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German Intelligence under Fire for Spying on Parliamentarians

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The revelation that lawmakers for the Left Party are under observation by the German intelligence service has triggered a debate about the agency's powers. The country's highest court is expected to provide much-needed clarification this year. At what point should spies be allowed snoop on elected representatives?

Klaus Ernst of Germany's Left Party came face to face with his own insignificance last week. At his party's New Year's reception in Berlin, while sitting in a corner eating meatballs, the party's co-chairman cracked a joke. "If I'm not on the list," he said, "it'll damage my reputation." He even had a button pinned to his suit: "Am LEFT. Please observe."

But his wish wasn't granted -- Ernst's name is not on the list of [27 Left Party politicians](#) under observation by the Federal Office for the Protection of the Constitution (BfV), Germany's domestic intelligence agency. The joke was on Ernst, in fact: one of the agency's criteria for selecting MPs that warrant observation is whether they play a "leading role in the party."

Ever since SPIEGEL revealed last week how comprehensively the agency is monitoring Left Party MPs, there's a need for clarification: who should be categorized as an enemy of the constitution these days, and who as a friend? Can a member of parliament be an enemy of the

constitution? Should the executive branch of the government be allowed to monitor elected representatives of the people -- when really it should be the other way around?

Now, adding fuel to the debate is a further accusation that the BfV kept tabs on Left Party MPs not just by analyzing harmless, publicly accessible sources such as newspaper articles -- as it claims -- but also applied intelligence methods such as using secret informants.

Nothing Worse than a Laughing Stock

The damage to the agency's image has been enormous. First came the PR debacle surrounding the BfV's failure to track down the neo-Nazi terrorist group known as the Zwickau terror cell. Now the agency is facing a crisis over its overzealous observation of the Left Party. The best the BfV can hope for at this point is to emerge from the whole matter as nothing worse than a laughing stock.

So far, the supposedly dangerous enemies of the state in the Left Party have been basking in their new-found notoriety. The party, riven by internal divisions, has been savoring its status as somehow being unjustly persecuted.

The agency's mania for data collection is missing the point . There are certainly radical splinter groups within the Left Party that call for the overthrow of the political system. And leading members of the party need to be asked whether they entertain similar fantasies. But unlike with the far-right National Democratic Party, there's no need here for the BfV to go digging around in secret. Even the Left Party's most ideologically extreme debates take place in public and are documented extensively in forums such as the Communist Platform.

Even the parliamentary group of the center-right Christian Democratic Union (CDU), which distances itself from the Left Party as much as it can, has voiced its support in this case. If only publicly available sources have been used, says Johannes Singhammer, deputy chair of the CDU parliamentary group, "I have to ask myself what insight this observation is meant to provide."

Criticism from the Right

Stephan Mayer, likewise a member of the CDU's parliamentary group, believes some individual members of the Left Party display tendencies that stand in opposition to the German constitution, but he still "would never go so far as to use intelligence service methods against Left Party parliamentarians."

Even Siegfried Kauder, chair of the Bundestag's Committee on Legal Affairs, voices solidarity with the opposition. "The manner in which the Left Party is being observed is not acceptable," he

says. "After all, parliament monitors the constitution -- the Office for the Protection of the Constitution doesn't monitor parliament."

But precisely what the country's domestic intelligence agency is allowed to do still has not been clearly defined. Duties, authority, responsibilities -- all these are open to interpretation, with German law offering only incomplete and inconsistent information. The unclear laws that govern the BfV "do not meet all the requirements of a constitutional state," believes Christoph Gusy, a law professor at Bielefeld University and a leading expert on police and security law. On closer inspection, the BfV is a constitutional monster.

German Interior Minister Hans-Peter Friedrich of the Christian Social Union (CSU), the CDU's Bavarian sister party, isn't afraid of that monster. The controversial observation of Left Party parliamentarians, he reassures himself, is covered by a Federal Administrative Court ruling. He suggested taking a few harmless individuals off the agency's observation list, and replacing them with more radical ones.

'Violation of the Constitution'

A 2010 ruling by the Federal Administrative Court in Leipzig did in fact grant the BfV more or less free rein, including the power to look at the work of elected representatives. That particular case concerned Bodo Ramelow, a moderate leading politician for the Left Party in the state of Thuringia, who had been under observation for years. "This is how protection of the constitution becomes violation of the constitution," comments Christoph Möllers, a constitutional law professor in Berlin, in reference to the ruling.

At its core, the question is whether the BfV has the right to spy only on Left Party members allegedly engaged in unconstitutional behavior, or also on leading party politicians such as Bundestag Vice President Petra Pau, who has never particularly given the impression of being a violence-prone revolutionary.

The laws that govern the BfV provide no answers, no directive on precisely who may be the target of such snooping. Still, the Federal Administrative Court reached a clear conclusion in the Ramelow case, finding that even a harmless politician might come in contact with dubious elements and, subsequently, might "promote unconstitutional aims without realizing it." Such a person, the judges ruled, "who does not notice the way in which he or she is being misused, can be as dangerous to the preservation of a free democratic system as one who acts out of conviction."

It seems this protection of unwitting party leaders by helpful spies can even take place inside parliament, according to the Federal Administrative Court judges. Even these representatives of the German people, the court's ruling suggests, require surveillance just in case they don't know

what they're doing. The constitutional passage stating that members of parliament "are subject only to their conscience" made little impression on the judges in Leipzig, who declared that the freedom governing such a mandate was "not unlimited."

'Intelligence Service Methods'

Based on the Leipzig ruling, all parliamentary representatives can be held accountable for any nonsense spouted by any splinter group affiliated with the party.

But just what actually amounts to unconstitutional troublemaking remains a matter of opinion. Laws concerning the protection of the constitution at both the federal and state level do not provide any basis for a rational, legally-based decision on what precisely should be considered "aims" that justify observation. Big words uttered by a few provincial radicals, is that grounds enough for spying on a party? Or should it be actively planning a revolution before the intelligence services get involved?

Last week, the BfV stuck to its assertion that parliamentarians were only observed and not, for example, wiretapped or targeted by informants. But just a few days later came the sheepish admission that "intelligence service methods" were indeed used at some regional departments of the agency, and that those findings might in fact end up in files kept by the federal-level BfV.

The agency's file on Gregor Gysi, parliamentary group leader for the Left Party, for example, weighs in at nearly 1,000 pages and clearly amounts to more than a harmless set of press clippings. The Federal Interior Ministry issued a 41-page statement justifying the decision not to allow Gysi himself to read the entirety of this tome. "Pages 18 to 24 concern documents obtained through intelligence service methods and submitted to the BfV," the statement reads. The omission of pages 12 to 14 of the Gysi file, meanwhile, is justified with the rationale, "The need to protect sources and the assurances of confidentiality made to informants require nondisclosure." Nearly 130 pages of the file are missing on such grounds, while a further 500 pages are partially censored and approximately 200 more have been replaced.

Mundane Bits and Pieces

Why such caution, if only public sources were analyzed? The BfV justifies its censoring of passages and pages with the explanation, among others, that text underlined by its agents and comments made in the margins might make it possible for a reader to infer the "operational methods and aims of the observation."

Those parts of the files that have been released are newspaper clippings, party flyers and the like, mundane bits and pieces that look like no more than busywork invented to keep agents occupied.

In the file on parliamentarian and former German Communist Party member Wolfgang Gehrcke, not even his birth date is correct.

The Left Party is accustomed to having informants in its ranks and is no stranger to intrigues. But in the past, informants were usually believed to be working on behalf of various feuding groups within the party. Now, mistrust is on the rise.

Ramelow, for example, the Left Party's parliamentary group leader for the state parliament in Thuringia, reports that an acquaintance admitted to being an informant. Michael Leutert, a Bundestag member from the state of Saxony who is likewise in the BfV's sights, says the agency tried to recruit him back in his school days. Bernd Riexinger, Left Party spokesman in the state of Baden-Württemberg, says he knows of three separate cases of people being offered money in exchange for information.

One particularly delicate case is the observation of Steffen Bockhahn, Left Party chair for the state of Mecklenburg-Western Pomerania. A leading representative of the party's pragmatic wing, Bockhahn is also a member of the parliamentary committee that audits the German intelligence agencies' budgets.

Convoluting Line of Reasoning

That he of all people would be on the BfV's list "stuns" Bockhahn, who says he is now reassessing "certain past events." In 2007, opponents of the G-8 summit in Heiligendamm convened at Bockhahn's party office in Rostock to prepare demonstrations and each time they met, they saw a white Audi drive slowly past the office several times. During one meeting, Bockhahn's cell phone rang and the screen showed the name of a fellow G-8 summit opponent -- who was at that precise moment sitting next to Bockhahn and definitely not on the phone. "The spies don't seem to have their technology under control," they joked at the time. Now, it turns out several pages are missing from the copy of Bockhahn's BfV file released, pages that cover precisely the time period when the anti-G-8 summit meetings took place at his office.

The Federal Interior Ministry has responded with a convoluted line of reasoning. If the secret list of names of people under observation had in fact been kept a secret, then Bockhahn wouldn't have known he was under observation and consequently, the ministry says, the mutual trust between the BfV and the parliamentarian charged with monitoring it would not have been disturbed.

A look at various regional states in Germany shows there's no clear policy on how to handle Bockhahn and his fellow party members. In the eastern state of Brandenburg, for example, where the Left Party is part of the governing coalition but also dogged by repeated scandals concerning party members with ties to the former East German secret police, or Stasi, there is no BfV

observation of Left Party members. In Baden-Württemberg, meanwhile, where the Left Party is not represented in the state parliament and in general hardly has a public presence, the agency seems to consider the use of intelligence service methods necessary.

Bavaria's Office for the Protection of the Constitution, meanwhile, has a penchant for waiting until just prior to elections before publishing its findings on Left Party members, who see this as a tactic employed by the state's ruling parties.

The body most likely to provide a solution is the Federal Constitutional Court, whose judges are now charged with reexamining the problematic Federal Administrative Court ruling and deliberating on complaints filed by the Left Party.

All involved are desperately hoping for a clear answer to emerge from the confusion. The Federal Constitutional Court judges have promised to reach a decision this year. It is high time they did.