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**and police development**

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# C I L I P

NEWSLETTER ON CIVIL LIBERTIES AND POLICE DEVELOPMENT

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THE NEWSLETTER PUBLISHES INFORMATION, NEWS, DATA AND ANALYSES ON  
THE FOLLOWING SUBJECTS:

- I      METHODOLOGICAL PROBLEMS OF POLICE RESEARCH
  - II     STRUCTURAL DATA OF POLICE DEVELOPMENT IN WESTERN EUROPE
  - III    LAW DEVELOPMENT
  - IV    POLICE ACTIVITY
  - V     POLICE IN EUROPE
  - VI    POLICE AID TO DEVELOPING COUNTRIES
  - VII   PUBLIC POLICE CONTROL
  - VIII TOWARDS A CRITICAL PUBLIC
  - IX    CASE STUDIES
  - X     QUESTIONS - COOPERATION POSSIBILITIES - CONTACTS
- 

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development

## EDITORIAL

### WHY HAVE AN INFORMATION-SERVICE ABOUT THE POLICE?

MOTTO: "WHO IS WATCHING THE WARDERS ?"

#### 1. Necessity and Use

Investigations and continual documentation of armament and military development is an accepted fact. The Press reports continually on weapon development, new defence methods, special war-head-carriers, the new phenomenon of "killer-satelites" etc. "War and war-cries" are not requested to prove their relevance to society when one is still dealing with the preparatory stages. The almost inconcievable destruction potential now existant and the fears arising in this connection, the economics of armament production, the arms-trade in general and the play-acting at disarmament negotiations all force one to sit up and take notice. Of course, due to fairly wider-spread information, despite attempts successful and unsuccessful - stemming mainly from qualified information services - to keep details secret especially with regard to new developments, it is still not certain that the controls over armement und military development are at all successful. At any rate armament and military development is of unquestionable significance and touches on decisions about the life and death of whole societies. Even where these dicisions are not so topical, armament, military expenditure and the respective Institutions thereof are still considerable budget and power factors.

Can we compare the development of the police-force and police expenditure in the same dimension? The police-force does not only have a smaller radius and much less potentiality in its methods of force, it also has nothing which can compare - even after taking into consid-  
eration better weapons and the technological development of instruments used by the police - with the annihilation potential that the military possesses. In any case the function of the police is a different one. The police has the task to keep law

and order in the country and not to defend the country as a whole against possible aggressors from outside. The police acts in the special function in the name of, and for the public.

The police and the military, especially where domestic policy is concerned, are not as a rule considered to be a unity, although they should be treated as such when comparing their mutual suppliers and beneficiaries. Apart from this there is the danger that the public has very little knowledge of the development of the police force and its instruments. The routine work of the police fits all too easily into our everydays lives and developments in police instruments and methods are taken for granted. Consequently, only then when we consider police behaviour as being unnecessary do we react and even then the reaction is usually temporary and the developments of the police unduly mildened. Changes that can, and have already, taken place in a liberal democracy due to changes in the function of the police-force and its instruments tend to go unnoticed.

#### a. Facts on and about the Police-Force

The lack of public awareness relates directly to the careful way in which the police and secret service neglect to publish information about themselves, structures and working methods. The 'publicity-shyness' of the police and secret service is notorious. This 'publicity-shyness' increases the danger that in the face of a modern world of computers, facts on individual citizens can be collected and banked under the cover of the official secrets act without the person concerned everknowing about it. The police all too readily use this 'publicity-shyness' as a cover for

its work in general. For instance, it would be ridiculous for the police to publicly expound that it will be arresting a certain drug-pusher at such and such a time and place and then expect to be successful in doing so. But a too hasty understanding for police activities can lead us to forget how easily the police and secret service are able to expand, in a cancer-like manner, resulting in the trend to perfecting the techniques of bureaucracy a consequence of which being a reduction in liberal democracy as a whole. There are many signs which show that the liberal democracies are endangered by their own methods of procedure this being mainly due to tendencies towards concentrated centralisation and the build up of bureaucracy which goes along with it. There are also many signs showing that the domestic apparatus for authority i.e. the police-force and information services are moving more and more towards consolidated central steering agencies. If these observations are true, then it is urgently essential that the information made available to the public concerning police and police development be greatly increased in order to sharpen our awareness in connection with the role of the police-force and its influence.

To advocate a democratic constitution and to observe the police and its development exactly are one and the same thing. The police can always use its role as 'friend and helper' but at the same time we should not forget that its main duty is as a servant of the State and to keep order in the States interest. In this respect, it is not just a coincidence when we hear that in an official opinion of an independent commission investigating on behalf of the police in 1975, the statement: "It is now quite correct to say that the police-force acts within the constitutional rights because the constitutional rights are formed as a protection measure against the State and its agencies,

therefore the police-force, itself being a State institution is unable to defend the citizen against intervention and encroachment by the State."

#### WHO IS WATCHING THE WARDERS ?



The drive for open discussion and controls for the police can only occur through publicity about the police, its structure, activities, work-methods and success. However, one must make certain that the information given is accurate i.e. small details should not be blown up out of all proportion or a single incident interpreted into a systematic trend. Furthermore it is necessary that information always be reliable, clear and watertight. There is no point in reporting that the police-force has increased in numbers or that this or that incident has been observed when one does not have the appropriate facts to back this information up. The aim, to be able to report reliable and honest data is a very difficult one to reach mainly due to the fact that the police force and especially the secret service are able to use their right to secrecy at their own discretion. For this reason one must try and collect information about the police from several different sources and try to interpretate this together with the developments and tendencies already known to get a complete picture.

Here are a few sources which can be used:  
- Extracts from official statistics,

crime statistics, police records, budget information. Try to reconstruct from criminal statistics the positive and negative sides of police behaviour.

- Extracts from newspaper reports which can be pieced together like a mosaic so that in spite of their selectiveness one can come to certain systematic conclusions.
- Interpretations of certain actions and their results (number of bullets causing death etc.) especially the interpretation of well known individual cases which sometimes throw a flash of light into the normal behaviour of the police.

Other sources depend on the situation involved. At all costs one must check the trustworthiness of the facts and documents collected and their respective sources. At the same time, it is often necessary to use what at first glance seem irrelevant sources to try and get as complete a picture as possible.

#### b) Facts on the police in Europe

This Information-Service would not only be confined to West Germany. Although we are unable to make an exact comparison of the situations in similar western countries due to the different traditions and topical problems, it is most likely that the dangers of a "transformation of the liberal constitution" are possible everywhere even when taking in a different appearance. We are not only threatened by what is called 'inner security', what which accounts for the stability of the society and determined by the police and secret-service, but also by the fact that these same institutions are increasingly able to shun public controls. In order to ascertain the respective specific and general problems to compare possible similarities in the developments in different countries, we need to gather and publish information about the police in

other countries. With this information we can ultimately prepare a strategy adequate to deal with possible changes. Naturally, however similar it is a difficult task. There is always the danger that through snatching at isolated data or incidents and comparing them with incidents reported from other countries one begins to try to relate inequivalents.

For this reason it is necessary that this information service presents not only the facts about personnel development, expenditure development and the deaths resulting from police action, but it also tries to compare the long-term effects of developments in police strength, police tools etc. with the development in laws and organisation. Accordingly this Information service should also try to bring to attention important indications reflecting these developments.

#### c) Police and secret service

Because our interest is for a liberal constitution, we feel we must be informed on how this present State and its developments can be influenced by the development of the police-force, its tools and methods. It would, for this reason, be wrong to limit our Information service to police development only. On the contrary we must also gather information about the Institutions which are more and more being brought into connection with the police. In short, we must also include the secret-service in our Information service. In the case of the latter we are often dependent upon fragments of information and single incidents. For this reason especially data must be collected and scrutinised as systematically and as often as possible.

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#### d) Police and public control

Our Information service should, to justify its responsibilities to the public, not only report on what is happening in the police force but also document on the different forms of police and secret service control existant in different countries. To find out which variations have been tried and if there are also private initiatives for controls etc. For this purpose we dedicate 2 paragraphs to suggestions for alternative control forms and public criticism in general.

Due to the nature of this experiment - to watch the warders - it is obvious that this Information service will be critically observed and there will be attempts to hinder the service in one way or another. We must at any rate be prepared for such possibilities. The fact that we must consider such eventualities is in itself proof of its necessity. We think it to be one of the most important tasks for social scientists and journalists to make public that which is not meant for the public.

Supporting a liberal democracy and its constitution does not mean that this democracy should not be criticised. When an official apparatus is brought into being to protect this democracy then it would seem that this is the first step towards destroying same and not supporting it.

Finally, we are well aware that even if this Information service is of good quality, has many supporters and a large distribution, it is still comparable with David's fight with the giant Goliath. The aim of our Newsletter namely to inform the public, has roughly the same dimension as that of the stone in David's sling being hurled at Goliath i.e. the established police force and secret service etc. This is indeed little, perhaps too little as we cannot reckon with the same success that David had. However, in the face of the

tendencies which can now be observed, we are of the opinion that everything possible should be attempted to defend our basic and civil rights and that whenever we see these rights being endangered we should bring this to the public's attention. The form which we have chosen to reach the public, is a form which liberal democracies have approved and understand.

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#### 2. SUGGESTIONS FOR THE PRACTICAL REALISATION OF THE NEWSLETTER

The function of the Newsletter is to provide a platform for open criticism. This can only be achieved if a large number of supporters, coming from individual Western European countries, can be found. The Newsletter cannot act as an Information service whereby information, analysis and reports are subscribed and then called upon. The initiators of this Newsletter are a small group of mainly academic people and are only able to compile a small part of the contents for the Newsletter. We are therefore dependant upon the help of those interested whether it be from the field of the media, academics, civil rights organisations, pressure groups or persons directly involved. How then should a Newsletter with such ambitious aims be made possible? This question was put to us, and rightly so, by various persons and working groups we had written to in an attempt to make first contacts. Then it would appear correct to say that although many people are interested in the developments of the police and secret service etc., this is not their main preoccupation. This means that the information analysis and reports come either sporadically or are only concerned with single cases.

The concept we suggest tries to balance out the conflict between keeping the work for the individual supporter to a minimum

and the high aim for systematic and comprehensive information about the developments in inner-security in Western Europe. To help solve this conflict we have 3 principles:

1. The contents should be kept as simple and as standardised as possible. We hope that collecting a number of mosaic pieces we are, in time, able to come to clearer analytical and systematic conclusions.
2. The amount of work for each supporter must be kept at a low level. We do not expect brilliant elaborate reports (although we would naturally be glad to receive them) but in the first place, facts, informations, cases, which should carry a short commentary with regard to their emphasis and importance. We hope that this should help to keep the work to a minimum.
3. In our opinion, this Newsletter should not aim at increasing closed shop discussions, but instead encourage and support open wide-ranging discussion. For this reason there is no need for supporters to supply long comprehensive scientific statements. This should also make it a lot easier for those who are interested and not coming from the academic world.

The only stipulation we make is that the information and reports are reliable, verifiable clearly stated and put in the proper context.

Based on these principles, it should in our opinion, be possible for many potential supporters to become active. Contributions should be at least half a page for short reports and at the most 20 pages for longer reports. Reports should be in English or German. Only when this is not at all possible, then in French. Naturally the suggested concept for contents should itself be open to discussion in the first editions. This 0-number only gives suggestions which are probably insufficient and in need of alternation. Criticism and suggestions for alternations are openly

and gladly welcomed. We now hope to receive a lot of letters so that our wish to produce 2 - 3 significant numbers a year can be realised.

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## I METHODOLOGICAL PROBLEMS OF POLICE RESEARCH

### INDICATORS OF POLICE DEVELOPMENT

The development of a frame of indicators for registering trends in the internal security policy of Western Europe empirically and for gathering the corresponding data in a policy sector which is strongly subordinate to secrecy (problems of access), provides a series of methodological problems on different levels. In order to succeed, the intention of this newsletter to organize police research on an international level demands a very critical and explicit methodological course of action already at the descriptive level. Consequently, in addition to the documentation of data concerning police development it will be necessary, within the parameters of the police information system, to sustain a continuous methodological discussion. As a condition for a documentation of trends in the development of the Western European police force, we assume that the initial newsletters must stress primarily the developmental level of the frame of indicators. Accordingly, we ask our colleagues, who have received this copy of our Newsletter and who would like to contribute to support the compilation of a frame of indicators through criticism and conceptual suggestions. The frame of indicators presented in this issue is merely intended to serve as a basis for discussions. It is open for modifications, expansion etc.

(cf II Structural data of police development in Western Europe)

### PROBLEMS OF ACCESS EXEMPLIFIED BY THE BRITISH OFFICIAL SECRETS ACT

In addition to the above mentioned difficulties with the examination of state security institutions, further limitations in criminal law exist concerning the passing on of official data. This is exemplified by the Official Secrets Act.

#### THE CASE

In February 1977, the American journalists AGEE and HOSENBALL were expelled from Great Britain. Even today the background of the expulsion is unknown.

Two days after the announcement of the expulsion, the journalists AUBREY and CAMPBELL, members of the "AGEE and HOSENBALL DEFENSE COMMITTEE", met for a discussion with ex-corporal John BERRY. The latter had informed the Defense Committee in a letter that as a former member of the intelligence unit of the army (during 1965-70), he might eventually be able to elucidate the reasons for the expulsion.

On the same day, the three persons who before this meeting did not have any contact whatsoever with each other were arrested and accused under the Official Secrets Act of having betrayed secrets. They were not allowed to see a lawyer or friends. Even after their release on bail, on the condition that they not disclose anything about their discussion, attempts by the police to intimidate them did not cease: The three men had to report daily to the police, friends were interrogated by the police and had to put up with enquiries.

Six months after the first arrest, CAMPBELL was accused of a further offence closely connected with his journalistic activities. He had collected information about the military intelligence system which was considered "directly or indirectly useful to the enemy". The police, though, could not even prove that the material in CAMPBELL'S possession derived from official sources, or if it was secret material.

## VALUATION

The Official Secrets Act places the prevention and the bringing under criminal law of every public and private discussion concerning official data - which through official decisions have not been made public - solely in the hands of the arbitrariness of legal prosecution.

The opinion of a former leader of the British Internal Security Service is typical of this prosecution, in its selection operating according to opportunity principles: "It is an official secret if it is an official file". Even if the courts not always support such excessive interpretations, this does in no way diminish the effect of the Official Secrets Act.

The range of application of this law already extends to information or criticism not yet published. This necessarily implies an observation and surveillance of the private sphere of living and consequently an extensive collection and storing of the data pertaining to persons under suspicion for such crimes. Here, the official inquest intended for the prosecution of criminal actions mutates into investigations of critical behaviour.

Extract from a verdict of the West German Supreme Court

If the culprit through systematical registration and reliable compilation of originally public facts attains an exact picture of the potential army force in the Federal Republic in an essential area, he arrives at a "knowledge" whose secrecy visàvis a foreign government is necessary in order to secure the welfare of the Federal Republic of Germany: a state secret.

Penal Code § 99

Moreover, the possibility of being committed for trial and having to endure police enquiries negatively influences the articulation of criticism.

A law which was passed in 1911 and ex-

pressed the common fear of hostile espionage, has turned into a law which isolates the state from its own citizens.

## OPPOSITION

In order to support AUBREY, BERRY and CAMPBELL, an extensive campaign is being carried out in England. It is sustained by the National Union of Journalists and such numerous personalities as: Ken Ashton, Robin Cook MP, Robin Corbett MP, John Griffith (prof.), Peter Hain, Patricia Hewitt, Arthur Lewis MP, E.P. Thompson (prof.), Ralph Miliband (prof.), Ken Morgan, James Gordon.

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**OFFICIAL  
SECRETS**  
**are for  
sharing**

## II STRUCTURAL DATA OF POLICE DEVELOPMENT IN WESTERN EUROPE

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Within the scope of our research as well as in the CILIP-project we take interest in the police - along with the military - as one of the two organizational types of legal physical force monopolized by the state. The documentation under this category aims at an empirical comprehension of the structural characteristics and tendencies of development within this official force potential which is intended for internal operations and is correspondingly organized, equipped and trained.

Especially great problems emerge in balancing the function of the military so that a total empirical balance of changes in the potential internal force mechanisms might be achieved. In most West European countries there are historical and recent examples of actual internal military operations. The range of legal codification and organizational as well as training and equipment aspects of preparing military machinery for an internal operation varies.

In West Germany, where in 1968 military operations were legally codified in situations of civil war, an estimation in terms of quantifiable data of the military share in the total internal force potential seems impossible. At the same time, the case of West Germany shows that military internal operations - codified in the law of 1968 - were of utmost importance, particularly for the reorganization of the police force machinery. Considering the equipment with firearms, this new adjustment led to a demilitarization of the police force machinery.

For the reasons mentioned above, our cluster of indicators, which is supposed to include the internal force potential confines itself to the police and co-ordinate institutions. In the reports from different countries, however, we find it essential to make general statements concerning the role of national military institutions in internal operations.

Likewise, the attempt to grasp the national force potential empirically in order to make it comparable to the potential in other countries meets with numerous problems. The comparison between different countries demands more than a general consideration of different legal systems, police organizations, tasks etc. Indicators must be found and formulated, in order to make it possible, despite national differences, to find data of comparable national police organizations. The formulation of such indicators is still easier than the attempt to get the corresponding data of such indicators. When it comes to the question of the internal force potential and its development, these indicators (which are to be further explained) seem to be important:

- NUMBER OF PERSONNEL
- MOBILITY
- MEANS OF COMMUNICATION AND BANKS OF DATA
- EQUIPMENT WITH MEANS FOR AN INTERVENTION USING PHYSICAL FORCE

The development of police authorities to legally authorized intervene in fundamental civil rights is not quantifiable and consequently excluded from this cluster of indicators due to systematical reasons. It will be discussed separately.

We also deliberately refrain from including the development of the budget in this cluster of indicators. Financial data might be interesting when it comes to the question of the social and political costs of the police force. As an indicator of the development within the official force potential, however, information about the costs of the police force is vague. From 1960 to 1969, for example, the budget of the West German border police has increased twofold. After a more exact investigation, however, this doubling of the costs proved to be almost entirely a consequence of the collective

wage-development in the public sector. Within the course of these ten years, neither the number of the officers employed by the border police nor the volume of investment changed significantly. Even based upon the limited claim to find comparable, quantifiable and comprehensible indicators for the force potential in the internal security institutions, the selection of indicators is certainly not extensive. Our selective criteria for the possible areas of indicators were on the one hand convincing statements of single data/indicators concerning the national potential of repression, and on the other the frequency of isolated indicators in publications and research. Many useful indicators must be excluded if they occur not at all, or only in isolated cases within official institutions, or if data are at public disposal. Without a limitation of the indicators to a few efficient and useful examples, comparable frames of development cannot be evolved.

The size of personnel and equipment with means for an operation are the most common indicators - for example in the research of armament - to characterize the force potential. Compared to the military, differences in the equipment of weapons play a less important role in the case of the police force. The efficiency of police operations does not mainly depend on the size of the potential of destruction.

On the other hand, it is extremely difficult to designate indicators contributing to a comprehension of the differentiated structure of the official force potential and its different means of equipping it. Mobility, information, communication, and organization of the state mechanisms of repression belong to the elements which make the capacity and functioning of the repressive mechanisms in a state most clearly comprehensible.

The fact must be realized that the interesting data themselves cannot be sifted out. Rather that data must be grasped, which bureaucracy - with another purpose -

has brought together. Whether a sifting out of the interesting parts from the bureaucratic mountains of data will prove successful or not, will finally be decided through the question of to what extent the compiled data will explain relations further. Especially when comparing several countries, data from and concerning the police force as a bureaucratic organization, dependent on national differences and historical changes, having a large amount of administrative tasks in addition to its main function, and data concerning the police force as a direct repressive institution must be separated from each other.

Thus it makes no sense to compare, for example, the number of officers and the budget development of different countries in a cross-section, if one simultaneously pays no attention to the tasks of the police organization in question made possible with a certain number of officers and a certain budget. When it comes to the question of the official force potential, an equally large number of officers can be valued very differently. In one case the police force has a lot of additional tasks concerning fiscal-, labour-, economical-, health-, fire-, construction- and traffic-inspection, whereas another case deals solely with the organization of the direct repression mechanisms. At the same time changes in the number of officers within a national police organization must not necessarily mean a diminishing of the official force potential. Rather these changes might be a consequence of increasing or decreasing tasks beyond the main function of the organization.

#### DATA OF PERSONAL

When it comes to the question of the force potential, the data concerning the total number of police officers is not of primary interest. More interesting is the size and development of officers in such organizational sectors of the police force whose members are authorized to use physical force. The number of civil employees in these organizational sectors must be added, insofar as they are part

of the infrastructure of force. In West Germany, England, and in the USA, an increase in the civil staff can be observed in addition to the direct increase in employees authorized to use physical force. These civil persons are employed for the purpose of releasing the officers trained for executive tasks from the administrative duties, so that the latter can be at the disposal of direct police duties. As regards the importance of the power institutions, consequently not only the development of the executive staff is significant but also the staff development in the civil sectors of the police institutions performing infrastructural tasks

(general administrative duties, clerks, computer staff, staff of the crime laboratories, etc.) for the machinery of force.

As an example, further problems of the West German police force will be discussed here. The West German police system has an essentially federal organization. The federal states are responsible for the police tasks. In addition, there are special police institutions for which the Federal Republic as a whole is responsible.

Forced by the demands of the World War II occupation power, most general and inspection tasks are excluded from the police institutions of the Western sectors and organized in independent administrative units. Consequently the police institutions in the federal states, with the exception of traffic control and direction, are mainly limited to the principal function of the police. In the daily work of the police institutions, approximately 20 to 30 per cent of the executive personnel is confined to tasks pertaining to the traffic staff. From the point of view of training, authorities and bureaucratic planning, this without doubt is a personnel sector which beyond the daily tasks is prepared for direct operations by open force. Consequently this type of personnel can be added to the other types of personnel within the force potential.

Table 1 shows the personnel development of the police force in the federal states during the

years 1960-75. Such data is not available in which - for all federal states - executive employees are separated from the civil staff. It should be remembered, however, that after 1945, the general disciplinary tasks were removed from the police institutions.

This measure enables the civil personnel in the federal states to perform mainly infrastructural tasks preparatory to the acts of force. Thus the civil staff is a functional part of the force potential. The difference between column 2 (46,6 per cent absolute increase in personnel from 1960 to 1975) and column 4 (17,6 per cent increase in working-hours of the police officers pro 100 000 of population) should be pointed out. The indicator used in column 5 seems more telling than absolute numbers of personnel are about the daily presence of the police officers and consequently about the daily control of citizens by the police. The valuation of the number of personnel dependent on the collectively decided working-hours in the public sector also is important when it comes to the following question: Which factors have actually induced the remarkable - absolute - increase in personnel during the years 1960 to 1975? Compared to an interpretation of the increase in personnel on the model of "Social development in times of crisis and enlargement of the official repressive institutions", a very remarkable influence of one variable (development of working-hours in the public sector) becomes obvious. The change is not due to the development of a crisis.

Comparing, for example, the columns 1 and 4 for the year 1970, it is evident that an absolute increase of 20 per cent in personnel corresponds to an increase of only 2,5 per cent of police manpower performing daily bureaucratic tasks. Considering the extension of collectively bargained holidays as a further variable, the increase of 2,5 per cent also disappears. Differently formulated, this means:

A 20 per cent rise in personnel was necessary during the years 1960 to 1970, merely

in order to maintain the status quo (we are here neglecting the possibilities of rationalization) of a daily police presence. Even more significant in comparison is the increase - in column 6 - of more than 15 per cent during the years 1970 to 1975.

Corresponding to this argumentation we maintain the thesis that the enlargement of the staff between the years 1960 and 1970 has its origin not so much in the intention of strengthening the official force potential, but rather in the attempt to keep at least the status quo. Still one must not fail to observe the fact that there is more personnel for attaining internal peace with physical force in emergency situations. Table 2 shows the development of the personnel in two West German special assignment institutions of the police and in one West German intelligence organization having no kind of executive function. In its function as an organ of police surveillance however, it is to be added to the oppressive state institutions and its infrastructure. The Federal Border Police today still consists to about 95 per cent of executive officers organized in a police force. The remaining 5 per cent of the officers carry out the passenger control at the checkpoints. Contrary to the legal task (to be an objective and local authority for the direct protection of the borders), the border police force - up to the late sixties - was organized according to the pattern of infantry, and in its organization, training and equipment was oriented towards the destruction of internal enemies in an open civil war, by means of a force potential characteristic of light infantry.

On the one hand, the end of the cold war and the beginning detente, and on the other the codification of emergency laws in 1968, which made internal operations by the Federal Army legal, changed the function, organization, training, equipment and the legal exposition of Border Police Force tasks.

The Border Police became a West German police force. On the eve of an open civil war, this police force can be used in all areas of the Federal Republic with a much more differentiated potential of operational means and forms of operation. As such it is complementary to the police forces of the federal states.

The Federal Criminal Investigation Department (Bundeskriminalamt - BKA), founded in 1950, originally was an institution intended to coordinate the work of the criminal investigation departments in the federal states on a national level and as a German department of the Interpol on the international level of cooperation. It had a very limited executive power of its own beyond its main function as an intelligence centre of the Criminal Police. In the late sixties, the Federal Criminal Investigation Department was rapidly enlarged, as well on the level of personnel and equipment as on the level of legally codified, local and objective authorities of legal prosecution. The Federal Domestic Intelligence Office (Bundesamt für Verfassungsschutz - BfV), with corresponding parallel organizations in the federal states, was founded in 1950. Legally, it has the exclusive authority of "Collecting and evaluating information and material concerning the endeavours to abolish the constitutive order of the Federal Republic". In addition to its independent work of investigation, the Federal Office has a coordinating function with regard to the cooperation with and between the corresponding departments of the federal states. Historically, the Domestic Intelligence Office and the corresponding federal departments are the result of a decision made by the allied forces in West Germany. Through an organizational separation of politically instructive work or surveillance and executive tasks within the country, they wanted to prevent a resuscitation of the fascist secret state police (GESTAPO). Functionally, the office performs the tasks of the

traditional political police.

The civil staff of the Federal Criminal Investigation Department and the Border Police indirectly perform the tasks (cf. technical staff etc.) of these

special police institutions within the internal force machinery. Consequently it should be included in the calculations.

Due to data problems, table 2 cannot possibly present a complete documentation of the area of staff development within the Federal police institutions, insofar as the development from 1960 on is concerned.

Nevertheless, from 1968-70 an important turning-point in the expansion of police institutions becomes evident. Moreover, within this expansion, the special police institutions in West Germany begin to play a large role.

In the following section, a stronger division of the personnel development of the federal police institutions according to the particular range of tasks seems appropriate and necessary. Due to the specialization of the police, the personnel of particular organizational divisions cannot be marshalled for all police tasks. According to organization, equipment and specialization, certain subdivisions of the police can be used merely for limited problems of security (harbour police etc.). It makes for a considerable difference if the sectors of the state defense, the police forces, or the traffic sections are enlarged.

TABLE 1:  
DEVELOPMENT OF MANPOWER  
WEST-GERMAN LAND POLICE (Effective Strength)  
(Police-officers, civilians and traffic wardens)

YEAR	Population (1000)	Total manpower	increase %	Total manpower per 100 000 population	increase %	hours potential weekly duty time per 100 000 population	increase %
		1	2	3	4	5	6
1960 <sup>1</sup>	55 785	113 124	100,0	202,8	100,0	9 126	100,0
1961	56 589	114 364	101,5	203,0	100,1	9 135	100,1
1962	57 247	117 138	103,5	204,6	100,9	9 207	100,9
1963	57 865	119 194	105,4	206,0	101,6	9 270	101,6
1964	58 587	120 390	106,4	205,5	101,3	9 247	101,3
1965	59 297	123 833	109,5	208,8	103,0	9 396	103,0
1966	59 793	126 870	112,2	212,2	104,6	9 549	104,6
1967	59 948	129 524	114,5	216,1	106,6	9 724,5	106,6
1968	60 463	130 181	115,1	215,3	106,2	9 688,5	106,2
1969	61 195	132 386	117,0	216,3	106,7	9 733,5	106,7
1970 <sup>2</sup>	61 001	135 863	120,1	222,7	109,8	9 353,4	102,5
1971	61 503	141 074	124,7	229,4	113,1	9 634,8	105,6
1972	61 762	147 250	130,2	238,8	117,8	10 029,6	109,9
1973	61 976	154 793	136,8	249,8	123,2	10 491,6	115,0
1974 <sup>3</sup>	62 054	159 573	141,1	257,2	126,8	10 288	112,7
1975	61 829	165 853	146,6	268,2	132,3	10 728	117,6
1976	61 513	176 267	155,8	286,6	141,3	11 464	125,6

1) 45 hours potential weekly duty time of public employees

2) 42 " " " " " " " "

3) 40 " " " " " " " "

Source: Statistisches Bundesamt, Fachserie L, Reihe 4 (Personal von Bund, Ländern und Gemeinden)  
erscheint 1960 ff.  
bzw. ab 1975: Fachserie 14, Reihe 6



TABLE 2: Development of Manpower,  
West German Land and Federal Police

Year	Federal Domestic Intelligence Office (Planned Strength)	Federal Crime Office (Planned Strength)	Federal Border Police Civilians and Police Officers	Federal Border Police Officers (Effective Strength)	Federal Police		Landpolice		Federal and Land-police	
					Total	Increase	Total	Increase	Total	Increase
	1	2	3a	3b	4a	4b	5a	5b	6a	6b
1960	523	419		14 329			113 124			
1961	635	451		13 495			114 864			
1962	620	450		12 963			117 138			
1963	865	515		15 541			119 194			
1964	915	524		17 450			120 390			
1965	910	548		16 624			123 833			
1966	956	553		16 206			126 870			
1967	960	559		17 205			129 524			
1968	998	578 <sup>1)</sup>		15 613			130 181			
1969	1 016	933	20 673	16 811	22 673	100,0 %	132 386	100,0 %	155 008	100,0 %
1970	1 088	1 211	21 370	17 459	23 669	104,4 %	135 863	102,6 %	159 532	102,9 %
1971	1 186	1 529	22 129	18 182	24 844	109,6 %	141 074	106,6 %	165 918	107,0 %
1972	1 259	1 876	22 557	18 576	25 689	113,3 %	147 250	111,2 %	172 942	111,6 %
1973	1 459	2 062	23 309	19 266	26 830	118,3 %	154 793	117,0 %	181 623	117,2 %
1974	1 559	2 212	23 841	19 789	27 612	121,8 %	159 573	120,8 %	187 185	120,8 %
1975	1 585	2 237	24 544	20 514	28 566	125,1 %	165 853	125,3 %	194 219	125,3 %
1976	1 628	2 424	24 849	20 765	28 901	127,5 %	176 267	133,1 %	205 168	132,4 %
1977		2 545	25 650	21 530						

1) The figures used 1960 to 1968 are for executive officers only, from 1969 onwards civilians are included

## MEANS OF OPERATIONS FOR THE USE OF PHYSICAL FORCE

Traditionally, a strengthening of the police force was caused by an expansion of military ordinance (that is, in addition to the common police and military weapons - pistols, firearms, machine-pistols - the equipment of machine-guns, shell-throwers etc.). In West Germany, however, a new trend can be observed. The police forces as holder of military armoury have sorted out shell-throwers and guns of the smaller size and reinforced them (for the first time in the case of the Federal Border Police) with weapons characteristic of the police, that is, normally non-lethal weapons.

The demand of the security bureaucracies for new, non-lethal means of operation to be used by the police can be noted from the mid-sixties on, especially in the USA and in comparable Western European countries. The new armament of the Federal Border Police is an additional consequence of the new regulation of tasks. The later was effected through the codification of internal federal army operations.

Equipping and training the police officers with certain weapons also implies a principal readiness to use these weapons against the population, aside from the fact that special conditions are associated with the application of certain weapons. Thus

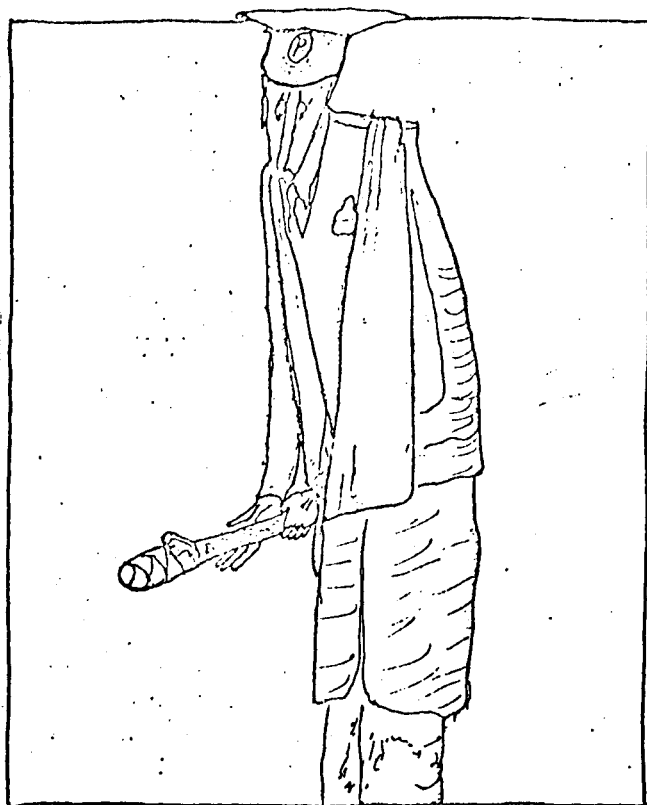
the catalogue of allowed police weapons in a country is an important indicator. At the same time, the armament reduction of the federal police forces shows that the volume of police equipment consisting of heavy weapons is a variable dependent on the readiness of the military for internal operations and on the degree of probability that an intervention might take place.

Along with the principal significance of weapons authorized for a police operation, the size and the changes in size of the equipment of weapons is an important indicator.

According to a resolution by the Ministers of the Interior Conference in 1972, which in its conclusion defines the regulations for the legal authorization of weapons, the federal police is equipped with following weapons:

- a truncheon as basic equipment of each officer in the uniformed police service of the whole country
- pistol/revolver for every officer in the uniformed police service of the entire country
- machine-pistol (MP 5) for the Federal Border Police, the Federal Criminal Investigation Department and the police forces in the federal states. In the federal states the per capita quota in 1973 varied between 1 (MP): 1,4 (persons) (West-Berlin), and 1: 26,5 in Nordrhein-Westfalen
- automatic firearms for the Federal Border Police, the Federal Criminal Investigation Department and the police forces of the federal states
- tear-gas, authorized for all executive officers in the entire country
- hand-grenades and machine-guns for the Federal Border Police and the emergency police forces in the entire country

In so far as they were available, the per capita quotas have been stated.

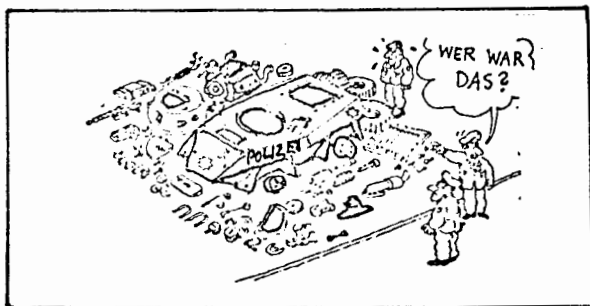


Teigling: Per Marquard Otzen

## MOBILITY

The possibility or preparedness for police interventions can be significantly greater through the extent of modern means of conveyance and can serve as a substitute for stationary disadvantages, especially in the case of the police forces and the reinforcement of personnel. In West Germany the development of the Federal Border Police is of special interest. Since their stations lie close to the borders of the communist bloc, after 1972 these police forces were equipped with 18 transport helicopters in order to grant the possibility of a rapid internal intervention - corresponding to the new legal regulations of tasks - in spite of the proximity of their stations to the border.

Here an indicator would be significant, which could correlate the transport capacities (number of vehicles) with the size of personnel. For 1973 there is corresponding data concerning the equipment of the police forces with vehicles in the different federal states. Between the different federal states, however, there are tremendous quantitative and qualitative differences. The relation of motor vehicles to the number of personnel varies between 1 (motor vehicle): 4,3 officers (in the federal state Hessen) and 1:9 (West-Berlin). Here, among other things, different mobility requirements on the part of the police organizations in country and city areas become important.



## MEANS OF COMMUNICATION AND DATA BANKS

### a) Means of communication

The readiness of the different police officers to intervene, the availability of police information and the efficient execution of specific operational conceptions strongly depend on the transmission and elaboration of intelligence among the employed officers and between the officers and their chief centres of operation. Whereas in 1973 the per capita equipment with walkie-talkies and FM-transmitters was so extensive that de facto every patrolling officer was within reach through radio contact (in Nordrhein-Westfalen one transmitter pro 4,9 officers and one walkie-talkie pro 6 officers), the situation of equipment in other federal states was much more modest. In 1973, one transmitter pro 13 officers and one walkie-talkie for 61,5 officers were at the disposal of the federal state Saarland.

In the meantime, this equipment has been technically improved and the per capita quota increased as well. It is not possible to specify exact data for the present situation of equipment.

### b) Data banks

The construction and improvement of police data banks based on electronic data processing has proved to be revolutionary for the preventive control of persons. This technique has replaced the traditional dossiers and missing persons files. Combining (technically) unlimited capacities of storing data with the technical possibility of retrieving information very quickly, the efficiency of police search has improved considerably.

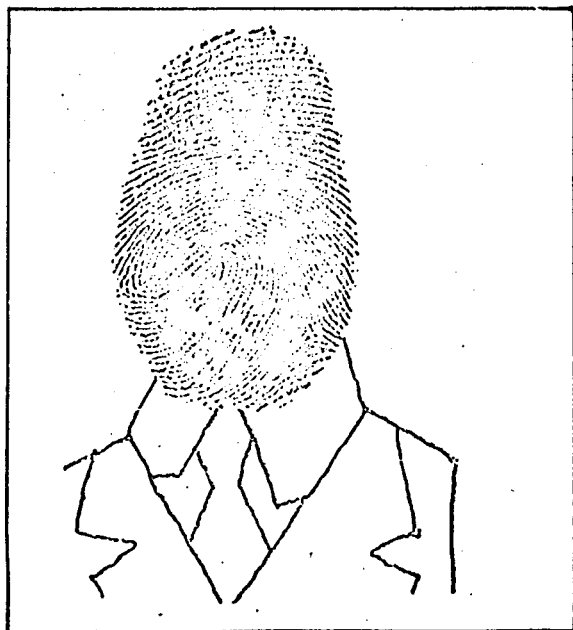
In December 1975, 710 data stations were attached to the police system of electronic data processing (INPOL). At the same time, 850 000 search and index personal data were stored, among others 231 125 persons and approximately 230 000 dactylo-

scopic ten-finger classifications of fingerprints. In the meantime, the electronic search for people and objects, a dactyloscopic classification system as well as a system for the detection of crimes and criminals in specific areas of crime have been effected. The later makes possible a comparison of the modes in which specific crimes have been committed (by still not detected criminals) with the crime techniques of already known criminals (modus operandi, the "hand-writing" of a criminal). With a comparison of finger-prints controlled by electronic data processing, it has become possible to compare 130 000 pieces of evidence within the course of two seconds. Mobile terminals with transmitters are already being tested. When correspondingly equipped, every motor or foot patrol is capable of immediately utilizing the data of the INPOL system. Only in Nordrhein-Westfalen, the range of inquiries and documents of the information system of the electronic data processing pertaining to the police forces demonstrates to what extent these data banks are being utilized. In 1974 the data banks were used altogether 5 861 000 times, which means a daily frequency of about 16 000 activities.

The efficiency of the search controlled by computers has led to an extremely significant increase in the seizure of criminals. Thus, in the years 1973-74, after the introduction of the terminals connected with INPOL, the special service of the border police could increase its seizure of criminals with about 30 per cent.

Among the areas of (electronic) information processing, the extent (of all persons arrested etc.), the structure (data and identification records) and direction of the collected informations (special sets of persons, as for example applicants to the civil service or the police institutions, special target groups) ought to be the most interesting items.

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## POLICE ORGANISATION AND ORGANISATIONAL REFORMS AS A MODE OF IMPROVING THE EFFICIENCY

Organizational forms and changes also become important when it comes to the question of police efficiency and consequently to the question of strengthening the preventive control capacity of the population through the police forces, and in cases of emergency, the question of reinforcing the potential in order to immediately restore peace and order by force. Organizational changes and their importance when the efficiency is improved and changed (efficiency of what?) are hardly quantifiable. Nevertheless, they are too influential and significant with regard to changes within the internal force potential not to be mentioned.

From the late sixties on, especially the following tendencies can be observed in West Germany:

- Firstly: the double centralization of the police organizations. On the one hand, the last municipal police organizations in the federal states have been nationalized and are subject to the central responsibility and control through the Ministries of the Interior in the federal states. On the other hand, the West German special police force has got a qualitatively new significance, as well through improvement of the machinery as through the actual and legally codified increase in its authorities. Moreover legal changes and the construction of an organizational infrastructure have created conditions, according to which all different police organizations can be employed and centrally regulated through a national management board. In addition, organizational reforms have been made in the different federal police organizations, likewise aiming at an intensified specialization and a tenser structure of command.
- Secondly: an intensified specialization of

special organizational sectors makes it extremely difficult to extrapolate the total police structure, setting out from a mere calculation of one organizational sector (as for example the "normal" municipal police). Specialized units like anti-terror-commandos, officers responsible for maintaining communication with the community, juvenile specialist officers etc. may be neglected quantitatively when considering the police as a whole. Their actual qualitative value only shows in the attempt to determine the functional significance of such groups within the total constellation of tasks and the organizational structure of the internal power mechanisms.

- The specialization is connected with a further increase in professional expertise, which for two reasons is interesting. On the one hand, extensive specialization reduces the degree of interchangeability in different parts of the internal power system. Today, patrolling officers, so called officers responsible for maintaining communication with the community (foot patrol) are used only under certain conditions for strategically difficult tasks like demonstrations (tasks today normally performed by the border police and the emergency police). These officers, however, are hardly trained for tasks like those of an officer responsible for maintaining communication with the community. On the other hand, the degree of specialization also shows the specific spheres, to which the police is paying attention.
- Specialization and increase in professional expertise in many cases - especially in large cities - can be observed in experiments aiming at an increasing "efficiency" of police work with the help of organizational reforms (with often rather differing conceptions of efficiency), rationalization of costs and a publicly effective authorization ("within call of the citizens"). These "policing models",

mainly and very thoroughly examined in the USA, now playing an increasing role in the West German reform experiments, are above all interesting when it comes to the question of the real changes in supervisory police training of different parts/groups of the country.

Of course especially the organizational factors are not easily pressed into fixed, quantifiable frames of indicators. In many cases they probably in the first instance occur as necessary frames of interpretation for existing special data (e.g. of special organizational sectors). In the long run it might be interesting to find out whether specific organizational development tendencies run parallel with the development in all Western countries.

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#### SOME OPEN ITEMS

The mentioned five clusters of indicators for the comprehension of the total police structure in a country probably demand too much work which could only be possible in special research groups. Data of single sectors of the federal police forces probably are easier to obtain and consequently more rapidly available. This seems to be a useful starting-point. It must be asked, however, if and to what extent the single data forms a total picture in the course of time.

A second item likewise remains open. The structure of the internal power mechanism - according to our suggestion - was analyzed merely under the aspect of the potential of force. But how, under which aspects, by means of what is this potential daily being realized? How could the everyday police, a kind of (fictitious) average police activity be determined? What value would such data present? Partly such reflections are made in other sections of this publication. Apart from the technical problems to grasp standardized data, that is, data referring to the same questions, we principally feared to overstrain the experiment of an overlapping frame of data or indicators already from the beginning if the area of indicators would have been further extended. Consequently these questions were wholly excluded.

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### III LEGAL DEVELOPMENT

In the different western capitalist countries, the legal codification of the rights of a state to interfere with the civil spheres of liberty takes place in differing ways. Different legal systems (common law vs. continental systems) and different constitutional structures make direct comparisons concerning the legal forms of civil fundamental rights difficult. Even more complicated is the attempt to compare the regulations of the authority of state power mechanisms (that is, police forces, military internal operations etc.) to intervene. At present there is an attempt in West Germany to attain a legally possibly clear and extensive determination of the executive rights of intervention (in a "model of a centralized police law"). In other countries, however, there are no legal regulations at all for many important sectors, only decrees and regulation of tasks. Consequently, for the time being we must give up all claim to a systematical, law-comparing description of the development concerning the rights of a state to intervene (identification, entering or searching through flats, confiscation, identification service, use of weapons etc.)

For the same reason the question cannot be answered, whether the different techniques of regulation themselves are containing qualitative characteristics of the relationship between citizens and state (or police).

The answer to this question is of fundamental significance, owing to the fact that countries with more ancient democratic traditions - e.g. France - hardly have standards of intervention (produced by means of parliamentary legislation) determined by statute law, except for the general stipulations of police law. Nevertheless, these countries cannot be deprived of the right to be called constitutional states when compared to West

Germany (the later being characterized by the endeavour to standardize any right of intervention legally). Consequently the aspect of legality sometimes is of special significance.

Some countries show a development similar to the West German situation, namely the attempt to innovate partly very old regulations concerning the rights of a state to intervene (Netherlands, Italy, Switzerland, Austria). Under the catchword anti-terrorist-legislation several countries (Great Britain, Terrorist Act, Italy and especially West Germany with its different changes in the criminal procedure, like for example the law of contact prohibition and the law of police-raids) similarly execute a policy of jurisdiction which apparently is based on real causes.

To detect the similarities and the differences of this anti-terrorist legislation ought to be interesting not only for the observers of the West German endeavours. Areas especially worth attention emerge independent of the differing techniques of regulation in the various countries and illustrate the position of the police as an internal power mechanism in the isolated legal systems.

- The separation of repressive and preventive authorities is probably immanent in all West European legal systems. Consequently corresponding authorized changes (even 'mere' standards of competence) can serve as indicators for the position of the police.
- the legal regulation of a preventive and elastic conception of danger with an immediate state intervention as its imminent consequence
- borderline cases in the executive and legal interpretation of intervention clauses authorized for the police

- Utilization and authorization of police actions with reference to legally not regulated emergency cases
  - the different internal repression practices and the powers deciding its utilization in the system of force division as an evidence of the degree of legal repression practices. (In France and Belgium, for example, actions by force originally are reserved for the administration of law. Their execution only is the task of the police, whereas in West Germany actions by force solely belong to the competence of the administrative or police authorities).
  - range of legal protection against (repressive and preventive) police actions
  - mode of legal protection: have specific legal departments been established? (Aspects of the isolation even within the institutions, an isolation of citizens - state - lawsuits from the general administration of justice).
  - the emergence or persistence of social enemy images and their transference in the legal spheres of valuation (spheres of administrative, criminal and civil law).
  - the significance of the development from a material police conception (task = authority) towards an institutional police conception under the aspect of isolation, decisive themes of police tasks and subsequent "higher efficiency" (larger police forces with more power)
  - the relation between tasks, authorities, technical equipment in the different repressive institutions in a state.
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## FEDERAL REPUBLIC OF GERMANY

### NEW LAWS FOR A NEW POLICE CONCEPT

At present, the legal basis of police intervention authority in West Germany, especially in the area of the so called standard measures (identification, examination, arrest etc.) and the utilization of immediate force, is largely changed. The executive government essentially wants to give the police a legally authorized possibility to intervene in fundamental and civil liberty rights, without first having to pronounce a suspicion that these individuals might be guilty of a real crime or represent a real danger to public security and order. This means a rupture with the prevailing legal situation, not so much with the current police practice of the last years.

A specific preventive police concept standing under discussion not only in West Germany, is at the back of the attempt no longer to restrain the intervention rights of the police to the occurrence of really dangerous situations or crimes. Before taking up this problem, the already existing changes in the process of jurisdiction must be displayed.

#### 1. PREVENTIVE POLICE AUTHORITIES

In the German legal tradition, police authorities of intervention are codified as well in the criminal procedure as in the police law as part of the administrative law. In the criminal procedure, the rights of intervention in order to prosecute real crimes and criminals are regulated, that is, rights based on deeds already committed. In the police law, however, rights of intervention are - systematically - codified in order to protect public security and order against dangers. Books about this subject qualifie the authorities formulated in the criminal procedure as "repressive", and the authorities formulated in the police law as "preventive".



Traditionally, intervention authorities of the police law as well as of the criminal procedure were dependent on a really existing situation of danger or a suspicion of certain persons. Besides, the (preventive) authorities of the police law, based on a case of danger, were not allowed to exceed the intervention authorities of the criminal procedure within the scope of legal prosecution (repressive authorities).

In 1976 - modified in 1977 - the West German Minister of the Interior Conference produced the draft of a general federal police law, consequently abolishing the two former principles of law. The different authorities of this project were more extensively described than within the scope of the prevailing criminal procedure. Besides, they are no longer dependent on the existence of real reasons for believing a person to have committed a crime. The less important position of the police law first led to a change in the criminal procedure. In order to pass the new parliamentary police law and thus make it legal, a new criminal procedure bill adjusted to the planned law was passed. On February 16th, 1978 the following relevant changes of the criminal procedure for the police practice were passed by the federal government (cf. the law documentation, p.41) which are to be compared with the corresponding project outlines. The following particular authorities are concerned:

#### IDENTIFICATION

In the new § 163 b/c of the criminal procedure, for the first time identification with its subsequent authorities of preliminary arrest, search warrants and the way of identifying are granted for persons who - explicitly stated - "are not suspected of a crime". The presupposition of these measures is the possible elucidation of any crime. According to § 9, part 1 of the draft, in order to prevent a danger, the police - with the corresponding subsequent authorities - is supposed to identify all persons in public build-

ings, means of conveyance, or close to "objects exposed to danger". A suspicion of these persons to have committed a crime is not necessary.

#### CONTROLLING POINTS

According to the new § 111 of the criminal procedure, the police is authorized - if judicially instructed by the public prosecutor - in a case of imminent danger (this is the actual and normal case), to establish "controlling points in public streets and places and in other publicly accessible localities" in order to prosecute crimes belonging under § 129 a of the penal code (the establishing of terrorist associations) or § 250 part 1 of the penal code (armed robbery). At such a controlling point every person and his luggage has to be searched through. At the same time, the already mentioned measures may be used for the identification. Even in this case, no concrete suspicion of the person is necessary. In the draft (§ 9, part 1, nr. 4) the establishment of controlling points with all adherent authorities is planned also when it comes to the question of preventing a crime pertaining to § 100 a of the criminal procedure, or § 27 of the meeting law. To the crimes enumerated in § 100 a of the criminal procedure belong among other things causing or supporting desertion, provoking military insubordination etc. The insertion of § 27 of the meeting law makes the § 9 of the draft to a *lex Kalkar* (cf the commentary on p.25f). This paragraph prohibits the carrying of weapons during demonstrations. This regulation becomes doubtful in view of a practice like the one during the large-scale operation in Kalkar, where even srewdrivers and lifting-jacks were confiscated as weapons. The Ministers of the Interior Conference even discuss the proposition of registering so called passive weapons (protective helmets, tissues against chemical mace, etc.) in a reform of § 27 of the meeting law.

## SEARCHING THROUGH FLATS

The reform of § 103, part 1 and 2 in the criminal procedure creates as a new authority the possibility to search through all flats of a building according to a judicial instruction (in a case of imminent danger according to the instruction of the public prosecutor), with the purpose of seizing a person suspected of a crime pertaining to § 129 a of the penal code (establishing of terrorist association). Up to now, only certain isolated flats could be searched through under certain restrictive conditions, if this particular flat was considered "suspicious". This possibility of searching through all flats in a building is not only authorized - as § 129 of the penal code first suggests - in cases of serious crimes against human life and against physical and psychical integrity. According to the present practice of accusation, even such persons comply with the corresponding paragraphs who spread pamphlets with statements by terrorist organizations, or persons offering suspicious publications in associated left-wing bookshops.

Within the scope of the planned law, the federal state Baden-Württemberg even demands the possibility of searching through whole localities. Moreover, according to § 19, part 3 of the planned law, the police will be authorized to estimate the situation on their own - that is, without judicial instruction and control - and to enter flats at any time in order to prevent imminent dangers, "if deciding factors really lead to the empirical conclusion that people meet there to prepare criminal deeds, people without permit of residence, or if they hide criminals, or the flat is used by prostitutes. Here once more an intervention in the inviolability of domestic rights has been carried out because of the police definition of places as security risks in the combat against abstract dangers.

## 2. CHANGES IN THE PREVENTIVE CONCEPTION

As limits of the executive authorities the criminal and police law contain the material substratum and the concrete general principles of the constitution. Of course the legal standardization of police intervention authorities does not automatically reflect the normality of police actions. There is evidence that all here described new or extended rights were correspondingly used by the police in the past, as for example the Kalkar measures documented in the CILIP. Yet legal standard changes remain very significant for the empirical profile of police activity. The legal sanction of the extended rights of intervention turns the extreme limits, the limits of the possibilities of a police intervention into basic rights and in many cases changes the normality of police activity. If today controlling points are being established in order to search demonstrators for weapons, only the planned legal sanction of this proceeding makes it a possible routine practice.

At the beginning we mentioned the realization of a specific conception of preventive police strategies in the criminal procedure changes passed in Parliament and - even more distinctly - in the planned regulations of the model law. This conception essentially means an active police intervention anticipating any case of real danger. In an internal paper of the Ministers of the Interior Conference, this is clearly pronounced. Since the Prussian Common Provincial Law of the 18th century and up to now, the police task was defined as the "prevention of dangers for public security and order". A working team of the Ministers of the Interior Conference now suggested a rewording of the police task as having to maintain public security and order. Omitting the conception of prevention of danger makes for a considerable difference. The authors of the Atonement Committee of the Ministers of the Interior Conference gave some reasons for their suggestions:

"On the other hand, the actions (preventing criminal deeds) are not averting dangers either, as they do not presuppose a dangerous situation... for all these reasons.... a reform of § 1, part 1 of the draft is necessary."

Understanding the police not merely as an institution acting merely in the case of an already committed crime, but as a ubiquitous and active organ claiming authorities within the scope of crime prosecution in order to prevent crimes, quite corresponds to a traditional interpretation of police prevention. But traditionally these preventive police authorities of intervention were referring to real situation of danger. In the new preventive conception, which is more precisely defined as pro-active measures, this reference is abolished. In other countries as well stronger efforts have been made during the last years to modify the old police authorities of intervention because of the "changed conditions". (Austria, Switzerland, Italy). With regard to the contents - which literature shows (cf. A.C. German, Law Enforcement, A Look to the Future, in: Police Journal, 1977, 4, p. 340 continuing / Book Review by T. Bowden, from: A Force for the Future, by Roy Lewis: in: Political Quarterly 1-77, p. 367 continuing) - all comparable Western countries have the problem of a "pro-active" police, increasingly operating in a legally undefined sphere. T. Bowden writes in his criticism of the uncritical future picture of the police as described by Time journalist Lewis: "The police are becoming a ubiquitous and systematic element in most political systems as the man on the horseback retreats from the political stage." The question remains, whether a future control of the "dynamic police development" still is possible? When it comes to this question, a discussion of the so called pro-active or preventive police conceptions and drafts of bills becomes interesting not only for West Germany.

From: "Die Bayerische Polizei," 29th year of publication, 1/78

The attempt to call a search control a traffic control is no progress. § 36/V of the traffic regulations, the adequate standard of authority for the police in this case, gives no police officer the right to order the driver of a car to open his boot in order to get it searched through. (A driver cannot even be obliged to show a police officer his warning triangle or his first-aid-equipment which he - according to the rules of the traffic admission regulations has to carry with him!)

As a summary it must be noted that a standardized authority is necessary before a driver can be obliged, for example, to open his boot. For want of further legal instructions we must here refer to the search instructions of the PAG or the criminal procedure. In reality, however, the preconditions considered there are only partly well-founded.

If the well-known "Draft of a general police law" should be legally sanctioned, (cf. § 18/1, nr. 6, i.V.m. § 9/1, nr.5), the police officers would have specified authorities and would not fear an intervention on the verge of legality.

Tagesspiegel, February 16th, 1978

#### THE KIDNAPPERS OF EMPAIN LET TIME ELAPSE

The French police still grope in the dark

...Even the police, being mobilized for days in order to search cars and houses, after a few days refused to play this illegal role...

#### IV POLICE IN ACTION

If the amount of contributions to this section in the course of time should develop and become a phenomenology of police activity and police action - systematized according to analytic criteria - this would contribute significantly to a success of the Newsletter.

Many isolated observations and experiences of police researchers, as well as of affected persons are frequently to be found in a general frame. In West Germany, for example, the great amount of actually disquietening preventive police measures is considered as a specific German development. A glance at English and American literature, however, shows surprisingly many similar subjects, surprisingly many similar police strategies (e.g. the new mode of prevention by means of extensive data collections per electronic data processing). A permanent flow of reports from different countries concerning police actions, strategies and undertakings which each reporter finds symptomatic for the police development in his own country, could be extremely important as a corrective and as a stimulus for other countries. This does not mean any palliation of national problems concerning the state internal security policy. Rather we are aiming at a better comprehension and a more clear valuation of the general and specific aspects of certain tendencies of development within the sphere of internal security. This also would make it possible to formulate better political strategies according to which one could act.

In this section it is often unnecessary to summarize certain observations, news, reports etc., or to reproduce and prove them. Consequently the news represent a certain tendency, a new strategy of action etc. Of course, at the same time, it may be interesting - primarily according to the valuation of the reporter, not of the editorial staff - to insert activity reports etc., containing statements about the nor-

mality of police activity (concerning, for example, working hours pro year and different sectors). Finally, a more exact description of new police strategies pertains to this section, strategies sooner or later coming into play in other countries.

#### FEDERAL REPUBLIC OF GERMANY

KALKAR, SEPTEMBER 24TH, 1977

A large-scale police operation caused by the demonstration against the nuclear power station under construction in Kalkar of the type fast breeder.

#### Antecedents:

from about 1973 a movement supported by citizens' initiatives against the construction of nuclear power stations has been established in West Germany. In connexion with the discussion about the nuclear power policy of the Federal Government, a large part of the population proved to be ready for new methods of settling conflicts - varying from large-scale demonstrations to the occupation of sites - which hitherto were known only within the student movement.

The successful occupation in 1975 of the building-site in Wyhl/Rhein, close to Freiburg, in 1976/77 was followed by demonstrations in Brokdorf and Grohnde. Also on the later occasions the attempt was made to stop the already commenced construction of nuclear power stations by means of an occupation of the site in question. In doing so, serious controversies with the police ensued.

In connexion with the events in Brokdorf and Grohnde, the communication media tried to associate the West German anti-nuclear power station movement with outrageous demonstrators, communists and even terrorists.

The preparations for a central demonstration on September 24th in 1977 also were attacked by this campaign against the antagonists of

nuclear power plants. Politicians of the federal state Nordrhein-Westfalen and of entire West Germany warned all potential participants of the demonstrations to take part in it. A remark by the Minister of the Interior of Nordrhein-Westfalen, B. Hirsch: "outrageous and communist groups are firmly determined to attack the police during the demonstration and to assault the power station under construction." (Der Tagesspiegel, West-Berlin, Sept., 9th, 1977)

#### The Event

More than 100 citizens' initiatives and environment protection groups from West Germany, the Netherlands, France and Belgium had appealed for the manifestation against the nuclear power plant under construction in Kalkar.

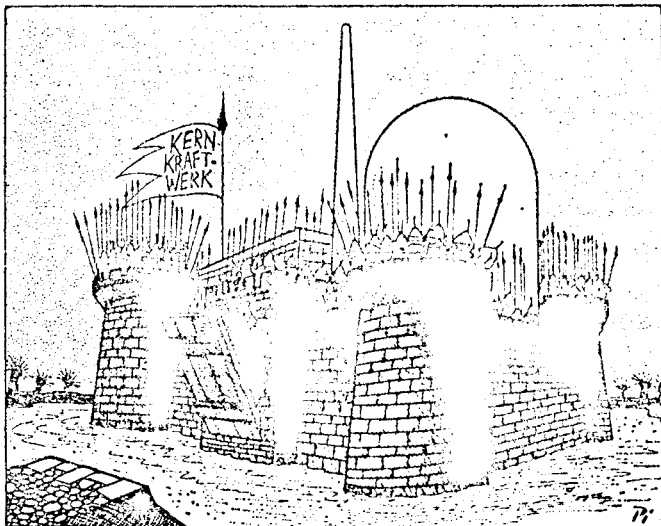
From the beginning, the organizations had pointed out the peaceful and non-violent character of this planned demonstration. No attempts would be made to occupy the building-site. As a precaution, the building firms had surrounded the site with a concrete wall, one kilometre long and about three metres high, and a deep ditch. In

in the manifestation of Kalkar. After the manifestation, a demonstration took place, leading to a site close by the nuclear power station. About 8 p.m. the event was terminated. No violent riots or incidents whatsoever had occurred.

#### Accompanying Phenomena

In entire West Germany, including West-Berlin, controlling points were established, by means of an "unparalleled large-scale police operation" (formulation by the Ministry of the Interior in Nordrhein-Westfalen), in order to control and search all persons travelling to the demonstration and to possibly register them as potential violent demonstrators. The "success data" of this action published in the press, mostly justified these measures. After the examination of 147 000 persons, 8 000 weapons were said to be confiscated. (Der Tagesspiegel, Sept. 27th 1977).

Specific police statistics inform us about the kind of confiscated weapons and about the total amount of employed police forces. (in: Die Streife<sup>+</sup>, nr. 10/16th year of publication, Oct. 1977).



#### Controlling measures in Nordrhein-Westfalen

Controlling points:	96
employed officers: RP	3 539
BPD/HLPS	1 021

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Totally 4 560

In addition, observation and controlling measures were carried out by means of the KPB in all known places of departure.

addition, about 8 000 police officers were prepared to protect the building-site. Approximately 35 000 persons participated

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<sup>+</sup>) Official journal of the Ministry of the Interior of Nordrhein-Westfalen

Results of control

## Controlled persons:

(Preliminary statements of other federal states)

other states 22 514

NRW 124 395

146 909

## Controlled vehicles

(preliminary statements of the other federal states)

other states 6 599

NRW 67 926

## Arrests

other states

(including border) 68

NRW 73+

141

+ 43 in the immediate area of operation

Persons refused at the border 805

(one person bringing a molotow-cocktail and black powder was arrested)

Confiscated objects

(as far as numbers are available; the federal states will give final informations before Sept. 30th 1977)

other states about 4 500

NRW about 3 830

8 250

## Survey of specific objects

Molotow-cocktails (ready for use) 2

Containers with chemicals 170

Hatchets 44

Gas pistols/signal pistols 3

Airguns 2

Bolt-driving guns 2

Tank winches 1

Protective helmets 3 223

Gas masks / safety goggles 1 687

Knives 80

Machetes 1

Transmitters	4
Lifting-jacks/winches	5
Iron bars	32
Chains	27
Gas cylinders Type T 12	6
Paint bags/tins	50
Truncheons	876
Petrol cans	92

Further: rubber suits, squared timber, flag-staffs, masks, various bumping tools, cords, catapults, steel bullets, objects for the production of Molotow-cocktails. In two cases, drugs were confiscated.

Confiscated objects of arrested people in the area of operation

24 protective helmets

8 gas masks

4 petrol cans (filled)

1 container with dilute solution

1 " " " citric acid

4 filled petrol cylinders

15 rubber pieces lengthened with chains

24 bicycle chains

9 bumping tools

3 table legs

several catapults

35 metal tent pins

17 knuckle-dusters

2 knives

9 cords

carpet knives

razor-blades

1 first-aid kit

silver paper

The number of officers employed at the controlling points in other federal states is not stated here.

In the direct area of operation in Kalkar 7 884 officers were employed:

Nordrhein-Westfalen: 2 group staffs 30 operation helicopters

5 department staffs

Border Police 1 department staff 4 operation helicopters

Niedersachsen 1 department staff 4 operation helicopters

Hessen 1 department staff 4 operation helicopters

Bavaria 1 department staff 3 operation helicopters

Rheinland-Pfalz 1 department staff 2 operation helicopters

Totally: 12 departments 47 operation helicopters

Additionally:

- 8 transport helicopters of the Border Police
- 4 directional transmitting troops of the border police
- 3 radar troops of the border police and further control and operation means of the federal states
- 6 helicopters (NRW)

According to this calculation, the number of employed officers amounts to 12 444.

About 35 000 demonstrators reached Kalkar. Newspapers and comments by the organizers prove that more than 10 000 persons did not reach the place for the manifestation at all, or too late, because of the controls, often lasting more than one hour.

110 busses and numerous cars with at least 10 000 demonstrators coming from the Netherlands (also politicians of several political parties) were stopped.

At the controlling points of the different federal states the motor roads were partly cut off. (Tagesspiegel, Sept. 25th, 1977).

The costs of the total police intervention, according to the Minister of the Interior in Nordrhein-Westfalen, Hirsch, amounted to more than 3 million DM.

These numbers do not tell anything about the way in which the controls were accomplished and about the kind of weapons with which the police officers were equipped.

The controlling points were secured by hundreds of police officers equipped with machine pistols. Tanks established street obstacles. In one case the chemical maze is known to have been used. Confiscated tools like screwdrivers and lifting-jacks were characterized as pointed or bumping weapons.

An intervention characterized as a blitz operation, in reality meant an organized body of hundred police-men landing with helicopters in the "immediate area of operation" in order to stop a train on the open track and search the passengers and forcing them to get out of the train.

The relation between 147 000 controlled persons and 35 000 demonstrators further shows that only

1/5 of the controlled persons had the demonstration as destination of their journey (under the assumption that all participants of the manifestation were controlled). Consequently 4/5 of the controlled persons had nothing whatsoever to do with the manifestation.

#### Summary

These controlling police measures against approximately 147 000 civil persons in one day are unparalleled in West German history and were carried out without any legal foundation. It is true that the Federal Government modified the criminal procedure in February 1978. Under certain conditions (cf. the more extensive contribution on p.

), the establishment of controlling-points is authorized in order to prosecute crimes. The police actions in connexion with the Kalkar demonstration, however, would not be legally authorized even within the scope of this new regulation. As for the attempt to legally justify such measures by means of a changed police law, cf. the contribution on p. . It should be remembered that Kalkar clearly shows the consequences of law changes which always were based exclusively on the search for terrorists. The police practice in the preventive "combat against crime" with or without a legal basis, already exceeds the set of persons, terrorist criminals, described in the passed or planned law amendments.

## V POLICE IN EUROPE

Conceptually, the Newsletters as a whole want to attain a better understanding of the police function in the different European countries by means of an intensive exchange of information and ideas. This section "Police in Europe" deals with specific information about the standardization of European police systems, coordinate police actions and the attempt at a European legislation in the security sector.

In the liberal press of the last months in Italy, France and Denmark, the apprehension was articulated that a specific German model of law and order might succeed in Europe. If the development of a European police system actually could be proved, consequences must be drawn for the research of internal security as well as for any liberal law and security policy within each national state. At the moment however, more speculations than well-founded information about real processes tending towards a European police model seem to exist.

Above all, two areas are worth to discuss:

1) Mainly with the argument of an internationalization of crime (terrorism, drugs etc.), the security experts insist on an amelioration of communication, technical aid, organizational reforms etc. Partly this kind of suggestions end in the plan to establish a European police force. Of course there are various areas of criminality (the trade of drugs, organized criminality, terrorism) where a police cooperation on a European level seems necessary and in many cases already is being carried out.

But in order to analyze the different "technical" possibilities of cooperation a discussion mainly under the aspects of authorizing objective repression and efficiency cannot be decisive. Special attention should be paid to the approach of the different police systems often connected with this (singular) development: con-

Tagesspiegel, Oct. 13th, 1977

### EUROPEAN FIRST STEP TOWARDS AN "INTEGRATED SYSTEM OF SEARCH"

On Wednesday, three parties of the European Parliament expressed the demand for an "integrated search system" of the EEC states...

... Since three years the demand for a European criminal investigation department has become frequent...

Die Bayerische Polizei, 28th year of publication, nr. 4/77

### GERMAN AND ITALIAN POLICE WANT MORE COOPERATION!

Frankfurter Rundschau, June 8th, 1976

EEC MINISTER OF JUSTICE WANTS MORE COOPERATION IN THE FUTURE!

ceptual and ideological assimilation; establishment of similar forms of organization and compulsory professionalization; tendencies of centralizing decisions and information.

2. The topical European debate concentrates on the attempts to standardize the definition of political and criminal offences. Such attempts to reach a standardization on a European or international level have a long tradition, as Otto Kirchheimer proved in his book "Politische Justiz".

In this context, especially article 5 in the European Agreement for fighting against terrorism should be pointed out. In the case of religious, political or racial persecution this article provides the possibility not to comply with eventual requests of extradition.

The new convention certainly compels all governments to bring such persons under justice who according to the convention are accused of terrorist actions. But it should be remembered that the governments receiving requests of extradition still - even under the new conven-



tion - have the final power when it comes to the question of defining and classifying offences as criminal or political. Consequently we do not find conflicts like the case of the German lawyer Croissant (with France) or Rolf Pohle (with Greece) clearly regulated through the new convention. Rather it could be assumed that such problems will occur repeatedly as interpretatory conflicts of the European convention.

If the postponement of the assumed interpretatory conflicts - from the level of bilateral agreements to the level of a general European codification - really is corresponding to an endogenous need of all Western European countries, or if the topical debate concerning the European convention proves to be a mere repetition of past attempts to exclude certain acts (individual terror etc.) from the asylum regulations of different countries can only be answered through the kind and extension of the integration of common political values in their own national system of action and valuation.

Undoubtedly the specific character of the present Western (German) terrorism to a larger extent leads to homogenous decisions by different courts and governments. We find it risky, however, to conclude - merely from some common phenomena, as presented for example by the European convention - that we are on our way to a European law and order system or a police model (under German leadership?) Fortunately Kirchheimer's conclusion in his analysis concerning the asylum regulation of the fifties still seems to be accurate:

"As before it is true that even closely connected states seldom establish relations in such a manner that they lose their freedom in doing so. This remains an exception, whereas the differing political decisions remain regulated because of the different political systems."

We sincerely hope that the information, reports and analyses in this section "Police

in Europe" will contribute towards a definition of the importance of direct cooperation between security organs for the different police conceptions.

#### THE DEFINITION OF POLITICAL OFFENCES IN TWO VERDICTS CONCERNING THE GRANTING OF ASYLUM

Two verdicts of French and Spanish courts in cases of extradition have special interest when considering the background of the new European convention which is to regulate the extradition proceedings of the signatory states for the next years. The reason for this significance is that a permanence of the formulated principles of the verdicts probably could save the offenders from an extradition also under the new European convention. As distinguished from the present legal situation, the signatory states - that is, also France and Spain - must requite the offences in their own jurisdiction. This could lead to the peculiar situation of a non-political proceeding concerning a crime which was committed in another country and officially within the scope of the asylum proceeding was estimated as a political crime.

Case 1: The request of the French government to extradite the kidnappers of the French Fiat manager Revelli-Beaumont was rejected by a Spanish court. The court maintained that the suspected persons had acted out of political reasons. In addition, the crime of kidnapping was not included in the official French-Spanish exchange agreement. The court claimed that Revelli-Beaumont had been kidnapped by one Italian and seven Argentine men because of his former position as head of the Argentine CIA.

(Source: Der Tagesspiegel, nr. 9792, Dec. 8th 1977)

Case 2: The Conseil d'Etat in Paris refused the extradition of a Spanish convict with similar arguments. In 1975 the French go-

vernment in the first instance granted the extradition of this man, according to a Spanish request. To begin with, the government only wanted to pass a sentence of another crime (theft) which had been committed in France.

The man in question, M. Calleja, protested against this decision of the French government, as he considered himself to be persecuted for political reasons in Spain. His father was killed by the Spanish fascists under Franco and his mother died after several imprisonments. Calleja himself was sentenced of having tried to evade military service and after the military service of having spread political propaganda (6 years imprisonment). He escaped to France and in 1969 he returned to Spain for a short time. There he committed a few burglaries. In 1973, due to these non-political crimes, the Spanish government demanded his extradition. The Conseil d'Etat however, refused this with the following arguments: the agreement of extradition, article 5, maintains that an extradition is to be refused if the crime is a political one, or if the circumstances indicate an extradition for political reasons. All circumstances of this case, especially the personality of the accused Spanish man and the fact that the request of extradition was made after the murder of Prime Minister Carrero Blanco, indicate that the request of extradition had a political purpose. (Source compiled from Europäische Grundrechte Zeitung, nr. 23, Nov. 1977).

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## VI POLICE AID TO THE DEVELOPING COUNTRIES

We hesitated whether to include this item in the Newsletter or not, as this publication mainly is concerned with questions of police development in highly industrialized countries. This hesitation is due to the fact that it seems impossible in this context to work out the wide area of problems concerning the development of law and order models in developing countries. That is the reason why a detailed analysis of the police systems in Africa, Asia etc. cannot be considered here. Yet it seems necessary to include one specific item in the Newsletter which was not payed attention to, neither in the military research nor by the police researchers: measures of development aid serving to maintain the internal order of the developing countries.

In very few cases this aid is being administrated in the form of establishing a police organization comparable to the West European states, an organization dependent on explicit limitations of its possibilities of intervention in civil rights.

"Police aid" often refers to military training and equipping in order to use repressive capacities mainly to intervene in the internal matters of a state.

Up to now a public discussion of the international cooperation and the transfer of technology and experiences concerning the "maintenance of security and order" by means of military or police forces in developing countries has only been realized to a limited extent. (The partly public fact of American police aid to South-American countries, or the conference of the Richardson Institute about the role of military and police forces for the maintenance of internal order in the British ex-colonies illustrate this).

For this reason we found it significant and necessary to include the section "police aid to the developing countries" in order to document information about this kind of development aid.

### POLICE AID: THE CASE OF ETHIOPIA

On Dec. 2nd in 1977 there was a short notice in the German press: an Ethiopian sentry had shot at a German major of the federal army who was considerably injured. (Tagesspiegel, Dec. 2nd, 1977). What does a German major of the federal army do in a country which a long time since has changed from American to Sowjet and Israelian military aid? One answer is: the major of the federal army was in Ethiopia not as a military but as an expert in the context of the police aid existing since 1965. In 1977, in the first instance it still seemed as if the Federal Government as well as Ethiopia wanted to maintain this police aid, even if the German press reported about brutal repression against oppositional persons and Ethiopia regarded West Germany as allied to the USA.

Even the conflict with Somalia concerning Ogaden did not seem to stop the German endeavours to "realize the aid of the Federal Republic of Germany in order to improve the infrastructure and the maintenance of public security and order". (Thus the functional description for German advisors in a letter from the Federal Ministry of Defense.)

Despite the increasing tensions and incidents in Ethiopia, where Western foreigners are involved, and the discontinuance of the normal development aid, the police aid is supposed to continue: "In any case the West German experts aiding the Ethiopian police to establish a communication system should stay." (Tagesspiegel, June 1977).

After the incident of Mogadischu, the police aid was reduced to three persons, and the German ambassador was expelled because of the ameteriorated relation with Somalia (a country which also receives German police aid). West Germany had not only showed itself deserving in the field of Ethiopian security and order, but also established the police force of Somalia. This aid proved to be an "act of providence" during the action of the

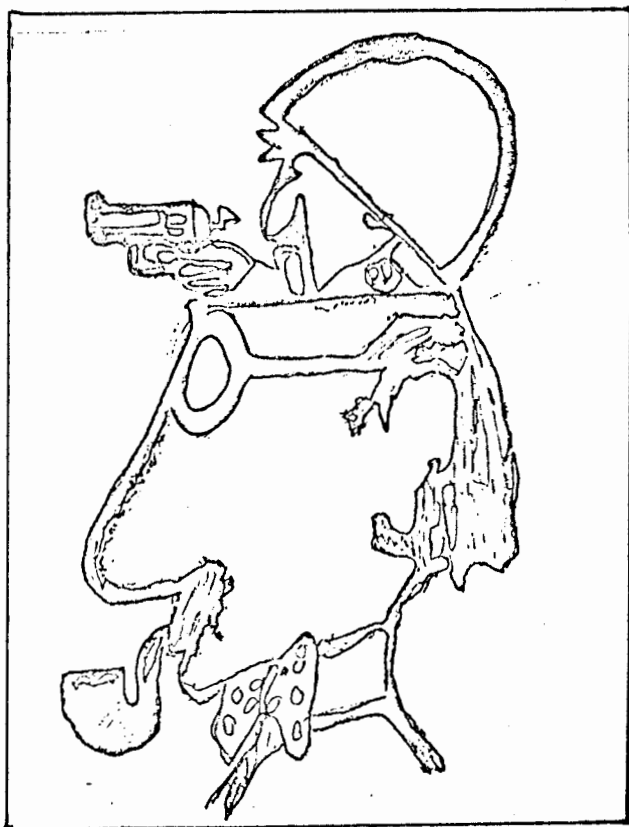
German Border Police Troop (GSG 9) in order to release the hostage from the hijacked aeroplane which had landed in Mogadischu. On the landing-ground waited not only the Somalian police officers drilled by the Germans and the German negotiator Wischniewski, but also the German police trainer of these officers. (Die Zeit, Oct. 28th 1977).

The case of Ethiopia which - as the case of Somalia shows - is not a particular case, is characteristic of the structure of a conception for police aid to developing countries. Even the fact that this structure was evolved by the Ministry of Defense and not by the West German Ministry of the Interior which is responsible for the police forces, indicates a more military conception of "police aid to developing countries" and of "security and order" in developing countries. Consequently the 65 million DM going to Ethiopia since 1965 within the scope of development aid were not intended for the expansion and equipment of police officers. Moreover, in addition to the technical aid - especially the modernizing of the relay service - a school for future officers was constructed, and 26 squadrons were equipped with steel helmets and other military machinery. (Frankfurter Rundschau, July 25th, 1977). This aid has little to do with the police force as a civil institution of power, dependent on fixed laws. In the case of police aid as a contrast to military aid, it is not primarily a question of equipping and training military for war operations against an external enemy, but mainly a training of the military for an internal intervention.

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## VII PUBLIC POLICE CONTROL

Up to now, jurisdiction and social sciences have defined security organs mostly from the point of view of their standard purpose - as instances for the prevention of dangers for public security and order, as - in short - instances of social control.



The question if and how these controllers are publicly controlled themselves has been raised again and again by many Western countries after scandals concerning the secret service and other police and security institutions. Members of parliament and scientists mostly have a simple explanation of these incidents: they are interpreted as a solitary failure of a historically developed and usually smooth-running system of force division, in which the legislature independently and publicly directs the executive - in this case the police force, the secret service etc. - to have certain purposes and how to act.

Consequently only a reinforcement or restoration of the controlling function of parliaments and courts would be necessary in order to avoid such occurrences in the future.

A scientific analysis, however, cannot be satisfied with such simple answers. The constant repetition of such "accidents" actually compels us to ask if this standard model of force division corresponds to reality, or if it has ever corresponded to it. What happens, if the security institutions define their purposes themselves, thus creating "disturbing groups" which in reality should be the precondition of its existence? What happens if the institutions establish their own basis for an action, if resorting to hardly determined needs of security?

If the security organs define their purposes (alone or in cooperation with others) they cannot be regarded as mere instruments any longer. In the same degree law and parliamentary discussions are less standardized limitations of the administrative range of action than means of authorizing purposes of security policy pertaining to the bureaucratic machinery.

This total instrumentalization of law and proceedings of legislation is documented by an announcement of the "atonement commission" of the Minister of the Interior Conference dealing with the new police law. This commission, discussing how the future legal fundamentals of observation and preventive police work is to take shape, writes:

"A clear legal foundation is absolutely necessary as there is danger of eventually having to obliterate the collected data in default of legal extraction of the knowledge."

Consequently the model draft of a general police law chiefly consists in the legal securing of actions which up to now were considered as infringements of the police. Here, obviously the mode of police actions decides what "public security and order" means and how it is to be protected. Where and how could a public and systematic control of their actions take place under such circumstances?

Courts and ombudsmen exist in order to control if each action of the executive organs corresponds to a "conformity of standards". Thus they are primarily institutions which should grant the right of the individual to be treated legitimately and to be protected against arbitrary actions of individuals and state. Here, from the point of view of the possibilities of protecting every individual citizen against such infringements, the mode of protection and the function of administrative courts and the system of ombudsmen should be documented. Yet these instances can only requite arbitrary actions which have already taken place. Consequently they cannot fulfil a systematic control.

Thus we are referred to the parliaments as institutions of legislation. When accepting this liberal-democratic interpretation of the constitution, the security organs within the state

monopoly of force can only be legal when they grant the standards established by parliament. The first and most important control of state power consists in the fact that the security organs cannot demand more authorities than those established firmly by law. A security beyond this legal regulation does not exist. In this section of the Newsletter the question will be examined to what extent - if at all - the mentioned modes of an institutionalized public are able to realize a discussion transcending the institutions, that is a really public discussion, and a systematical control of police actions; if they can adequately protect the fundamental rights at our disposal; in what degree the executive ideas of security (not to mention state security) are included in these modes of a public or even determine them. Consequently - in order to demonstrate this by means of West German reality - this section



BAVARIAN DOMESTIC  
INTELLIGENCE OFFICE



FEDERAL SECRET  
SERVICE



FROM "ANYONE"  
PAYED SQUEAKER



POLITICAL DIVISION  
OF THE CRIMINAL  
INVESTIGATION DEPARTMENT

should deal with reports pertaining to spheres like:

- the mode of discussion and treatment of law drafts by parliament and public in the area of internal security. For example the case of the contact prohibition law, which was stressed by the authorities after the kidnapping of the president of the employers' organizations, Schleyer. A concrete motivation of the law was refused because of the "emergency situation" (evidence of concrete offences by part of the counsel of the defense)
- content, range and public treatment of cases of systematical infringement of the law by means of security organs (attacks of spying by the West German secret service by means of wire tapping bugs, Watergate etc.)
- reports and analyses of the modes of public control of arbitrary police actions (e.g. treatment of illegal house searches by the administrative courts; function and limits of official institutions of complaint like those partly existing in Great Britain and the USA)
- The role of communication media in the creation of a public consciousness of "internal security" and in the detection and scandalization in cases of executive infringement.



FEDERAL DOMESTIC  
INTELLIGENCE OFFICE



BAVARIAN CRIMINAL  
INVESTIGATION DEPARTMENT



FEDERAL CRIMINAL  
INVESTIGATION DEPARTMENT

## VIII TOWARDS A CRITICAL PUBLIC

As the editorial already stressed, the CILIP Newsletter ought to be an organ not only for researchers occupied with police and security institutions. Rather an exchange of opinions on the beginning and the possibilities of a practical, active claim for and defense of liberty rights through single individuals and groups would be desirable.

In writing this, we want to find new collective forms of mastering conflicts with the security organs in which the traditional isolation of the individuals in question is abolished. Except for such new inventive modes of claiming and defending rights, except for a critical publicity, civil liberty rights will not be capable of defending themselves in the long run.

How necessary it is to come to a clear understanding of the fact that not only the individual possession of rights or the individual solution of cases is essential, the lawyer François-Noël Bernardi, former vice president of the Syndicat des Avocats de France, clearly has formulated. In the preface of his book, describing the combat of citizens, lawyers and some journalists against an unofficial police prison (Centre d'Arenc) where disagreeable foreigners are sent, he writes:

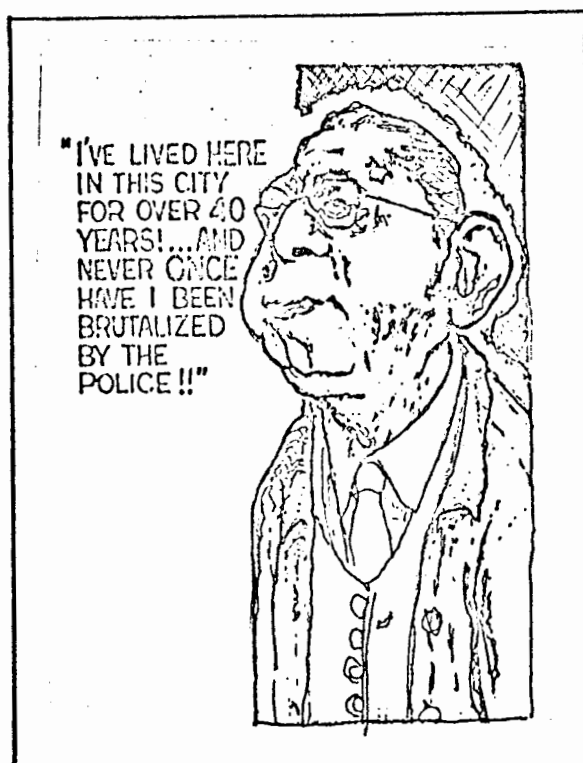
"Normally a lawyer in such a situation would have turned to the prosecutors' office, or more probably to the real authority, the police prefecture, and the individual of which he was responsible would have been released. This type of individual intervention (which in the case of Arenc was frequently practiced) abolishes a consequence of arbitrariness but leaves its mechanisms untouched.

The collective action of the Syndicat des Avocats de France combats exactly this fundamental arbitrariness, the existence of a prison controlled by the police. The action will not be terminated until Centre d'Arenc is closed."

(Alex Panzani: Une Prison clandestine de la Police française - Arenc, Paris 1975, p. 7 continuing - own translation).

The suggestion of an extra item dealing with alternative forms of publicity ought to make

clear that we find such practical projects extremely significant. Consequently we call upon already working teams, initiatives and institutions for contributions to this section. We are happy to see that already on this stage, in the O-copy, the "Klachtenburo" from Amsterdam has been willing to cooperate.



## NETHERLANDS

### KLACHTENBURO POLITIE-OPTREDEN AMSTERDAM

#### Establishment and aims

The "office" has been founded for several reasons. Important was the great doubt that existed about the legal procedures and other means of lodging complaints about the police. It is not clear which authority accepts and dispatches such complaints. Actually complaints about the police are sent to the mayor, the minister of justice, the public prosecutor, the town-council and to the police itself. Consequently there is no clear insight into character and proportions of complaints. The dispatch of complaints is in general nothing more than lodging complaints at the authority that is responsible for the way the police is acting.

Moreover the trust in the effect of the actual legal procedure of complaining is decreasing, especially in Amsterdam. The 200 complaints about the police-actions in the Nieumarkt-neighbourhood were declared unfounded by the public prosecutor two years after they have been lodged. Some persons that participated in the Nieumarkt-resistance and some lawyers meant at the same time that police-actions were tending to be more ruthless; citizens do not know their rights or are willing to leave rights for "better protection" and the police is anticipating more and more on competences not yet given. Citizens can give their opinion about the relation police-citizens only by approaching press or political parties and by lodging complaints.

#### Aims

1. Informing and attending individual complainors
2. Gathering complaints to get insight into character and proportion of complaints

3. Changing the structure of the legal handling of complaints; the klachtenburo thinks that complaints about the police are dispatched too much from penal view.

#### Methods

The intake at the office is done by volunteers (students in law and criminology). Each intaker is working at the office one day a week.

At the office the intakers talk to complainers, gather informations from press and so on, register complaints, help to make official letters, inform people about legal and other possibilities, contact the press and radio (Amsterdam has a city-broadcast) and all kind of other practical work.

Furthermore intakers do all sort of things for "their" complaints, visit people who called the bureau and contact action-groups. Intakers and other volunteers do participate also in projects in order to gather complaints from certain groups which are not motivated to contact the klachtenburo themselves. Foreigners for instance are often afraid of formal repercussions. Others do not believe in complaining at all by experience. (In discussions with such people we try to motivate them by making links between incidents and structure.)

Once a week all new complaints are discussed by all intakers and some experts i.e. lawyers and a staffmember of the university. The responsibility of the advises is collective. We consider the complaints on the level of penal-, publicity- and political value.

In heavy cases our lawyer can take over the case from the intaker though the intaker follows the case precisely. Data are registered in an uniform way (codes)



on the intaker-lists which are workable for all intakers.

Such list finally shows the process of dispatching complaints, the time it takes before the authorities react the complaints, and the results. They demonstrate also the categories of police-behaviour, varying from reprehensible to punishable. In case of punishable acts committed we advise to send an official complaint to the public prosecutor not because we expect any result, but only to be able to prove that this formal way of complaining does not lead to anything. The klachtenburo has not been founded to exist for ever and ever.

Sometimes complainers are invited on a police-office to talk over their complaint. In such cases we propose the complainor that she/he will introduce one of us as a member of the klachtenburo and that the complainor will refuse to talk alone about the complaint, when the police refuses the member of the klachtenburo. Until now we have not been refused at police-officers. We are only willing to cooperate with members of political parties when they do come to visit us. We do not make special reports for them hoping they will do something for our cases. When we make a paper for the publicity we send also a few copies to the political parties. - The social democratics who just took over the role of opposition are at the moment very interested in the information of the klachtenburo. We do have a number of constant contacts with the press. We are in discussion with the city-broadcast to publish "the complain of the week".

#### Special activities

- a wall-paper: once a month another case with sometimes photographs and some conclusions
- some of us are occupied in the special situation of foreigners/police
- we want to start a group that will study the police-treatment of women

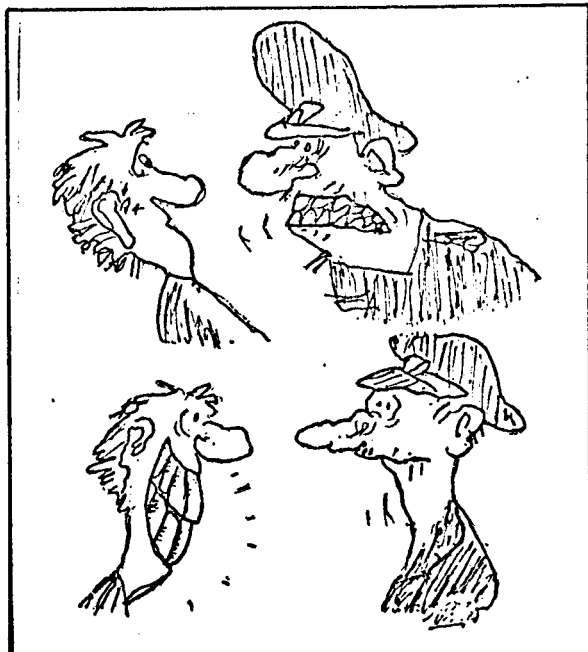
- we are gathering photographs of all policemen in Amsterdam
- some of us are getting into touch with certain areas where the police is rather active
- we are preparing a tribunal
- writing a small paperback about the things everyone should know about the penal procedure.

#### Results

The first four months we made just a few publicity to try out the way we had to work. Nevertheless the klachtenburo received 106 complaints, those first four months.

In 20 of those 106 cases an official complaint was sent to the public prosecutor; in 13 cases the public prosecutor did not respond. Other data: (per 13 October 1977):

- 22 x mistreatment
- 18 x discrimination
- 24 x escalation because of police-arrogance
- 12 x illegal arrest
- 11 x refusal to accept complaints
- 10 x "badging"
- 8 x unnecessary limitations during arrest
- 8 x refusing medical help
- 8 illegal house search
- 7 x illegal foulling search.



Provisional analyses (13 Oktober 1977),  
briefly:

- Police-officiers are not willing to discuss the problem in conflict-situations, but tend to use means of coercion immediately. As a routine the process of escalation will be continued.
- The average officer seems to have blinkers for the effects of his behaviour towards citizens. Even asking for reasons of control or arrest might turn out into other police-repercussions. ("alternative sanctions": If you do not want to cooperate you can think about your behaviour in the police-cell.)
- The competences of the police are frequently exceeded or misused.

At the moment the number of complaints registered at the klachtenburo is:

170

For contacts: Klachtenburo politie optreden  
Rozenstraat 6, Amsterdam,  
Tel.: 020-258000

## IX CASE STUDIES

### Case Studies/Analyses

Conceptually the Newsletter is not intended entirely as a theoretical-analytical organ in which very different subjects are joined together. Of course the suggestion of a specific frame of subjects and items worth attention which - without too much work - should be fed with information from different countries does not mean that contributions to the police and its development of a more analytical, treatise-like kind should be excluded. In order to give isolated individuals and groups the possibility to present their own ideas, results etc. outside the narrower frame of items worth special attention, the establishment of a section for case studies/analyses seems important. We hope that future contributions to this sections will prove that our idea is adequate.

## X QUESTIONS - COOPERATION POSSIBILITIES -

### CONTACTS



## ANHANG

## GESETZESDOKUMENTATION

## Criminal Procedure Law - Changes

**§ 102. [Durchsuchung beim Verdächtigen]** Bei dem, welcher als Täter oder Teilnehmer einer Straftat oder der Begünstigung, Strafvereitelung oder Hülfsleistung verdächtig ist, kann eine Durchsuchung der Wohnung und anderer Räume sowie seiner Person und der ihm gehörenden Sachen sowohl zum Zweck seiner Ergreifung als auch dann vorgenommen werden, wenn zu vermuten ist, daß die Durchsuchung zur Auffindung von Beweismitteln führen werde.

**§ 103. [Durchsuchung bei anderen Personen]** (1) Bei anderen Personen sind Durchsuchungen nur zur Ergreifung des Beschuldigten oder zur Verfolgung von Spuren einer Straftat oder zur Beschlagnahme bestimmter Gegenstände und nur dann zulässig, wenn Tatsachen vorliegen, aus denen zu schließen ist, daß die gesuchte Person, Spur oder Sache sich in den zu durchsuchenden Räumen befindet.

(2) Diese Beschränkung gilt nicht für Räume, in denen der Beschuldigte ergriffen worden ist oder die er während der Verfolgung betreten hat.

## 1. § 103 wird wie folgt geändert:

neu

## a) In Absatz 1 wird folgender Satz 2 angefügt:

„Zum Zwecke der Ergreifung eines Beschuldigten, der dringend verdächtig ist, eine Straftat nach § 129 a des Strafgesetzbuches oder eine der in dieser Vorschrift bezeichneten Straftaten begangen zu haben, ist eine Durchsuchung von Wohnungen und anderen Räumen auch zulässig, wenn diese sich in einem Gebäude befinden, von dem auf Grund von Tatsachen anzunehmen ist, daß sich der Beschuldigte in ihm aufhält.“

## b) Absatz 2 erhält folgende Fassung:

„(2) Die Beschränkungen des Absatzes 1 Satz 1 gelten nicht für Räume, in denen der Beschuldigte ergriffen worden ist oder die er während der Verfolgung betreten hat.“

**§ 104. [Nächtliche Hausdurchsuchung]** (1) Zur Nachtzeit dürfen die Wohnung, die Geschäftsräume und das befriedete Besitztum nur bei Verfolgung auf frischer Tat oder bei Gefahr im Verzug oder dann durchsucht werden, wenn es sich um die Wiederergreifung eines entwichenen Gefangenen handelt.

(2) Diese Beschränkung gilt nicht für Räume, die zur Nachtzeit jedermann zugänglich oder die der Polizei als Herbergen oder Versammlungsorte bestraffter Personen, als Niederlagen von Sachen, die mittels Straftaten erlangt sind, oder als Schlupfwinkel des Glücksspiels, des unerlaubten Betäubungsmittel- und Waffenhandels oder der Prostitution bekannt sind.

(3) Die Nachtzeit umfaßt in dem Zeitraum vom ersten April bis dreißigsten September die Stunden von neun Uhr abends bis vier Uhr morgens und in dem Zeitraum vom ersten Oktober bis einunddreißigsten März die Stunden von neun Uhr abends bis sechs Uhr morgens.

**§ 105. [Anordnung; Ausführung]** (1) Durchsuchungen dürfen nur durch den Richter, bei Gefahr im Verzug auch durch die Staatsanwaltschaft und ihre Hilfsbeamten (§ 152 des Gerichtsverfassungsgesetzes) angeordnet werden.

(2) Wenn eine Durchsuchung der Wohnung, der Geschäftsräume oder des befriedeten Besitztums ohne Beisein des Richters oder des Staatsanwalts stattfindet, so sind, wenn möglich, ein Gemeindevorsteher oder zwei Mitglieder der Gemeinde, in deren Bezirk die Durchsuchung erfolgt, zuzuziehen. Die als Gemeindevorsteher zugezogenen Personen dürfen nicht Polizeibeamte oder Hilfsbeamte der Staatsanwaltschaft sein.

(3) Wird eine Durchsuchung in einem Dienstgebäude oder einer nicht allgemein zugänglichen Einrichtung oder Anlage der Bundeswehr erforderlich, so wird die vorgesetzte Dienststelle der Bundeswehr um ihre Durchführung ersucht. Die ersuchende Stelle ist zur Mitwirkung berechtigt. Des Ersuchens bedarf es nicht, wenn die Durchsuchung von Räumen vorzunehmen ist, die ausschließlich von anderen Personen als Soldaten bewohnt werden.

neu

## In § 105 Abs. 1 wird folgender Satz 2 angefügt:

„Durchsuchungen nach § 103 Abs. 1 Satz 2 ordnet der Richter an; die Staatsanwaltschaft ist hierzu befugt, wenn Gefahr im Verzug ist.“

**§ 108. [Beschlagnahme anderer Gegenstände]** Werden bei Gelegenheit einer Durchsuchung Gegenstände gefunden, die zwar in keiner Beziehung zu der Untersuchung stehen, aber auf die Verübung einer anderen Straftat hindeuten, so sind sie einstweilen in Beschlag zu nehmen. Der Staatsanwaltschaft ist hiervon Kenntnis zu geben.

neu

## In § 108 wird folgender Satz 3 angefügt:

„Satz 1 findet keine Anwendung, soweit eine Durchsuchung nach § 103 Abs. 1 Satz 2 stattfindet.“

§ 111. (weggefallen)

neu

## Nach § 110 wird folgender § 111 eingefügt:

## § 111

(1) Begründen bestimmte Tatsachen den Verdacht, daß eine Straftat nach § 129 a des Strafgesetzbuches, eine der in dieser Vorschrift bezeichneten Straftaten oder eine Straftat nach § 250 Abs. 1 Nr. 1 des Strafgesetzbuches begangen worden ist, so können auf öffentlichen Straßen und Plätzen und an anderen öffentlich zugänglichen Orten Kontrollstellen eingerichtet werden, wenn Tatsachen die Annahme rechtfertigen, daß diese Maßnahme zur Ergreifung des Täters oder zur Sicherstellung von Beweismitteln führen kann, die der Aufklärung der Straftat dienen können. An einer Kontrollstelle ist jedermann verpflichtet, seine Identität feststellen und sich sowie mitgeführte Sachen durchsuchen zu lassen.

(2) Die Anordnung, eine Kontrollstelle einzurichten, trifft der Richter; die Staatsanwaltschaft und ihre Hilfsbeamten (§ 152 des Gerichtsverfassungsgesetzes) sind hierzu befugt, wenn Gefahr im Verzug ist.

(3) Für die Durchsuchung und die Feststellung der Identität nach Absatz 1 gelten § 106 Abs. 2 Satz 1, § 107 Satz 2 erster Halbsatz, §§ 108, 109, 110 Abs. 1 und 2 sowie §§ 163 b, 163 c entsprechend.“

**§ 127. [Vorläufige Festnahme]** (1) Wird jemand auf frischer Tat betroffen oder verfolgt, so ist, wenn er der Flucht verdächtig ist oder seine Persönlichkeit nicht sofort festgestellt werden kann, jedermann befugt, ihn auch ohne richterlichen Befehl vorläufig festzunehmen.

(2) Die Staatsanwaltschaft und die Polizeibeamten sind bei Gefahr im Verzug auch dann zur vorläufigen Festnahme befugt, wenn die Voraussetzungen eines Haftbefehls oder eines Unterbringungsbefehls vorliegen.

(3) Ist eine Straftat nur auf Antrag verfolgbar, so ist die vorläufige Festnahme auch dann zulässig, wenn ein Antrag noch nicht gestellt ist. Dies gilt entsprechend, wenn eine Straftat nur mit Ermächtigung oder auf Strafverlangen verfolgbar ist.

neu

## § 127 wird wie folgt geändert:

## a) Absatz 1 erhält folgende Fassung:

„(1) Wird jemand auf frischer Tat betroffen oder verfolgt, so ist, wenn er der Flucht verdächtig ist oder seine Identität nicht sofort festgestellt werden kann, jedermann befugt, ihn auch ohne richterliche Anordnung vorläufig festzunehmen. Die Feststellung der Identität einer Person durch die Staatsanwaltschaft oder die Beamten des Polizeidienstes bestimmt sich nach § 163 b Abs. 1.“

## b) In Absatz 2 wird das Wort „Polizeibeamten“ durch die Worte „Beamten des Polizeidienstes“ ersetzt.

§ 163. [Aufgaben der Polizei] (1) Die Behörden und Beamten des Polizeidienstes haben Straftaten zu erforschen und alle keinen Aufschub gestattenden Anordnungen zu treffen, um die Verdunkelung der Sache zu verhüten.

(2) Die Behörden und Beamten des Polizeidienstes übersenden ihre Verhandlungen ohne Verzug der Staatsanwaltschaft. Erscheint die schleunige Vornahme richterlicher Untersuchungshandlungen erforderlich, so kann die Übersendung unmittelbar an das Amtsgericht erfolgen.

§ 163a. [Vernehmung des Beschuldigten] (1) Der Beschuldigte ist spätestens vor dem Abschluß der Ermittlungen zu vernehmen, es sei denn, daß das Verfahren zur Einstellung führt. In einfachen Sachen genügt es, daß ihm Gelegenheit gegeben wird, sich schriftlich zu äußern.

(2) Beantragt der Beschuldigte zu seiner Entlastung die Aufnahme von Beweisen, so sind sie zu erheben, wenn sie von Bedeutung sind.

(3) Der Beschuldigte ist verpflichtet, auf Ladung vor der Staatsanwaltschaft zu erscheinen. Die §§ 133 bis 136a, 168c Abs. 1 und 5 gelten entsprechend. Über die Rechtmäßigkeit der Vorführung entscheidet auf Antrag des Beschuldigten das Gericht; § 161a Abs. 3 Satz 2 bis 4 ist anzuwenden.

(4) Bei der ersten Vernehmung des Beschuldigten durch Beamte des Polizeidienstes ist dem Beschuldigten zu eröffnen, welche Tat ihm zur Last gelegt wird. Im übrigen sind bei der Vernehmung des Beschuldigten durch Beamte des Polizeidienstes § 136 Abs. 1 Satz 2 bis 4, Abs. 2, 3 und § 136a anzuwenden.

(5) Bei der Vernehmung eines Zeugen oder Sachverständigen durch Beamte des Polizeidienstes sind § 52 Abs. 3, § 55 Abs. 2, § 81c Abs. 3 Satz 2 in Verbindung mit § 52 Abs. 3, § 136a entsprechend anzuwenden.

Straftat verdächtig ist und der Zweck der Untersuchung durch die Benachrichtigung gefährdet würde.

(3) Eine Freiheitsentziehung zum Zwecke der Feststellung der Identität darf die Dauer von insgesamt zwölf Stunden nicht überschreiten.

(4) Ist die Identität festgestellt, so sind in den Fällen des § 163 b Abs. 2 die im Zusammenhang mit der Feststellung angefallenen Unterlagen zu vernichten."

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Nach § 163 a werden folgende §§ 163 b und 163 c eingefügt:

#### § 163 b

(1) Ist jemand einer Straftat verdächtig, so können die Staatsanwaltschaft und die Beamten des Polizeidienstes die zur Feststellung seiner Identität erforderlichen Maßnahmen treffen;

§ 163 a Abs. 4 Satz 1 gilt entsprechend. Der Verdächtige darf festgehalten werden, wenn die Identität sonst nicht oder nur unter erheblichen Schwierigkeiten festgestellt werden kann. Unter den Voraussetzungen von Satz 2 sind auch die Durchsuchung der Person des Verdächtigen und der von ihm mitgeführten Sachen sowie die Durchführung erkennungsdienstlicher Maßnahmen zulässig.

(2) Wenn und soweit dies zur Aufklärung einer Straftat geboten ist, kann auch die Identität einer Person festgestellt werden, die einer Straftat nicht verdächtig ist;

§ 69 Abs. 1 Satz 2 gilt entsprechend;

Maßnahmen der in Absatz 1 Satz 2 bezeichneten Art dürfen nicht getroffen werden, wenn sie zur Bedeutung der Sache außer Verhältnis stehen; Maßnahmen der in Absatz 1 Satz 3 bezeichneten Art dürfen nicht gegen den Willen der betroffenen Person getroffen werden.

#### § 163 c

(1) Eine von einer Maßnahme nach § 163 b betroffene Person darf in keinem Fall länger als zur Feststellung ihrer Identität unerläßlich festgehalten werden. Die festgehaltene Person ist unverzüglich dem Richter bei dem Amtsgericht, in dessen Bezirk sie ergriffen worden ist, zum Zwecke der Entscheidung über Zulässigkeit und Fortdauer der Freiheitsentziehung vorzuführen, es sei denn, daß die Herbeiführung der richterlichen Entscheidung voraussichtlich längere Zeit in Anspruch nehmen würde, als zur Feststellung der Identität notwendig wäre.

(2) Die festgehaltene Person hat ein Recht darauf, daß ein Angehöriger oder eine Person ihres Vertrauens unverzüglich benachrichtigt wird. Ihr ist Gelegenheit zu geben, einen Angehörigen oder eine Person ihres Vertrauens zu benachrichtigen, es sei denn, daß sie einer