



TOP STORIES

NEWS

German court determines fake traffic stop used for cocaine bust to be legal

German police in 2015 found kilos of cocaine in a drug courier's car in an apparent random traffic stop. It was really part of an undercover investigation. The country's highest court has now ruled this practice legal.



In what could be a crucial decision for many criminal investigations, the German Federal Court of Justice ruled on Wednesday that the fake routine stop set up by police to seize cocaine during an undercover investigation was used legally against the suspect on trial.

The court legitimized what is already common practice in many investigations against organized crime - for police to obtain evidence in the face of imminent danger without a judge approving a search warrant, and for the prosecution to later use that evidence in court.

Carsten Momsen, an expert in criminal procedural law from the Free University of Berlin, told DW that the ruling could potentially lead to [more organized crime cases](#) being filed in Germany. "Within the EU, we have some cases that could be filed in different countries. Drugs, for example, are often imported from outside the EU to France or the Netherlands and then sold in Germany, like in the case the Federal Court just ruled on," he said. "Investigators usually try the case in the jurisdiction that will grant the best conditions for success."

Cocaine hidden in car

The details of the case brought before the court read like the plot of a TV crime drama.

In August 2015, a team of German police had been following a drug gang for several months when they noticed that a car they had attached a hidden tracking device to traveled to the Netherlands. Because police suspected the driver had picked up a new batch of drugs there, they were set on stopping and searching the car on its way back to Germany.

But at the time, police did not want to reveal their investigation into the drug gang because their leader was visiting his native Morocco, where he could have easily gone into hiding. Instead of requesting a search warrant from a judge, police asked the highway patrol for assistance. Patrol officers stopped the drug courier in what they told him was a routine traffic check. When a drug-sniffing dog they brought along alerted the officers, they searched the car and uncovered close to eight kilos (17.6 pounds) of cocaine - enough to send the



A police dog accompanied officers when they stopped the cocaine courier

driver to jail for six-and-a-half years.

The drug courier's lawyers lodged an appeal, arguing that the main evidence in the case against his client - the cocaine found in the car - should not have been used in the trial because it was obtained without a search warrant and because police did not initially inform the man that he had been arrested as part of an ongoing investigation. Police only revealed their investigation to the man when the gang leader and several other accomplices had also been arrested.

Enough evidence for a warrant

But the court determined on Wednesday that the police acted within the law.

The judges found that given the evidence law enforcement had collected against the drug gang, they could have easily obtained a search warrant had they not had concerns about revealing the investigation.

The verdict specified that suspects had to be informed of an investigation against them by the time the prosecution pressed charges, at the latest.

Presiding judge Ekkehard Appl said that police had to constantly struggle to fulfill two tasks: to simultaneously prevent dangers - in this case, preventing drugs from being sold - and investigate suspected criminals.

More leeway for police

Law professor Carsten Momsen explained to DW that the distinction between those two tasks is of crucial importance because German law allows police significantly more leeway when it comes to preventing danger compared to criminal investigations. The court's decision could thus allow investigators opportunities to circumvent the notoriously strong restrictions for police under German criminal law.

The head of police union GdP, Oliver Malchow, welcomed the court's decision. "This ruling means that police can continue to use measures in their work that allow them to, for example, conduct a search without exposing an ongoing undercover investigation," he told DW.

Some experts, however, warned that allowing evidence to be obtained without consulting a judge could give police too much leeway. Michael Jasch, a professor for criminal procedural law who works at Lower Saxony's police academy, told news agency DPA ahead of the ruling that this could encourage police officers to "circumvent constitutional standards" in their investigations.

Anticipating potential criticism, presiding judge Appl said that the ruling was "not a set-in-stone approval of all future police investigations." If police were to systematically exploit the ruling, the judges might rule differently on the issue in the future, Appl said.



The ruling gives German police more leeway in preventing dangerous crime

DW RECOMMENDS

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Customs officers at Germany's biggest airport are increasingly likely to find illegal contraband in the cargo hold than on passengers, new figures show. And smugglers can be very creative. (06.04.2017)

German Federal Court rules patients should have access to life-ending drugs

For more than a decade a 74-year-old man fought for legal access to fatal drugs for his paralyzed, now-deceased, wife. A German court has now ruled that her extreme suffering should have been taken into account. (02.03.2017)

Germany sees sharp spike in cocaine imports

Authorities have seized more than 550 metric tons of the illegal narcotic within Germany this year. This is an increase of hundreds of tons over a period of just a few years. (07.03.2017)

German police 'forced to choose' between mafia and terror

Organized crime is costing Germany billions and increasingly working via encrypted networks, the German police has said. But despite stable figures, critics say the priorities have switched to fighting terrorism. (14.10.2016)

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Author Mara Bierbach

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