for.

Act now!

Inform yourself critically and form your own opinion.

Get involved in AK Vorrat – take part in our actions or realise your own ideas to draw the attention to the menace to civil and human rights in Germany and Europe.

International mailinglist:
<http://listen.akvorrat.org/mailman/listinfo/akv-international>

More informations:
www.ak-vorrat.de

Contact via e-mail:
kontakt@ak-vorrat.de