Abstract

Implicitly referring to information privacy [Recht auf informationelle Selbstbestimmung] as declared by the Federal Constitutional Court in its landmark Census Verdict in 1983 the Conference of German Data Protection Commissioners declared in March 2000 that each person has the right to move in public space without being caught on camera. However, two months later the Conference of the German Ministers for the Interior unanimously declared video surveillance to be an effective tool to support police work, combat crime and make people feel safer. Meanwhile all German Länder except Berlin have explicitly legalized the permanent deployment of CCTV in public areas for purposes of preventive crime control; such CCTV schemes are in operation in around 30 cities with a total of 100 police cameras. Though the extension of open street CCTV is very limited in Germany compared to Britain and other Western European nations the paper will argue that privacy regulation and data protection legislation only contained the extension of CCTV in Germany in a very indirect way. By drawing on the concept of “forward regulation” [Vorwärtsverrechtlichung] it will exemplify on the basis of CCTV that the legal instruments are directing towards an “overregulated absence of regulation” rather than sufficiently protecting information privacy. To do this the paper will firstly, outline the polity which frames the regulation of information privacy and image data processing, secondly portray the evolution of open street CCTV in Germany, and thirdly present a policy analysis which identifies actors and advocacy coalitions, their narratives and interests and how these determine policy making and the politics of CCTV in Germany. Thus is will be shown that tight budgets and reluctant police forces are a much more important constraint to the invasion of privacy by police cameras than constitutional law.
Introduction

In September 2006 Privacy International (PI) and the Electronic Privacy Information Center (EPIC) published their tenth annual report on “Privacy and Human Rights“ and used this report, for the first time, as basis for a ranking assessment of the state of privacy in all EU and eleven other countries. Surprisingly, Britain, homeland of the Magna Charta, the Habeas Corpus Act and the Bill of Rights, was blacklisted as “endemic surveillance society” and found itself in companion with China, Russia, Malaysia and Singapore. Only Canada and Germany were qualified as countries with “significant protections and safeguards”. (PI 2006) However, also German data protection commissioners fear the erosion of information privacy in face of the post-9-11 expansion of police and secret services powers and the extensive profiling of consumers by private companies. Given their concern that Germany is also “sleepwalking”¹ into a surveillance society the question arises how safe privacy really is in Germany.

Among the indicators that contributed to the blacklisting of Britain was the state of affairs in video surveillance. In this category Britain was assessed as “leading in bad practice” while “comprehensive efforts, protections, and safeguards for privacy” were attested for Germany (PI 2006). But the empirical basis of this assessment is weak. Though media report the existence of 2 to 4.2 million cameras for Britain – compared to 500,000 to 1 million cameras in Germany, all these figures are based on “guesstimations”. Despite existing registration regimes no European country officially counts the number of CCTV cameras. Surveys indicate that the extent of CCTV in publicly accessible premises (such as retailers, public transport, museums, banks, local authorities etc.) is determined by the institutional rather than the national contexts, and recent developments show that national differences found a few years ago are leveled increasingly (Hempel & Töpfer 2004). This suggests that the penetration of confined but publicly accessible spaces by CCTV is hardly contained in any European nation despite the very different modes of regulation.

¹ The Berlin Data Protection Commissioner Alexander Dix used this term when recently presenting his annual report and was hereby explicitly referring to the speech that was held by the British Information Commissioner Richard Thomas when he presented his report on the “Surveillance Society” in November 2006.
The only setting where the extent of video surveillance differs significantly in European comparison are the public open streets: While more than thousand public CCTV networks with tens of thousands of cameras are in operation in more than 500 British cities for the declared purpose of crime control (Williams & Johnston 2000; Webster 2004), such systems exist only in around 30 German cities with a total of 100 cameras (Töpfer 2005). How can these differences be explained?

It is clear that the rise of open street CCTV in Britain was not constrained by any privacy regulation (Maguire 1999). But it is also clear that the expansion of CCTV towards an almost ubiquitous utility was propelled by several other decisive factors, such as the moral panic and national trauma following the tragic murder of the toddler Jamie Bulger by two youths, populist politics and struggles for political power within the Conservative Party, the responsibilization of municipal councils and local communities in the domain of public order and safety, the abandonment of planning provisions in case of CCTV installations, and, perhaps most important, the massive injection of 250 million £ Home Office money since 1994 (Graham 1999; Norris & Armstrong 1999; McCahill & Norris 2002; Webster 2004; Norris & Armstrong 2006).

This raises several questions: Is it the particular mode of privacy regulation found in Germany that contains the expansion of open street CCTV in Germany and does its limited extent offer evidence for PI’s and EPIC’s claims that Germany is a model for those who wish to be let alone? Or do factors other than regulation limit the rise of open street CCTV in Germany? And if so, what would are the implications for the qualification of the allegedly advanced German mode of privacy regulation?

The present papers aims to examine this set of questions and will challenge the sympathetic assessment of PI and EPIC. The paper firstly outlines the polity which frames the regulation of information privacy and image data processing in Germany, and secondly traces the evolution of open street CCTV. It thirdly presents a brief policy analysis which identifies actors and advocacy coalitions, their narratives and interests and how these determine policy making and the politics of CCTV in Germany. Thus is will be shown that tight budgets and reluctant police forces are a much more important constraint to the invasion of privacy by public CCTV cameras than constitutional law. It will conclude that even significant constitutional protections need to be complemented
by critical debate and a vigilant civil society in order to safe privacy as a public good being constitutive for democratic societies.

**The Regulation of Personal Image Data**

Technologically mediated visual surveillance of public open streets has a tradition in post-war (Western) Germany as long as in Britain and can be traced back to 1958 when the police in the city of Munich installed television cameras to monitor and manage traffic flow from a central control room. The deployment of cameras for the observation of political demonstrations and non-political crowds is reported since the early 1960s, and the covert use of sophisticated surveillance equipment for the detection and prevention of terrorist assaults, for criminal investigation or monitoring border check points and fences is practiced by police forces since the early 1980s. (Weichert 1988)

Although not explicitly mentioned in historiographies of video surveillance it is very likely that throughout these early days of CCTV also private entities and public bodies other than the police deployed cameras that were targeting public space in order to protect their properties and facilities.

Throughout their early days all these practices of opto-electronic observation were hardly touched by legal regulation. In these times only the Copyright Act (Kunsturhebergesetz resp. Kunsturheberrechtsgesetz after 1966) of 1907 guaranteed the right to control personal depiction (Recht am eigenen Bild) and limited the publication and broadcasting of photographs, video stills and other footage that display identifiable persons: According to §§22-24 of the Copyright Act no person shall be publicly depicted without informed consent. Few exceptions (among others the authorization of the police to display images of suspects) confirm this general rule which is in force until today – and it was repeatedly strengthened in Celebrity vs. Paparazzi lawsuits also by the European Court of Human Rights (ECtHR) with reference to article 8 (right to respect for private and family life, home and correspondence) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

However, all stages of processing personal image data previous to the publication or transfer to third parties were implicitly allowed as not being explicitly prohibited: capturing, storing, manipulating or analyzing occurred without a regulative framework.

This situation dramatically changed in December 1983 when the Federal Constitutional Court (Bundesverfassungsgericht) established the right to informational self-
determination (Recht auf informationelle Selbstbestimmung) in its landmark Census Verdict. Judging over the Census Act and the details of the planned data collection the Constitutional Court saw personal freedom and the democratic character of society under threat by the power of computerized data processing. It outruled the Census Act and argued that the knowledge if one is under surveillance, why and by whom is crucial for democracy and the autonomy of its citizens:

“Whoever expects that e.g. the attendance of an assembly or the participation in a civic action group will be registered by the authorities and that this will probably cause risks, may probably abandon their corresponding fundamental rights (Art.8, 9 Basic Law) [freedom of assembly and association – E.T.]. This would not only impact the individuals’ chances for development but also the public interest because self-determination is a necessary condition for the functionality of a liberal democratic polity which is based on its citizens’ ability to act and to participate. [...] Whoever is not sufficiently certain about what information concerning themselves is known in certain areas of their social environment, and whoever is not able to calculate the knowledge of possible communication partners, can be fundamentally inhibited in their personal freedom to plan or to decide by themselves.” (translation in: Weichert, 2000)

In principle, the Court ruled, everybody possesses the right to determine her or his representation by data shadows: No collection and processing of personal data without informed consent by the data subject. The verdict is seen as a milestone of data protection and was even praised as the “Magna Charta of the Information Age”. However, the Court did not establish an absolute safeguard for the protection of information privacy. It rather ruled that an infringement of the right to informational self determination is admissible in the “prevailing general interest”, provided a clear and constitutional legal basis in line with the principle of proportionality.

Among others, practices of video surveillance involving the collection and processing of personal data found themselves in a new position between the demand for legal regulation on the one hand, or, if not seen in line with the “prevailing general interest”, as unconstitutional operation on the other hand. Thus, the Census Verdict put many forms of CCTV on the agenda of policy making. The implications of the right to informational self-determination and the requirement to legally regulate surveillance became most apparent in the field of public safety and domestic security (in Germany known as Innere Sicherheit) even for actors beyond the circles of higher police ranks and branches of ministerial bureaucracies who were also previously negotiating policies for the procurement and operation of police cameras. In contrast, the field of privately
operated indoor cameras was then seen as an area where people signal informed consent by accessing premises under surveillance instead of non-monitored alternatives, and therefore became only an issue in the late 1990s when it became obvious that the “possibilities for disappearance” have dramatically narrowed.

The years following the Census Verdict saw a wide range of legislative activities aimed at amending existing police acts in order to legalize long-trained surveillance practices. Depending upon the kind of surveillance and the constitutional assignment of legislative responsibilities these activities involved different levels of Germany’s federal system. As policing in principle falls under the jurisdiction of the individual German states (Länder) these are in charge of the regulation of most forms of police surveillance.

However, in the area of police video surveillance it was the Federal State (Bund) which took the initiative. Being in charge of the legal regulation of political assemblies the Federal Parliament (Bundestag) amended the Assembly Act (Versammlungsgesetz) in 1989 and took the opportunity to include §§12a and 19a, i.e. provisions for a legalizing regulation of overt “videography” targeting political demonstrations and protest. In 1992 it followed the legalizing regulation of covert video surveillance for criminal investigation by the Organized Crime Act (Gesetz zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der Organisierten Kriminalität) which included among others §100c on “technical means of observation” into the Code of Criminal Procedure (Strafprozessordnung). As criminal law and criminal proceedings also fall under the jurisdiction of the Federal State it was again the Federal Parliament that stood behind the adoption of the Organized Crime Act. The most recent legislative initiatives at the federal level to set up a regulatory framework for police CCTV surveillance followed in the domain of the protection of endangered facilities and people by federal police agencies: The Federal Border Police Act of 1994 which aimed to revise the competencies of the Federal Border Police (Bundesgrenzschutz – since 2005 Federal Police, Bundespolizei) after the end of the Cold War. The Federal Border Police was put in charge of the protection of major federal institutions and national transport infrastructure (airports and the network and train stations of the railway company Deutsche Bahn) and authorized by §§26, 27 to overtly deploy cameras at public areas in the vicinity of these institutions and facilities. In 1997 the Act on the Federal Office for Criminal Investigation (Bundeskriminalamt) also included sections
(§§ 16, 22 and 23) about the deployment of cameras to protect (former) high profile politicians of the Federal State and informers of the Federal Office.

At the Länder level the regulation of police CCTV remained vague throughout the 1980s. As efforts failed to harmonize the state police acts in response to the Census Verdict each state was in search of its own mode of regulation of visual surveillance. Smart advocates questioned that CCTV is violating information privacy on the basis of their narrow interpretation of what constitutes “processing” or “data”, or they discussed the character of overview images not displaying identifiable persons or of camera-monitor systems. Others argued that the general clause of police law, i.e. the police’s responsibility to defend and maintain public safety as often laid down in the first section of German state police acts, sufficiently justifies the deployment of police cameras. However, eventually the desire for legal certainty of their own practices and actions outweighed the resistance within the police against the imposition of new regulatory frameworks. Thus, coalitions of police representatives and bureaucrats in the State Ministries for the Interior drafted bills for the amendment of police acts in order to explicitly authorize several modes of police video surveillance. These new special norms introduced in the course of the late 1980s and during the 1990s regulated the “videography” of non-political events and crowds, the monitoring of endangered institutions and facilities and their vicinities, and other forms of temporarily deployment of CCTV cameras for the defense of an actual danger.

To complete this brief overview of the regulatory framework for the processing of personal image data in Germany the relevant sections of the Federal and State Data Protection Acts should be mentioned although they do not touch video surveillance by the police forces which is the central topic of this paper. The revision of the Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG) that became necessary in order to implement the EU Data Protection Directive into national law was also taken as an opportunity to address the increasing presence of surveillance cameras in publicly accessible premises (öffentliche zugängliche Räume) of private entities and federal authorities other than the federal police and security agencies. Since May 2001 §6b BDSG is regulating the deployment of CCTV and the processing of personal image data in such premises. Under §6b the deployment of surveillance cameras is authorized for a wide range of purposes provided that these are “clearly defined” and the operation of
CCTV is notified by “appropriate means”. Similar provisions can be found in the Data Protection Acts of the individual Länder for the operation of CCTV in publicly accessible spaces of state authorities other than the police and state secret services.

To summarize, with its Census Verdict the German Federal Constitutional Court clearly established a right to information privacy also for the public space, and declared all surveillance a violation of the fundamental right to personal freedom. It ruled that an infringement of this right to information privacy was only justified in the “prevailing general interest” provided a clear and constitutional legal basis and in line with the principle of proportionality. In the case of police CCTV surveillance, the legal regulation of privacy protection and information handling became an issue in the policy arena of Innere Sicherheit that is characterized as being dominated by corporatist negotiations between professional associations of the police and departments of the Ministries for the Interior, often staffed with trained police officers (Lange 2000). Moreover, policy formation took place at different levels and jurisdictions. Today the deployment of police cameras in Germany is regulated by 20 different acts that often include several special clauses on CCTV, plus 17 data protection acts on non-police video surveillance. Having said this, it comes as no surprise that the series of regulations following the Census Verdict ended the full discretionary surveillance powers of the police but delegated the authority to assess a situation and decide on the legality of surveillance – usually provided a “reasonable suspicion” that public disorder or criminal offences might occur – to higher ranks of the police rather than to attorneys, judges or data protection authorities. In effect, the police themselves watch their watching, and CCTV surveillance has become a routine practice at, for instance, political demonstrations or major sport events. Critical intervention of Data Protection Commissioners was limited to investigations of abuse and recommendation while the general use of (CCTV) surveillance was made immune against their formal contestation (Busch 2006).

The Evolution of Open Street CCTV in Germany

After the series of enacting regulation that was legalizing existing practices of police surveillance a new kind of CCTV became an issue in the mid-1990s: In April 1996 the police department of Leipzig, capital of the Eastern German state of Saxony, started a four weeks pilot project with open street CCTV in the vicinity of the central train
station. Thus, for the first time a German police force installed a surveillance camera to monitor public urban space 24 hours on 7 days a week to control “street crime”. The declared purpose was to “displace potential drug dealers” and to “weaken the drug scene”. After a second pilot phase the CCTV system was established as permanent measure with three cameras in April 1, 1997. In legal terms it was justified by the general clause of the police law and §100c of the Code of Criminal Procedure (StPO). (Müller 2000)

Other cities in the Eastern part of Germany followed the example of Leipzig. Dresden (Saxony), Halle and Magdeburg (Saxony-Anhalt) also installed cameras in inner city areas. In the Western part the seaside resort of Westerland/Sylt (Schleswig-Holstein) operated a CCTV system on a seasonal basis in order to monitor loitering and drinking punks in a pedestrian zone. These early open street CCTV systems did not record images permanently. They were staffed by police officers who monitored the streets and started recording only when they suspected a crime to be committed on scene. For this reason the Administrative Court in Halle decided in a lawsuit against the local system that personal freedom is not inhibited as far as not images are recorded. However, in legal debates the justification of this new type of surveillance was challenged even by police practitioners. As a reaction to this critique Saxony amended its police act in 1999 and included a special provision on open street CCTV tailored to the requirements of the current practices.

These early pilot projects of open street CCTV were embedded in changes of the urban landscapes and new discourses on crime and security in cities. The decline of industry and the rising importance of service and consumption shifted the focus of urban economies and the interests of local elite. Inner city areas were reinvented and refurbished to recreate their image and attract tourists and consumers to newly developed shopping and entertainment districts as well as train stations. The rediscovery of city centers entailed diverse conflicts over space and the development of new policing strategies: Public drinking, drug dealing and “aggressive” begging were depicted as menace to public order. Conservative politicians demanded to “reclaim the streets” for the “decent people” and efforts were undertaken to criminalize the unwanted behavior. Round tables on crime prevention established new networks of social control at the local level, and preventive instruments for the policing of “dangerous places”
entered police law and practices. In this broader context open street CCTV attracted the interest of police officers and politicians.

During the campaign for the national election in 1998, the dawn of the chancellorship of Helmut Kohl, several state branches of the Christian Democrats (CDU), Germany’s conservative party, made crime in the city an issue and propagated open street CCTV as a panacea for crime control. Though or because the election ended as disaster for the Christian Democrats CCTV remained on the political agenda. On top of the crisis of the CDU that followed the defeat of Helmut Kohl Jürgen Rüttgers, the conservative candidate for the elections in Germany’s largest state North Rhine Westphalia, presented in spring 2000 a paper on public safety that stressed the benefits of public area CCTV (Innenministerkonferenz 2000). A few weeks later, in May 2000, the Conference of the German Ministers for the Interior unanimously declared video surveillance at crime hot spots in public space to be an effective tool to support police work, combat crime and make people feel safer. The preparation of this declaration had begun in autumn 1999 when the Working Group II Innere Sicherheit of the Conference was assigned to draft an opinion on CCTV. In charge of drafting this opinion was a high-ranking police officer from the state of Schleswig-Holstein who was responsible for the police cameras in Westerland/Sylt in 1996. Noticing the signs of the time, the Conference of German Data Protection Commissioners had declared in March 2000 that each person has the right to move in public space without being caught on camera (59. Konferenz der Datenschutzbeauftragten 2000). But their warning could not stop the positive vote for CCTV by the Conference of Ministers.

The Minister’s decision was the starting point for a new round of police act amendments aimed to include clauses authorizing open street CCTV. Only a few days after the state assembly of North Rhine Westphalia passed a new regulation. Challenged by Jürgen Rüttgers a coalition government of the Social Democratic Party (SPD) and the Green Party authorized CCTV at crime hot spots. In the same year similar amendments were also passed in Saxony-Anhalt, Brandenburg, Baden-Württemberg and Hesse. In 2001 Bavaria, Saarland, Bremen and Lower Saxony followed, Thüringen in 2002 and Rhineland Palatine in 2004, Hamburg in 2005, and Schleswig-Holstein in February 2007. Only the coalition governments of SPD and the Party of Democratic Socialism (PDS) in the states of Berlin and Mecklenburg-Vorpommern have refused to
regulate and authorize open street CCTV. However, Berlin tested the exception during the FIFA World Cup 2006 when the “Fan-Mile”, a main boulevard in the city center, was temporarily privatized and put under surveillance by the firm organizing the public viewing events that attracted millions of visitors. Not all states police made immediate use of their new power. Systems are only permanently in operation in nine of the 16 German states. Rhineland Palatine, for example, so far has only deployed cameras during special events such as a 200-camera-network during the FIFA World Cup 2006 matches in Kaiserlautern.

Today police departments in around 30 cities operate open street CCTV systems that deploy in total about 100 cameras. Though all these systems can record video footage not all of them do so on a permanent basis as the provisions on recording practices and storage times for footage differ from police act to police act. Most systems are owned and operated by the police but some in collaboration with local public order departments (Ordnungsämter) and/or the Federal Police. In several cases the operation of systems was stopped or paused due to different reasons: In Bielefeld, the pilot project for North Rhine Westphalia, a small but influential group of privacy advocates initiated critical debate and mobilized public awareness, and the project was quit after being declared a success that made further operation obsolete. It, however, again started operation after a new amendment of the state police act weakened the threshold for the qualification of areas as “crime hot spots” in 2004. Also in Stuttgart, Heilbronn (Baden-Württemberg) and a few other cities the operation of the systems was ceased after the police evaluated their tools as successful, and, thus, lost the legal basis for surveillance only authorized at “crime hot spots”. In Weimar, a system was dismantled after three days in operation because it was discovered that the cameras were also monitoring the entrance to the editorial office of a local newspaper. However, in other cities systems continued to operate even after being declared a success. In Hamburg the Senator for the Interior announced plans to expand open street CCTV after a year of “successful” CCTV surveillance at the red light and entertainment district.

Despite this variety of practices and experiences some general trends can be outlined for the evolution of public area CCTV and the respective legal regulation:

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2 Besides these limited number of open street cameras thousands of police cameras monitor motorway traffic flows in Germany but these do currently neither collect personal data nor do they record footage.
From incident-related recording to permanent recording: The early systems in Leipzig, Dresden or Halle did not record footage on a permanent basis. Only in case of a “reasonable suspicion” the police officer on duty was authorized to press the record button. In contrast, most systems of the second generation that were installed after May 2000, e.g. in Mannheim, Regensburg or Kassel, record footage for preventive purposes on a permanent basis, a practice explicitly authorized by the new police act amendments. Meanwhile, also states were the police may not permanently record images consider the revision of their legal rules. How easy such practices can change is illustrated by the example of CCTV surveillance by the German railway company Deutsche Bahn which is operating an integrated network of more than 3,000 cameras deployed at major railway stations. After a failed bomb assault at the central train station in Dresden in June 2003 the Deutsche Bahn was severely criticized by “law and order” politicians for the practice to record images only in case of suspicious situations. Only three months later the Bahn had changed their practice. Given the new recording practice at train stations, the police could quickly present footage of two Arab suspects who unsuccessfully attempted to explode bombs in regional trains in summer 2006. In the aftermath politicians from all major parties in general agreed on the need for an expansion of video surveillance in public transport and public areas, but unanimously proclaimed that they oppose “blanket surveillance”. In the state of Brandenburg, where a five years pilot scheme with systems in four cities was evaluated as “successful”, the coalition government of SPD and CDU amended the State Police Act in December 2006 and enacted, among others, the continuation of the scheme and the permanent recording of image data. In Schleswig-Holstein, where until then only the monitoring of public areas by CCTV was authorized, the recent amendment of the police act also entitled the police to permanently record image data from crime hot spots. Thus, today police forces in most German states can permanently record image data collected for crime prevention. Storage times differ significantly. Many provisions rule that footage has to be deleted after 48 hours, in Bavaria data can be stored for two months.

From surveillance of “crime hot spots” to wider urban areas: Critiques of open street CCTV are regularly assured by supporters that nobody does want a British scenario of CCTV surveillance which is depicted as “Big Brother”. CCTV in Germany, it is argued, will be limited to “crime hot spots” as declared by the
Conference of Ministers for the Interior. Some provisions on open street CCTV often point to the legal definitions of areas where the police are empowered to stop and search without reasonable suspicion, known as *Schleierfahndung*. In Berlin, for example, the police declared in the past about 30 urban areas as “dangerous places” where the exercise of special powers was justified. Other provisions define areas justified to be put under surveillance by their quality as criminogenic spaces. In North Rhine Westphalia, for instance, the relevant § 15a that was modified to allow the resumption of surveillance in Bielefeld defines open street CCTV list areas, “the quality of which encourages the commitment of criminal offences”; which could almost everywhere in a typical major city. But also the states where the provisions are rather restrictive the experience has shown that the identification of a “crime hot spot” very is relative and can be hardly challenged as crime figures are not publicly available for the microlevel. The stigmatization of spaces as “crime hot spots” is decided only by the police on the basis of their internal assessment. Moreover, the number of systems that continued operation despite their alleged success outnumbers the cases where systems were dismantled as crime was displaced from one area declared to be a “crime hot spot” to other areas. Under these conditions open street CCTV is likely to slowly creep into ever more German cities and urban areas as the recent announcement of Hamburg to expand their surveillance network suggests.

- **From stationary deployment to flexible mobility:** Trend towards the deployment of highly mobile wireless cameras that can be quickly adopted to changes in patterns of crime. Pilot projects in Southern Germany (Nuremberg, Böblingen, Siegen). Recent example Mannheim where the police reports 45 “dangerous places” and aims to move cameras from old places to the vicinity of the central train station.

- **From isolated systems to networked surveillance:** Early examples of networked surveillance at *Deutsche Bahn*, where the Federal (Border) Police and the DB private security company are utilizing the same network. For the pilot project in the Bavarian city of Regensburg the police made use of the system of the local public transport corporation. Trend towards an integration of intelligence by the police and private security companies. Police links to private and other public CCTV systems – in particular public transport systems, for example in Frankfurt since the FIFA World Cup 2006. “Videoatlas” initiative in Baden-Württemberg mapped 4,000 private
cameras that the police wishes to access. Demands to use image data from the nationwide Toll Collect system that was installed to charge trucks on national highways.

- **From human operation to automatization**: Automated number plate recognition as next generation of CCTV is already enacted in several German states. Older projects with software for automated image searches in digital suspect galleries. Pilot project of the Federal Criminal Investigation Office with a facial recognition system in the central train station of Mainz. Current debate about the storage of digitized biometric data and eased database access rights for the police.

The evolution of open street CCTV can be understood in terms of the concept “forward regulation” (*Vorwärtsverrechtlichung*) coined by Narr (1998). As Narr notes the “preventive turn” in policing that can be traced back to the early 1970s implied a transition in the mode of police law: With increasing tendency provisions are included into police acts that do not follow the traditional “conditional program”, i.e. if case X happens, reaction Y should follow. Instead they follow an “intentional program” which makes law subject of a particular objective, e.g. crime control. While the conditional program of police law allows rather precise definitions of norms and how to sanction violations of these norms, the intentional program means the vague formulation of norms as policing under the rationale of a given objective should be enabled to adjust to all possible situations. In this context “forward regulation” means the amendment of existing police acts or the creation of new acts that do not contribute to higher accountability and better control of policing. Rather they delimit the powers of policing and options for democratic control by vague terminologies and sweeping powers. Narr points out that most amendments of police acts were justified by the need to adjust the regulatory framework to the new data protection requirements derived from the Census Verdict. This host of legal instruments that was developed since the 1970s and in particular since 1983, it is argued by Kutscha (2001), is directing towards an “overregulated absence of regulation”, and Roggan (2000) concludes that Germany tends to develop legally [sic!] towards a modern type of “police state” that is characterized by the substitution of welfare measures by surveillance and repression and armoured to ‘pacify’ potential internal unrest.

It has been shown that the right to information privacy as declared by the Federal Constitutional Court did not hinder the creeping expansion of open street CCTV for
being overruled by the “prevailing general interest” as defined by major parties and police practitioners. However, the right to informational self-determination framed the direction of the socio-technical path because decisions on its regulation were delegated to actors within the policy arena of *Innere Sicherheit*. This eventually led to a situation where decisions on the actual scope and implementation of open street CCTV were the responsibility of the State Ministries for the Interior, their police forces and the involved municipalities.

**Actors, Narratives and Interests**

*Political parties:* Most (state branches of the) major parties supported the legalizing regulation of open street CCTV in particular when in power. Support of CDU and SPD in general but differences over the details of actual surveillance practice (scope, recording, storage). Both people’s parties use CCTV as “sexy” issue to catch votes, in particular as challenged by populist and right-wing parties such as the *Schill-Partei* or the NPD. Opinion polls regularly suggest the support of CCTV by a majority of the electorate. Liberal and Green Party are ambivalent – voted for amendments of police acts but oppose intensification. Only Party of Democratic Socialism opposes open street CCTV in principle but voted for the authorization of other modes of CCTV, e.g. surveillance to protect “endangered facilities”.

*Police associations:* Support open street CCTV as useful instrument of police work in general. The Federation of German Criminal Investigation Officers (BDK) and the German Police Trade Union (DPolG) which is organized within the German Federation of Public Servants (DBB) and close to the CDU, support open street CCTV without restrictions. The Trade Union of the Police (GdP) values CCTV as useful but fears the replacement of personnel by cameras.

*Electronic industry:* The Working Group on Video Surveillance of the Central Association of the Electronic Industry (ZVEI) was intensively doing lobby work – at least before September 11 – to market their products for the deployment in the open streets: Drafting of a concept for a pilot project in Berlin, sponsoring of conferences of criminologists on the evaluation of CCTV, adopting “data protection by technology” strategy and marketing privacy enhancing solutions.

*Data Protection Commissioners:* Oppose open street CCTV in general as they see the whole population unconstitutionally put under general suspicion. Pragmatically
participate in legal debates on details of regulation to prevent worst cases and control existing systems to prevent abuse. Data protection is increasingly being denounced as “offender protection”.

_Civil liberty groups_: Loose and heterogeneous (often ad-hoc) networks of more or less established NGOs and social movements in fundamental opposition. Organization of public rallies (e.g. 3,000 demonstrators in Leipzig), awareness campaigns and public relation activities.

**Conclusion**

Compared to Britain and other European nations the extent of open street CCTV is rather in Germany. This fact is often depicted as an outcome of an advanced model of privacy protection that was declared by the Federal Constitutional Court in 1983. However, it has been shown that tight budgets and reluctant police forces are a much more important constraint to the invasion of privacy by police cameras than constitutional law: The series of amendments to authorize (open street) CCTV by police forces only vaguely defined the conditions for legitimate surveillance and in fact delegated many decisions on the implementation, in particular the assessment of an area as “crime hot spot”, to the police. Thus, it is mainly the reluctance of the police, their fear of being substituted by cameras, their professional opposition towards boring surveillance duties and the tight budgets that limit the invasion of privacy by public CCTV cameras in Germany. This situation could easily change when either technologies of automated algorithmic surveillance reach the stage of maturity or if cheaper and less well organized workforce would be involved into public surveillance such as for instance municipal servants.

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