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Federal Constitutional Court limits "Data Mining" to combat terrorism - Kugelmann: put a damper on legislators and security authorities In its decision of December 10, 2020, the Federal Constitutional Court declared a provision of the Anti-Terrorism Database Act (ATDG) to be unconstitutional. The focus was on the conditions under which federal authorities in particular, such as the Federal Criminal Police Office, the Federal Intelligence Service and the Federal Office for the Protection of the Constitution, may access the data in the anti-terrorist database. The Federal Constitutional Court considers such options to be permissible. However, as the judges emphasized, these must be subject to high intervention thresholds. This has not been the case so far with one provision, Section 6a (2) sentence 1 ATDG, so that the Federal Constitutional Court has declared this provision void. The judgment has consequences for other regulations on the analysis of personal data for the purposes of averting danger and criminal prosecution, which represent an encroachment on informational self-determination.

The Rhineland-Palatinate state data protection officer, Professor Dieter Kugelmann, welcomes the decision as a clarification of the conditions for intervention: "Fighting terrorism is a legitimate and important goal. However, this goal can and may only be pursued in accordance with the constitution. It is important to keep the police and intelligence services separate: they are only allowed to cooperate according to clear and specific rules. The Federal Constitutional Court rightly emphasized that neither new neologisms nor good intentions can justify an excessive interference with the right to informational self-determination." The Federal Constitutional Court also makes it clear that qualified intervention thresholds cannot be replaced by being tied to a project that is intended to combat terrorism. Rather, it requires sufficiently specific dangers or a condensed suspicion of a crime. The court thus rejects efforts to soften or lower the intervention thresholds. The legislature is called upon to put intervention powers on a solid legal footing when it comes to cooperation in large file networks such as the anti-terrorist database. More than 40 German security authorities work together as part of the network. On the one hand, there is an added value. On the other hand, this represents an additional burden under fundamental rights, which is only permissible in the case of clear rules.

Kugelmann makes it clear: "The legislature took two steps forward, the Federal Constitutional Court is taking one step back.

The pursuit of legitimate goals does not allow inaccurate and imprecise interference with fundamental rights such as data

protection. Merging as much data as possible in the sense of "data mining" is not a suitable instrument on its own. The work of the security authorities and especially the intelligence services must always be based on constitutional standards."

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