Written by **Alex Newman** on June 18, 2014

Germany Seeks Criminal Prosecution of NSA Snoops

Germany's top federal prosecutor has opened a criminal probe into espionage operations by the U.S. National Security Agency, particularly focused on the NSA snooping directed against German Chancellor Angela Merkel (shown).The goal, he said at a press conference, is to bring to justice specific individual U.S. government agents who were allegedly involved in the unlawful snooping operations against German officials. Prosecutions for spying on everyday citizens, while a violation of German law, will not be forthcoming — at least not yet.

Federal officials in Berlin had been investigating the alleged NSA crimes since last year following the explosive revelations of the U.S. government's spying leaked by former intelligence contractor Edward Snowden a year ago. Some analysts called him a whistleblower hero; others refer to him as a traitor. Nonetheless, the leaks caused a global uproar that included mass outrage in the United States, where hundreds of millions of Americans had their constitutionally protected rights violated by the agency.

In Germany, though, where citizens have endured multiple vicious tyrannies over the last century, the fury was especially intense. More than a few critics of the snooping programs have even invoked memories of National Socialist (Nazi) or Communist regimes. Countless references to the Soviet-backed East German Stasi secret police, which became infamous for its extreme spying on citizens, have also been made. Even Merkel compared the NSA spying to the operations of the Stasi.

Snowden's revelations and German media reports suggest that the NSA's operations in Germany gobbled up gargantuan amounts of private information on German citizens and officials. Efforts to have the ex-NSA contractor testify in Parliament about the schemes, however, were blocked by German political leaders citing bilateral relations with the United States. Snowden currently has asylum in Russia.

Since last year, though, German authorities have reportedly been looking into both the mass espionage targeting everyday citizens as well as the targeting of Merkel more specifically. This month, authorities in Berlin said there was enough evidence to proceed with the criminal investigation — at least on the agents who allegedly targeted Merkel. The spying on citizens' communications, while troubling to Germans and unlawful, will not be prosecuted at this point. Officials reserved the right to return to that component later as well.

Specific NSA operatives are being targeted for prosecution as opposed to the broader bureaucracy. The German Parliament's judicial committee was informed of the decisions during a closed session before the potential prosecutions were announced to the world at a press conference.

"Let me be clear: Espionage is a criminal offense in Germany regardless of whether those spying are friends or enemies," German Federal Public Prosecutor Harald Range told journalists in publicly

announcing the investigation, citing findings that specific individuals were perpetrating the crimes. "We're finding ourselves in a new reality here. James Bond 007 is yesterday. James Bond 2.0 is today."

The criminal investigation is aimed at actual U.S. government agents as individuals, the prosecutor said. German media reports noted that American operatives, some of whom were in Germany to conduct the espionage schemes, were responsible for the alleged spying on Merkel's cell phone and e-mails — not automated computer programs and algorithms as U.S. officials had previously suggested.

The identity of those individuals, though, remains unclear. In a statement released by the prosecutor's office, authorities said the preliminary investigation had uncovered "sufficient factual indication that unknown members of U.S. intelligence services" were responsible for snooping on Merkel's phone calls. The office also said there was enough evidence of the allegations to proceed with the case.

According to the statement, any individuals who are criminally prosecuted for espionage will probably be charged under Article 99 of the German penal code. "Those who carry out secret service activities for a foreign power against the German state are subject to up to five years or in extreme cases up to 10 years in prison," it reads in part.

The decision to pursue the case shocked many analysts — especially because just days earlier, multiple media outlets reported that German authorities were likely to drop the prosecution due to a supposed "lack of evidence." The reports sparked outrage across Germany as furious citizens demanded that U.S. spies be held accountable for their alleged crimes against citizens and their elected officials.

Despite refusing thus far to prosecute those responsible for spying on everyday citizens, the prosecutor's office said it would continue to monitor the "mass collection of telecommunication data of the public in Germany" by U.S. and U.K. intelligence outfits. "We will intensify the prosecution of cyber espionage," the statement added, suggesting the cases could be re-opened later if more evidence is uncovered.

In Germany, though, the decision to pursue those responsible for spying on Merkel but not the alleged crimes against everyday citizens sparked some outrage. "Orwell's 'all animals are equal but some animals are more equal than others' can't be the right motto when dealing with a massive and mass-scale breach of civil right," Social Democratic party politician Ralf Stegner was quoted as saying in German press reports. Political leaders from other parties echoed those concerns.

U.S. officials, meanwhile, called for discussions rather than prosecutions. "We believe that the best way to address the concerns that Germany has had about NSA's activities is through a direct dialogue with us," responded White House adviser Ben Rhodes when asked about the developments. "We believe we have an open line and good communication with the chancellor and her team, and that's where we're going to continue to focus our efforts." Obama had already apologized for the snooping, but Germans were largely unmoved.

While the prosecution announcements have caused somewhat of a celebration in Germany and among some anti-NSA activists in the United States, Accuracy in Media (AIM) Center for Investigative Journalism Director Cliff Kincaid suggested the agency was right to spy on Merkel's communications. Citing analysts, Kincaid said Merkel was known to be "suspiciously pro-Russian." He also pointed to recent revelations of Merkel's past ties to the brutal Communist regime in East Germany and her role as propagandist and agitator in the dictatorship's communist youth organization.

In addition to Merkel, dozens of other heads of state and government were also spied on by the NSA, Snowden's leaks suggest. NSA targeting of radical Brazilian President Dilma Rousseff, a "former"

communist terrorist who makes no secret of her ongoing affinity for Marxism-Leninism, sparked similar controversy. However, as a former U.S. ambassador explained in a hard-hitting interview, if the NSA is going to spy on anybody, Rousseff and her radical allies in Latin America certainly ought to be on the list.

It was not yet clear how the German prosecutor was planning to interview witnesses, or how alleged American spies might be brought to justice. According to a recent report by journalist Glenn Greenwald, who worked with Snowden to expose the NSA's operations, Germany is in fact that agency's most important base of operations in Europe. At least some of the U.S. agents may be operating out of American embassies and consulates, perhaps under diplomatic cover, the revelations suggest.

Still, it would not be the first time in recent memory that U.S. intelligence officials have been prosecuted in European courts. In 2009, for example, 23 Central Intelligence Agency operatives in Italy were convicted in absentia by an Italian court for their role in kidnapping an Egyptian dissident for torture in Egypt. Despite claiming to just be "following orders," all the CIA agents fled the country prior to being apprehended and jailed.

Photo of German Chancellor Angela Merkel: AP Images

Alex Newman, a foreign correspondent for The New American*, is currently based in Europe. He can be reached at anewman@thenewamerican.com. Follow him on Twitter @ALEXNEWMAN_JOU.*

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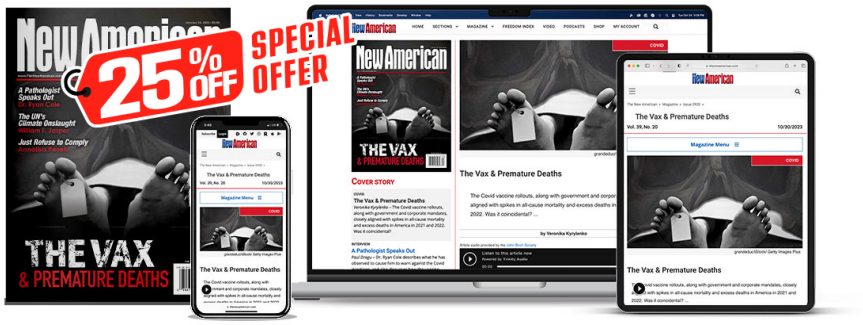

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