

Bavarian ****Secret Service Act****

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The Federal Constitutional Court largely upheld the GFF's lawsuit against the Bavarian Constitution Protection Act (BayVSG) in 2022, thereby delivering a landmark ruling. In the subsequent reform of the law, the Bavarian legislature improved the protection of privacy in many respects. At the same time, however, the already vague requirements for the disclosure of information to private bodies were lowered even further. In August 2024, we submitted a second constitutional complaint to the Federal Constitutional Court.

David Werdermann

Lawyer and Case Coordinator

"It is not just that the domestic intelligence service can comprehensively monitor individuals. The new regulation allows the domestic intelligence service to pass on the collected data to the entire private and professional environment without the knowledge of those affected. It can ensure that activists lose their jobs or are excluded from associations - without them finding out about the secret service's intervention and being able to defend themselves against it. Such methods have no place in a democracy."

In August 2024, together with climate activists from Bavaria, we once again filed a constitutional complaint against the BayVSG. The complaint is directed against a norm that authorizes the Bavarian domestic intelligence service to pass on personal data to private bodies such as employers or landlords under extremely limited conditions.

Such data disclosure can have serious consequences for those affected, such as loss of employment or social exclusion. The case of a young researcher in Saxony, who lost his job several times due to the unlawful influence of the Office for the Protection of the Constitution, is an impressive example of exactly what this can mean - until the matter was uncovered and the person concerned received a compensation payment.

In our view, serious interference with the fundamental right to control one's own data can only be justified in exceptional cases and must be subject to strict conditions.

GOVERNMENTAL ABUSE OF POWER ENDANGERS OUR DEMOCRACY

The extensive powers of the Bavarian Office for the Protection of the Constitution to transfer personal data to private bodies not only endangers the privacy of those directly affected. Such interventions also have great relevance for society as a whole, as they represent significant state interference in democratic processes and civic engagement. If people have

to fear that their data will be passed on unintentionally, this can ultimately lead to less engagement in our society.

Domestic intelligence services repeatedly try to discredit protest movements in particular as extremist. A recent example is the classification of the climate movement “Ende Gelände” as a “suspected left-wing extremist case” by the Federal Office for the Protection of the Constitution. As a result, democratic participation is being deliberately thwarted by government agencies.

WHO IS BRINGING THE COMPLAINT IN 2024?

The five complainants include Johnny Parks, who is active in “Ende Gelände”, and climate activists Lisa Poettinger and Daniel Verlohr, who are also active in the climate justice movement. All of the complainants are active in groups and protest movements that are considered left-wing extremist or suspected of being so by the State Office for the Protection of the Constitution, including “Ende Gelände” and the “Offene Antikapitalistische Klimatreffen München”.

AIM OF OUR NEW CONSTITUTIONAL COMPLAINT

The aim of our second constitutional complaint from 2024 is for the Federal Constitutional Court to set clear standards and strict limits for the disclosure of information by intelligence services to private bodies. We demand that the disclosure of data to private bodies should only be permitted for serious reasons, for example to avert a specific threat. In this respect, the regulation in the Federal Constitution Protection Act, which provides for a narrow catalog of transmission purposes, can serve as a model. In addition, data subjects must always be informed about the transfer of data. This is the only way they can defend themselves against the transfer of data and possibly even false suspicions.

SUCCESS OF THE FIRST CONSTITUTIONAL COMPLAINT

The amendment to the BayVSG, which came into force on August 1, 2016, gave the Bavarian domestic secret service expanded surveillance powers, which, in the service of “internal security”, encroach even more broadly and deeply on the basic rights of the population than is the case in the other constitutional protection laws of the states and the federal government.

On April 26, 2022, the Federal Constitutional Court granted large parts of our lawsuit filed in 2017 and made a landmark ruling. The Karlsruhe judges decided, among other things, that the power to request information about traffic data from data retention is null and void. In addition, the ruling strengthened the principle of separation between the Office for the Protection of the Constitution and the police by setting clear barriers to the exchange of information.

POINTS OF ARGUMENT IN THE FIRST CONSTITUTIONAL COMPLAINT OF 2017

The powers in the BayVSG that the Federal Constitutional Court declared unconstitutional following our lawsuit in 2017 included:

- **collection of telecommunications data (Art. 15 para. 3 BayVSG)**
- **large-scale wiretapping operation (Art. 9 BayVSG)**
- **online search (Art. 10 BayVSG)**
- **use of undercover employees and informants (Art. 18 and 19 BayVSG)**

These and other measures inadmissibly interfered with several fundamental rights, in particular the right to informational self-determination, the fundamental right to guarantee the integrity and confidentiality of information technology systems (the so-called "computer fundamental right"), the secrecy of telecommunications, the inviolability of the home and the right to effective legal protection.

WHO FILED THE CONSTITUTIONAL COMPLAINT IN 2017?

The complainants were several individuals who, as officials or members of organizations mentioned in the Bavarian Office for the Protection of the Constitution report, were able to credibly demonstrate that they were the subject of secret service surveillance. These organizations include in particular the Bavarian regional association of the Association of Victims of the Nazi Regime - Association of Antifascists (VVN-BdA).

The constitutional complaint was written by Prof. Dr. Matthias Bäcker (Johannes Gutenberg University Mainz). The expert in information law and data protection law is already working with us as a legal representative in the "G 10" proceedings. Our approach in these proceedings was financially supported by the Renewable Freedom Foundation.

WITH STRATEGIC LAWSUITS AGAINST EXCESSIVE PUBLIC POWERS

In our view, both constitutional complaints against the far-reaching powers in the BayVSG have a signal effect: In order to protect fundamental rights, it is important to prevent the other constitutional protection agencies from following the example of the "pioneer" Bavaria. Even beyond the area of intelligence services, it is important to us to take action against constitutionally dubious infringements of freedom not only at the federal level, but also in the states.