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## **Reporters without Borders Germany sues German foreign intelligence agency BND over communications mass surveillance**

Reporters Without Borders Germany (RSF Germany) is taking Germany's foreign intelligence agency Bundesnachrichtendienst (BND) to court for breaching the secrecy of the organization's telecommunications. The lawsuit was submitted to the Federal Administrative Court in Leipzig yesterday, June 30, 2015.

RSF Germany accuses the BND of spying on the e-mail traffic of the organization with foreign partners, journalists and others as part of the agency's signals intelligence surveillance. This severely impairs the work of RSF and harms the interests of the organization. Many journalists from Germany as well as from authoritarian countries like Uzbekistan, Azerbaijan or China contact RSF regularly and communicate with the organization about confidential concerns and matters worthy of legal protection. The BND's communications surveillance practices, however, mean that these journalists can no longer rely on the assumption that these concerns will remain confidential.

### **Disproportionate Surveillance Practices**

According to the latest annual report of the Parliamentary Control Panel (the parliamentary committee in charge of watching over the work of Germany's intelligence agencies), in 2013 alone the BND scanned an estimated hundreds of millions of e-mail messages for key words as part of its strategic signals intelligence. The BND then determined more than 15,000 of these messages that were investigated in more detail. Among the main topics of RSF Germany's work are states like those of the former Soviet Union and of the Middle East. During the year in question, the organization was in close exchange with numerous journalists and civil society actors about questions such as the activities of various intelligence agencies. Based on what is publicly known about the search operators used by the BND, RSF Germany therefore has to assume that a significant number of its e-mail messages were gathered and subjected to closer examination.

RSF considers this monitoring practice as disproportionate and is convinced that it is not covered by the relevant German law regulating limitations to the constitutional secrecy of mail and telecommunications (G10 Law). Given this vast dimension of monitoring, RWB believes that the protection of journalists' sources is no longer guaranteed and that press freedom in Germany is under threat. Under these circumstances, the media can no longer fulfill its role as a pillar of control in a democratic society.

## **Mass surveillance has chilling effects on journalists and sources**

Journalists in Germany, as in other democratic countries, enjoy the privilege of being allowed to refuse to give evidence, including concealing their sources from investigating authorities. Furthermore, journalists' communications enjoy special protection in a democratic state. With its lawsuit, RSF Germany aims to reinstall this right of journalists.

Various studies have consistently concluded that in the face of mass surveillance journalists feel threatened in their work and that this has a chilling effect on the way they work. In some cases, informants have even shied away from contacting journalists because they fear that they will be exposed by intelligence services. Confidential sources and whistleblowers, however, are a fundamental condition for independent journalistic reporting in a democracy.

## **Strengthening credibility in the face of authoritarian states**

By submitting the BND's monitoring practices to the Federal Administrative Court's review, RSF Germany also aims to strengthen Germany's credibility in the face of arbitrary surveillance practices of authoritarian states such as China, Saudi Arabia or Turkmenistan. At the end of 2013, the UN General Assembly adopted a resolution on the "Right to Privacy in the Digital Age", which was co-initiated by the German government.

However, the German government faces an obvious credibility problem when trying to persuade other governments to better respect freedom of information while at the same time pursuing similar practices at home and spying on its citizens on a mass scale through the German intelligence services. German authorities should also implement the demands of the UN resolution in their own country and make sure that the Federal Intelligence Service respect German and international law.

## **Lawsuit is also directed against BND's meta data analysis system**

RSF Germany is therefore also taking legal action against the use of the traffic analysis system "VerAS" (Verkehrsanalysesystem) which the BND has been using to collect and processing the communications of German citizens since 2002. This has included the gathering of phone connection records, SMS short messages, e-mail messages as well as data about citizens' internet traffic and use of social networks. There is no legal basis for this type of data collection and analysis; therefore it must be stopped immediately.

Security authorities argue that "VerAS" helps them identify the relationships between terror suspects and uncover secret plans or entire networks. However, the method is being applied in a very far-reaching manner, meaning that it may encompass even journalists can be linked only indirectly and via up to four additional intermediaries to a terror-suspect. This results in the gathering of around 500 million meta data records per month according to the BND. Given this immense amount, it is highly probable that connection records of RSF Germany as an organization with a large amount of international communications have also been included in the program.

The protection of the privacy of correspondence, post and telecommunications is a universal and widely respected human right. Already in March, RSF and other civil society groups called for comprehensive control of the German intelligence services. Today we are repeating our demand that

there must be no surveillance without legal basis, neither in Germany nor abroad.

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