**Germany: UN expert says "excellent foundations for privacy protection" but gaps remain**

GENEVA (9 November 2018) - Germany has excellent foundations on which to build its national system for privacy protection, but some recent developments are not optimal and may leave serious gaps. These are the key preliminary conclusions of the UN Special Rapporteur on Privacy, Joe Cannataci, at the end of a two-week official visit.

“There is plenty of good news in Germany,” Cannataci said. “It is easily one of the countries with a stronger culture on privacy protection and the rule of law, both in society and its administration, thanks in part to privacy being embedded in the training of German police and intelligence.”

Germany had also witnessed impressive ground-breaking decisions by the German Constitutional Court in 1983, on the rights to the free development of personality and informational self-determination, and in 2008 on digital privacy.

“Respect for the rule of law and the importance of privacy is deeply entrenched in German culture,” the independent expert said.

“Since the Snowden revelations in 2013, positive institutional reforms include the introduction of a new Permanent Commissioner and additional human resources being allocated to existing structures like the Parliamentary Control Commission, the G-10 Commission and the Federal Data Protection Commissioner’s Office, who also gained in independence when it was separated from the Ministry of the Interior,” Cannataci said.

German civil society remains vibrant, and had challenged threats to privacy both at the Federal Constitutional Court and by raising awareness on privacy, he said.

Cannataci  also praised research published on 8 November by the Berlin-based  think tank Stiftung Neue Verantwortung, which provided a compendium of 64 good practices on legal safeguards and oversight innovations for bulk surveillance. “This is an excellent work which I not only highly recommend to the German Government and oversight authorities but also to a global audience interested in reinforcing legal, technical and practical safeguards in such matters.”

The Special Rapporteur said there were, however, some areas of concern.

Reforms of intelligence surveillance in 2016 contained improvements but had also led to further fragmentation of the German intelligence oversight system, already complex due to Germany’s federal structure, he said.

“The creation of the so-called Independent Panel and the exclusion of the Federal Data Protection Commissioner from most matters related to the BND (Federal Intelligence Service) do not seem to have improved privacy protection, and may have missed the opportunity to strengthen *a posteriori* inspection and oversight.

“Germany seems to be missing oversight authorities empowered and adequately resourced to knock on the doors of the security agencies at any time and carry out spot checks, especially on technical systems, without prior warning,” Cannataci said. I intend to continue investigating the extent to which this impression is true together with the German authorities

There may also be a need for oversight agencies to establish remote access to databases of intelligence services, as counterparts in France, Netherlands, Norway and Switzerland already enjoyed.

Cannataci also examined the impact on privacy of spyware and biometrics, including facial recognition, in the context of intelligence and law enforcement. He assessed big data and open data policies, data retention, the implementation of the EU’s General Data Protection Regulation, and patients’ right to privacy in the health sector. More details about these subjects are likely to be included n the Special Rapporteur’s final report which is expected to be presented to the UN Human Rights Council in March 2020, following further consultations and research with the German Government and civil society.

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***Mr. Joseph Cannataci****(Malta) was appointed as the first*[*Special Rapporteur on the right to privacy*](http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx)*by the Human Rights Council in July 2015, with his mandate being renewed in 2018 until July 2021. He is an academic who has had a pioneering role in the development on data protection, privacy law and technology law. A UK Chartered Information Technology Professional & Fellow of the British Computer Society, he also continues to act as Expert Consultant to a number of international organisations.*

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