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Will insurers be peeping into the bedroom next?

On 25 November 2018 the people will decide on a tough law against fraud in the social security sector. A tiny group has called for a referendum against social detectives.

JÜRIG MÜLLER

Social security benefits obtained by fraud at the expense of the general public are not trivial offences. When such cases come to the attention of the public, it is understandable that they spark great outrage. Such as the case of a woman who, according to the doctor's certificate, could barely walk, then tottered out all the same in her high heels, as Christian Democrat People's Party (CVP) National Councillor Ruth Humbel revealed in the parliamentary debate. The occurrence came to light through surveillance images.

But just how far is surveillance allowed to go? That was the question parliament had to answer in the session on the new legal basis for the surveillance of insured persons. It was necessary because the European Court of Human Rights and the Federal Supreme Court of Switzerland had criticised the insufficient legislative framework for surveillance. This type of insurance fraud admittedly is not all too common: according to the Federal Social Insurance Office there were 630 cases of fraudulent use of the Old Age and Survivors' Insurance (OASI) uncovered in 2017. That is 0.3 percent of a total of 220,000 OASI recipients. Two-thirds of the cases did not come to light through surveillance, but among other things through repeated medical checks. Despite everything, parliament passed a very tight law.

The insurance companies – OASI, medical, accident, unemployment, daily allowance, needs-based minimum benefits – may “secretly observe an insured person and in doing so make visual and sound recordings and use technology tools for location determination”, as it says in the new law. These measures may be instigated by a member of the management of the insurance company concerned, but “external specialists”, i.e. private detectives, may also be employed. “Technology tools for location determination”, i.e. GPS trackers or drones, would need judicial authorisation.

The Federal Council cautioned restraint

In the run-up to the debate in parliament, law professors warned of a law gone too far. Even the Federal Council did not want to allow GPS tracking. Interior Minister Alain Berset pointed to the protection of privacy and the principle of proportionality. Yet in parliament the hard line prevailed. Swiss People's Party (SVP) member of the Council of States Alex Kuprecht declared that he had more trust in the practitioners than in the law professors. GPS trackers are necessary, said CVP member of the Council of States Pirmin Bischof, to be able to locate people – after all, those who commit fraud do not just always stay in their place of residence.

Even critics of the bill, however, professed to fight fraud while respecting the rule of law. One should not put everyone under general



Author Sibylle Berg (far right), National Councillor Silvia Schenker and Dimitri Rougy handing over the signatures. Photo: Keystone

suspicion because of a couple of hundred offenders, argued Swiss Social Democratic Party (SP) National Councillor Silvia Schenker. SP member of the Council of States Hans Stöckli recalled that parliament had recently rejected a tightening of the law for tax offenders.

Insurance companies play police

Despite all the criticism in parliament, the Left then did not want to call for a referendum after all. The SP feared a debate on “social parasites” and only jumped in once a small group surrounding author Sibylle Berg and campaign specialist Dimitri Rougy (see “Top pick”, page 31) had successfully launched an online signature collection campaign. “Never”, declared the opponents of the surveillance law, “has a law encroached so deeply on the privacy of us all. It is even allowed to film inside bedrooms when this is possible from outside.” What disturbs the referendum leaders most is that the insurance companies themselves can decide if and by what means they spy on their own customers and premium payers. Combatting crime, investigations and surveillance in particular are the sole domain of the police and not of insurance companies, they say. A social detective working on behalf of an insurance company is under certain pressure to deliver the photos that the insurance companies expect. And “the insurance companies would like to pay as little as possible”, argue the law's opponents.