newsletter
on civil liberties
and police development

Vol.: 1, No.: 1 – August/September 1978

Der Fall »Faust«:
Ist die Veröffentlichung rechtswidriger Handlungen der Exekutive strafbar?
The »Faust«-case:
Is publishing of unlawful executive actions a criminal offence?

Polizeiliches Schußwaffengebrauchsrecht in Westeuropa
The right to use fire-arms by police in Western European countries

Anti-Terrorismusgesetzgebung in Westeuropa
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Verfassungsschutz und Verfassungsschutz-Erkenntnisse:
Eine Rechtsprechungsübersicht
Domestic intelligence office and intelligence datas:
A survey of judgements

Auf dem Weg zur Legalisierung einer »Geheimen Sicherheitspolizei«
Towards legalizing a »Secret Security Police Force«

C I L I P

VOL. 1, NO. 1
AUGUST/OCTOBER 1978

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 LEGAL DEVELOPMENTS
IV POLICE IN ACTION
V POLICE IN EUROPE
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VII THE PUBLIC'S PREROGATIVE: CONTROL OF THE POLICE
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EDITORIAL

How could people continue to be informed about the workings of the intelligence network if it were not for the employees in these organzations who place loyalty to the constitution above loyalty to an intelligence organzation? These institutions, referred to euphemistically as "Verfassungs-schutz" (Defenders of the Constitution) or Bundesgrenzschutz (Federal Border Patrol), Bundeskriminalamt (West German FBI) or the Federal Bureau of Investigation have a general mandage to operate surreptitiously. Only occasionally do their practices come to light, as a result of some spectacular success or failure or when someone who works in one of these offices, someone who has retained his or her liberal sensibilities can no longer accept the bureaucratically sanctioned practices and proceeds secretively to bring the matter to the attention of the public.

No one would have ever heard of the "case" of Traube, the engineer whose personal integrity was violated by electronic eavesdropping,if it had not been for an intelligence agent who possessed the courage to pass the report on to the press. No one would have learned of the greatest USA political scandal in recent years if all the participants in Watergate and the involved officers and employees in the CIA/FBI had held true to the men's-club-espirit-de-corps in which everything is allowed as long as it does not come to the attention of the public.

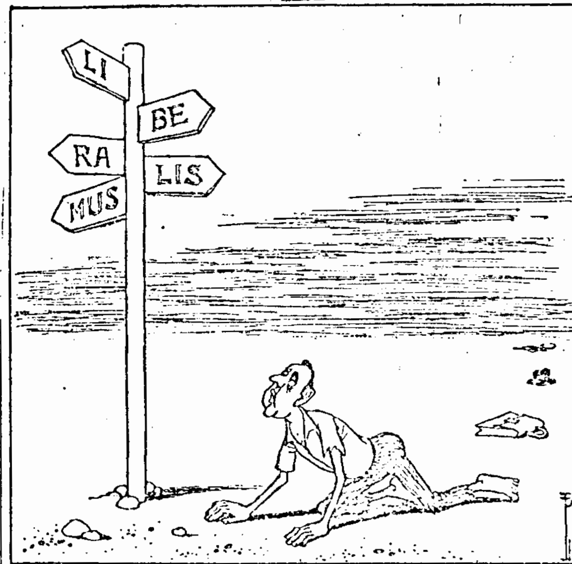
We now have some idea of just how many people are being observed for the reasons which appear almost whimsical (because of the newspapers they read, for example or when they apply for certain jobs). But no one would have learned of these things if it were not for persons in the Federal Border Patrol who recognized the tension, indeed the contradiction, between their duty to respect and obey departmental mandates and their constitutionally based civic duty and at least occasionally opted for the latter. We are forced to rely on such"failures" within the bureaucracy for our information. Only through "defects" in the system are we able to get a glimpse of the things that are going on in the name of our own protection. This reveals the extent to which liberal democracies are threatened from within by their own police and intelligence organizations which have gotten out of control. The danger has increased. This can be inferred from the way the information and control apparatus of the executive have been enlarged and extended and from the way these have received judicial sanction in all Western countries in the past decade, without the public even being able to learn just how large the personnel and budgets of the police and the intelligence services are. But there are other indications as well. The danger lies also in the fact that the executive has been given almost complete control over its own doings. The parliaments are not in a position to play the role of controller that is properly theirs -- not only because of their own duty to secrecy and their inability on the informational level to balance and evaluate the information of the intelligence services. The parliaments have internalized the one-sided displacement of power in favor of the executive as well as the logic of executive privilege.

The reaction of the chairman of the interior committee of the West German Federal Parliament (Bundestag), Wernitz (SPD) to the publication of the "secret" minutes of a committee appears to be characteristic of the state of affairs. According to an article appearing in the newspaper "Frankfurter Allgemeine Zeitung", June 3o, 1978, this incident (and not the upcoming publication) is "so serious because it could severely limit the Executive's willingness to make intelligence information easily available, thus restricting the committee's access to information and limit-ing the scope of its work". It would appearthat what is decisive to the controllers'parliament is maintaining the trust of the executive branch. To this end, it is necessary that the confidentiality of the relationship

be not disturbed. It is not the government but the parliament that has to demonstrate its trustworthiness;the public and its rights will be excluded anyway in the direct contact between the parliamentary committee and the executive branch. It is as though the public can attain status only as a thief; it is as though we were living under a neo-absolutist regime where political information which has become a state secret must be stolen and smuggled out before it is deprivatized.

One does not have to dramatize these circumstances. They are of themselves dramatic, especially in countries which do not have the tradition of having had a critical civil public and in which, "secreta" always takes precedence in the name of an elevated morality, namely the elevated right of the executive. We find ourselves faced with the power of political definition of the intelligence agencies and the police within the very context of "western democracies". This is a defining power, which unscathed by Watergate and its aftermath, appears to be growing. For this reason, the rediscovery of a social science and profession which would first and foremost gather and prepare unabridged information is essential. It is not enough to rely merely on the inability of the apparatus to plug all its administrative leas. It is much more important that an attempt be made to piece together the mosaic that comes as close as possible to the reality of the situation through a precise and continuous gathering of whatever information that can be obtained. Only through the painstaking task of collection and analysis leading to the completion of a more or less accurate picture of the present reality will we be in a postion to estimate the nature and extent of the danger, to make people more aware of it and then possibly to initiate an oppositional movement. It goes without saying that in dealing with institutions such as the police and the intelligence services, intitutions which sustain themselves in part through techniques of evasion as well as exaggeration, statements or utterances tinged with hysteria must be avoided. Still, in our opinion based on years of observation, we are presently in a situation in which normality has become dangerous and banality, in Hannah Arendt's words, has or is threatening to become, evil. The liberal , constitutionally-governed state, which has already been largely restricted and fenced in on many sides, stands at the crossroads.

We repeat our request for criticism and above all for cooperation made to all our readers in the first issue of this information bulletin. Without the cooperation of colleagues in the Federal Republic as well as in other countries, this bulletin would not be able to achieve the continuous level of quality necessary to attain its goals. How else will we be able to break through the hermetic of the intelligence organizations and their power of self-determination or to at least provide the public with alternative, if radical-liberal



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groups and individuals do not take up the task of gathering and preparing information? Not until we have enough reliable information can we hope to arrive at an adequate appraisal of the situation. Only then will we be in a position of enlightenment,in the truest sense of

the word. Citizens must not allow themselves to be dulled and influenced by intelligence organizations mascarading under a concept of "inner security" and pretending to operate in the interest of the people.

We therefore repeat our request:

- -- Please give this information bulletin your support by subscribing to it.
- -- Take part in the preparation of this bulletin by making a donation and by providing it with information.
- -- If and when possible, gather information relevant to this or a related theme, either in this or another country.

Naturally,enormous value is placed on the reliability of the information and for this reason, the sources must be stated precisely. In any case, the sources must be known to the editorial staff. It goes without saying, that this bulletin will be suspected of serving some sinister unconstitutional ends. We cannot remove these suspicions;we can only counter them by providing true unabridged information which has not been arbitrarily taken out of context.

We have to take up the task now. The liberal, constitutional state, the prerequisite for all democratic and socialist politics, deserves another chance, but will only get it if we all struggle towards its realization.

This issue contains only a portion of the areas of information which will be handled regularly in successive issues. We have therefore included the entire list of themes and topics which we currently regard as important to our work.

The individual contributions to this issue do not require any further commentary. Even the contributions in short-essay form are not to be regarded as independent scientific treatises, but as information that has condensed and interpreted.

I. METHODOLOGICAL PROBLEMS OF POLICE RESEARCH

IDEAS ON HOW TO OBTAIN DATA ON THE STRUCTURE AND OPERATIONAL PROCEDURE OF THE SECURITY BUREAUCRACY

It is well known that government bureaucracies generally publish only those things which "in their opinion can do them no harm" (Max Weber). It is not surprising in matters concerning the state security apparatus, whether it be the military, the police or even the security secret intelligence forces, the argument "secrecy for reasons of internal security" becomes reinforced. The state security bureaucracy has its compelling reasons, too, as has been reiterated through the illegal practices of the police and the Domestic Intelligence Office (from the Traube case down to the lists which were compiled by the D.I.O. and used by the Federal Border Patrol, incidents which came to public attention only through "indescretions")

Thus it is clear that an imaginative circumvention of the barriers erected by the security bureaucracies is needed. This applies to scientific studies which go beyond research into the police and serve as research for the police as well as to projects designed to place the executive under some kind of controls and to reach a broader segment of the critical public. The following conSise list of possibilities of circumventing denials of access to information from bureaucracies fearful of public control has been compiled in the hope that it will encourage people to use their own productive fantasy to find solutions. First it must be stressed, however, that the most important aspect of any data gathering remains the systematic evaluation of available material, which must be based on resolving the contradictions contained in it. This process occupies the major part of the working time of all security apparata as well. The professional publications of the security apparata in particular, as well as the extent of their availability, internal memoranda, provide information which enables the development of a system with which officially accepted categories and definitions can be critically evaluated within the context of a developed problematic. Through a systematic hunting out of facts, rationalizations and contradictions in the data which has been made public, the general structure of individual apparata, as well as their methods of operation, can be grasped with relative precision, thus providing openings into the system which allow further research.

1. Case studies: Scandals

Scandals provide sudden and spectacular insight into methods of operation, organizational structures and security ideology (the Watergate and the Traube case for example). It is not the scandal itself which commands the researcher's attention but rather the possibility of attaining retrospective insight into the normal functioning of the security apparatus which makes the study of individual scandals so rewarding. Since it is not possible to study reports of parliamentary committees, expert groups or internal organzational control organs, one is usually forced to rely chiefly on press reports and the minutes of court proceedings.

2. Evaluation of court proceedings

Court cases also provide only a selective portion of the daily practices of the security apparatuses. Nevertheless, keeping these limitations clearly in mind, it is possible to make inferences about routine police practice, information that can be obtained concerning the relationship of the police and judiciary in various problem areas, such as the definition of criminality, the extent of executive maneuverability, etc.

3. Parliamentary Inquiries

A method often used in the USA for research into the military, which, in our opinion, owes its success in part to the very impotence of the individual parliamentarian, in face of the executive, is that of going directly to parliamentarians and encouraging them to question the government on such issues during parliamentary i.e. congressional sessions.

4. Foreign Sources

In researching the military, the use of varying degrees of access to data is one of the

most profitable methods of gaining indirect access to material (the USA particularly in contrast to Western Europe).This method has only limited applicability in police research, however. In Germany, for instance, it is much easier for foreign colleagues to obtain data and information concerning the police from German authorities who tend to regard their own countrymen as potential enemies of the police. It is nevertheless necessary to exchange the most important information between individual research groups in the various countries.

5. Projection

Since access to certain relevant sources of information is largely blocked, applying pressure on the security apparatus through clearly formulated hypothese and factual claims seems justified. In this way, the bureaucracy can be forced to counter these statements and claims factually, to accept them, or to informally admit to them by prohibiting further access to information.

6. Covert Research

Bureaucracies,especially the security apparatuses, react more negatively to self-directed and motivated research projects than to those which are organzationally neutral. For this reason, it appears impossible to let the intelligence organizations know about a political group's methods of observation, its practical application and experience without having the request denied.
On the other hand, we know of a research group in the USA that studied leftist organizations in the American student movement and got access to all FBI material. Naturally, gaining access to material under false pretenses poses ethical problems for the researcher, who is obliged to conduct research according to criteria of honesty. Many researchers cannot even use this method, however, since their political beliefs are known to the institutions.

IS PUBLISHING UNLAWFUL EXECUTIVE ACTIONS A CRIMINAL OFFENCE

THE 'FAUST' CASE

1. The Indictment:

The following item appeared in the Berlin daily "Der Tagespiegel"

> "Government counsel Karl Dirnhofer and journalist Hans-Georg Faust were indicted today on charges that they illegally passed on and published records of the Domestic Inteligence Office (Verfassungsschutz).
> Among other things, they are accused passing secret Verfassungsschutz material to the news magazine "Spiegel". According to an inquiry of the public prosecutor, Dirnhofer, passed material on to Faust a total of fifteen times.
> He is charged with violating the secret service act which is punishable by no more than five years imprisonment.
> Faust was charged with aiding in the illegal distribution of secret material or news, which is punishable by up to three years imprisonment. Both persons are presently being held.

2. The Facts:

The "Spiegel" first reported a case of "electronic" eavesdropping on the engineer Dr. Klaus Traube on March 10 and 28,1977. Agents of the Cologne office of the Domestic Intelligence service, acting upon a warrant issued by the Federal Ministry of the Interior, had broken into Traube's house on New Year's eve, 1975/6 and planted a listening device which was used to eavesdrop on Traube for two months. Traube was suspected of being involved with terrorists, particularly with Hans Joachim Klein, who would later figure in the OPEC raid. These actions of the Cologne Domestic Intelligence Office, as well as the intervention of the office with Traube' employer, "Interatom" brought about his dismissal. Traube was informed neither of the actions of the intelligence office nor of the grounds for his dismissal. There were two motives which led to Traube being bugged: He worked for "Interatom". This meant that he could possibly gain access to nuclear material. Then there was Traube's unconventional life-

style and his association with persons who themselves were behaving in a manner which appeared strange to the bureaucratic mentality. Intelligence officials even suspected that a room in Traube's house which contained three matresses would someday be used as a "peoples' prison". Traube, who later was completely rehabilitated, has to this date, been unable to find another job commensurate with his training and abilities.

3. Facts:

Although the attempts of Federal Interior Minister Maihofer to justify the break-in on the grounds of an "emergency situation" failed,"Spiegel" was investigated and criminal proceedings were initiated against its editor, Rudolf Aufstein, among others. The charges were based on Section 353c of the criminal code, a law which had been conceived by the Nazis in 1936. The modern version of the law reads as follows:

"(1) Whoever acts without authorization and passes on or publishes, either in whole or in part, drawings or models or parts thereof, which have been labelled secret by a law-making body of the Federal or State governments, one of their committees or another official agency and thereby endangers important public interests, is to be punished by imprisonment of no more than three years or by payment of a fine.

(2) Whoever acts without authorization and consents to the passing on or publishing ofmaterial or information labelled"secret" by a law-making body of the Federal or State governments or one of their committees or another official agency,in reference to the punishability of violations on the code of secrecy endangers in so doing, important public interest is also to be punished.

(3) The attempt is punishable.

(4) If the secrecy results from a decision of a law-making body or one of its committees then the act can only be prosecuted upon the authorization of the president of the law-making body; in other cases it is to be prosecuted only upon authorization of the Federal government."

The proceedings against Rudolf Augstein were quickly dropped, but charges against the "others", namely Hans-Georg Faust and Karl Dirnhofer, were upheld. Hans-Georg Faust, journalist, was suspected of having provided "Spiegel" with information pertaining to the Traube case. Karl Dirnhofer, a government counsel, was alleged to have served as Faust's informant. Starting in February, 1977, Faust was subjected to almost total surveillance. This was justified not only through paragraph 353c but also through paragraph 88 of the Criminal Code which pertains to "sabotage against the contitution", as invoked by the Karlsruhe district attorney's office.

"(1)Whoever either by organizing or supporting a group or in actin alone without belonging to or supporting such a group acts to disrupt the following:
1. the Post Office or public transportation facilities;
2. Communication facilities serving the public interest;
3. firms or installations providing the public with water, light, heat, energy or other services vital to the public interest
4. public service facilities, plants, installations or items which either serve the public security and order, and in so doing either wholly or in part prevents them from fulfilling their designated task
and acts with the intention of doing harm to the existence and security of theFederal Republic of Germany or its constitutional principles is to be punished with no more than five years imprisonment or is to be fined.

(2) The attempt is also punishable.

On December 14,1977 the Federal Court decided that the release of the Traube documents to "Spiegel" in no way constituted"anti-constitutional sabotage". However, it was upon this charge that not only the surveillance of but also the arrest of Hans-Georg Faust on Nov. 11,1977 had been based. In addition, his apartment had also been thoroughly searched for a second time. The search lasted two days. Faust was released after posting a very high bail on December 23,1977. He was rearrested on January 12,1978 and once more released after posting a bail.
The December 30 arrest was based merely on Paragraph 353c of the Criminal Code and on the danger of possible collusion.
Since then charges against Faust under Paragraph 353c have been dropped by the district attorney' office (see Tagespiegel, dated July 13,1978; Frankfurter Rundschau dated July14,1978, Roderick Reifemath,"Faust IV. Teil")

4. Moral (1):

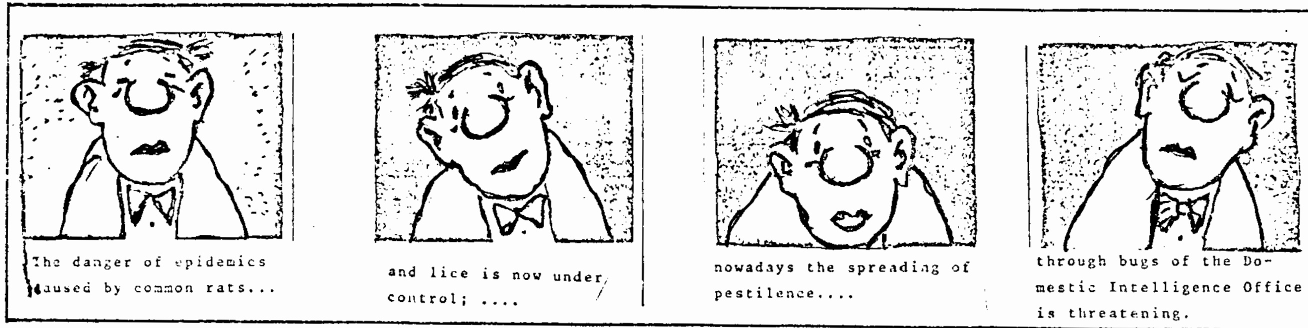
Here we will emphazise only those aspects which pertain directly to the relationship between the legal and administrative

apparatus and the public citizen.
We will not go into isolated aspects of the unjust treatment experienced by Faust. (For further information, see H.G. Faust in the Frankfurter Rundschau of February 22, 1978 "Die Klage des Hans-Georg Faust", as well as "Der Fall Faust" by the same author in Die Feder 2/1978, pp. 9 f.)

Faust's own account of the injustice has gone essentially unchallenged to this day. Faust was subjected to severe restrictions upon his work and his ability to defend himself, especially during his period of confinement (when he was faced with unfounded charges of "anti-constitutional sabotage").
Two points stand out in the analysis of the relationship of state law authority and public /citizen interest.

First we have an apparent manipulation of the law in order to justify pressing charges. Since charges had already been brought against "Spiegel" based on Paragraph 353c of the Criminal Code, i.e. for the illegal passing on and publication of the Traube documents, it seems at first a bit strange that they should be dropped against the magazine but pressed against Faust and Dirnhofer. The Federal government withdrew the charges apparently for opportunistic reasons in view of a direct confrontation with "Spiegel" but believed that by concentrating on the individual Faust "they would be able to get at the information." (statement made by Government Press Secretary Gruenewald on December 23,1977).
Furthermore, the executive and to some extent the judiciary as well, has a relatively large and a free from risk room for maneuverability in which to decide passages in the criminal code to base their accusations and charges on, all the way up to the final indictment. To be sure, the investigation based on Paragraph 88 of the Criminal Code must be conducted within guidelines set by the decision of the Federal Administrative Court. Still, Faust was not the only one harmed by the investigation. The Federal District Attorney aided by the Federal Office of Investigation, operating under the legitimization provided by Paragraph 88 of the Criminal Code were almost completely unimpeded in their attempts to gain access to all sorts of information.
Thus we come to the second point which involves the maneuvering on many levels and instances. Four offices--the Federal District Attorney's Office, the State Attorney's Office in Bonn, the security division of the Federal Criminal Office and the Domestic Intelligence Office-- all took part and are continuing to do so in varying degrees. The prosecuting authorities utilized not only the various paragraphs of the criminal code in order to legitimize their actions but alsodepended in varying degrees upon the political executive which was directly involved in the events especially where it concerned the use of Paragraph 88.

Alongside the prosecuting authorities and institutions of the political executive (especially the ministries of justice and the interior) ,the various courts also took part in the Faust case: The Federal Administrative Court, the Sieburg Local Court, the Bonn State Court and the Superior State Court in Cologne.
And of course the police were on the scene as well. Since his release in mid-January, Faust has had to report to them twice weekly.
It is very possible that the profusion of participating instances of the state legal and coercive apparatus were occasionally ineffective But two other results stand out clearly. First, the prosecuting authorities abided fully by Moltke's dictum: "March separately and



attack in unison." What cannot be achieved by one office or law can in need be accomplished by another. Second, oscillation between Paragraphs 88 and 353c were repeated on the intutional level. Though quite benificial to the prosecuting institutions, this method proved harmful to the victim of the process. Only those who are in command of an optimal defense, as well as sufficient means (financial and otherwise) to support it have any chance of finding their way out of the maze of accusations, negotiations and institutions.

5. Moral (2):

It should have been clear from the outset that charges based on Paragraph 88 would not hold up. We have already hinted at the possible reasons why the government and the prosecuting attorney decided to go ahead with the charge anyway (see Moral 1 and the statement of the SPD parliamentarian Conradi on April 12,1978 in the Bundestag Plenarprotokoll 8/82,p.6492.) Paragraph 353 posed problems as well, however. Conradi pointed them out in a question directed to parliamentary State Secretary in the Federal Ministry of Justice, de With:

> "Mr Secretary,does the Federal Government share the opinion that the discussion concerning the unconstitutionality of acts connected with the Traube case was in the public interest and that thereby the facts in Par. 353c of the criminal code which explicitly requires that the public interest be endangered here in no way comes into question?" (Plenarprotokoll,p.6493).

Just what does the term "public interest" mean? To what does the concept refer? If Faust did do the things with which he is charged, then his actions were not only proper, but in many ways represented a courageous defense of the public interest. He exposed an unjust, illegal government action which violated the basic rights of the citizen. But if by public interest, one understands that which has been formally designated as such by government institutions in such a manner that covering up or declaring secret unjust practices is required, then one should say that Faust was certainly acting against it. If one uses the Basic Law as a basis instead of the civil service law, which follows it, the verdict of the case becomes clear. This applies still more, in the case of Dirnhofer, if one places more emphasis on the section requiring active loyalty to the constitution. The conflict surrounding the concept "public interest" underscores the problems involved in gaining access to and publishing information concerning the Domestic Intelligence Office. Control is rendered practically impossible by the existence of a wide-ranging realm of secrecy justified in part by and institutionally-established concept of public interest. But whoever comes into contact with this realm, either directly or indirectly and tries to pass the information along strictly legal channels, risks losing his or her neck. If there is not enough legal basis or legitimation on the books to block such action, there are still many

vague passages in the criminal code which can be used,to keep information concerning bureaucratic misdeeds from getting out to the public. It is by now common knowledge that the Traube case was the product of the Federal Government and the Domestic Intelligence Office and that the latter violated basic rights without due cause. Nevertheless, the alleged informants are being prosecuted by the very authorities guilty of having engaged themselves in illegal activities. Not only is it clear that such practices are entirely preventive as they are designed to scare off potential future informers, but it is also becoming apparent that a one-sided concept of public interest is winning out over the definition provided in the Basic Law. The problems of information and control in the Faust and Dirnhofer cases,point out clearly that neither legally nor administratively, was the decision made in favor of the public's right to know as provided for in the Basic Law .

II. STRUCTURAL DATA OF POLICE DEVELOPMENT IN WESTERN EUROPE

Hakon Lorentzen

SOME DATA ON THE DEVELOPMENT OF THE NORWEGIAN POLICE

I. Effectivity--Centralization seen from a historical Perspective

The Norwegian Police has a long history of decentralization. In the last century, the police has been controlled on the municipal level, where decisions were made concerning manpower, financing and control. The need for state control grew, however, along with the development of industrialization and concomitant growth of the government apparatus. Throughout its history, however, the question of a centralized versus a decentralized police apparatus was the subject of much debate in which two arguments occupied a dominant position:
first, the question of a centralized versus a decentralized police direction; second, question of state versus municipal control. Until 1936 police tasks were divided between the state and municipalities with the state reimbursing the costs incurred by the municipalities. The final solution to the problem came with the police law of 1936 which is still in force. Since then, the state has assumed sole responsibility for controlling the police.

The Police Law Committee of 1912-1914 recommended the formation of the Office of Police President. This suggestion was rejected by the ministry for the following reason:

"This ministry does not agree with the recommendation that an office of Police President be created. The administration of the police is the task of the ministries of justice and the police. The po sistion of a President of the Police is not absolutely necessary. Such a measure would be rather costly and would be the cause of administrative conflicts with the courts as well as the ministry of justice."

Instead, the position of police inspector was set up. His job was to "make suggestions on how to improve and change the local police if and when he should deem it necessary to do so."
The police law committee of 1912 also discussed whether police councils should be set up in the municipal districts. Council members were to be elected from the ranks of the police and were to be charged with overseeing municipal spending.
They were also supposed to "concentrate on local wishes and act as spokesman for them."
They were also intended to function as a connection between the police and the municipalities. Thus it was hoped that the traditional ties between the localities and the state would not be broken during the period of transition to centralized control of the police. There was a decided desire to avoid having the police apparatus take on the appearance of "a strange or hostile power to the municipalities."
Nevertheless, the recommendation to set up a police council was rejected in 1920 be the Justice Committee.
In 1924, the question of a police president was raised again by the Police Committee, which once again found the creation of such a position to be impossible based more or less on the same arguments as earlier-- the authority of such an official would be too difficult to limit, for the local as well as the state authorities.
During the war,planning on the postwar Norwegian government was conducted in London. In 1943, a provisional declaration was made that as long as the land was at war and "as long as the king felt it to be necessary", the directorship of the the police was to be placed in the hands of a State Police President directly answerable to the Minister of Justice. After the war, the State Federation of Police Officers as well as the Norwegian Police Federation requested that the position of State Police President be maintained. Thereupon, the Ministry of Justice ordered a study which led to the continuation of the post with a consequent reduction of power. Then in 1946, the committee insisted that the position be terminated and this took place on January 1, 1947.

II. The Development of the Police in the 60's and 70's

Consideration was not given to a strengthened centralization of the police until 1964, when a committee on rationalization issued a report concerning it. The report concerned suggestions for changing the organizational structure of the police in order to assure greater efficiency and reduce costs. Among the conclusions reached, two stand out :
1. The need for central planning and control of the police
2. The need for a strong central direction of the police.
According to the report, reorganization of the directorship of the police would give more autonomy to the central police command and thereby improve the police's image of authority in the eyes of the public. The report led to the creation of the Aulie Commission which was charged with conducting an analysis and evaluation of the structure of the central administration as well as the command structure of the police and with coming up with possible reorganization suggestions.(refer to the Aulie Report p.9).
The Aulie report, which appeared in 1970, makes the following recommendations:
1. The central command should be placed under an independent directorate.
2. The directorate should be directly resposnsible to the State Police Department.

3. The local police districts should be reorganized into five larger districts, each, under the command of a regional police director.
4. The police should be better equipped and more mobile. The report also noted that the police was not equipped according to standards required of a modern police force.
5. In order to provide the basis for more rational work, the police should be restructured in such a way as to enable the integration of its numerous small units.
The report's authors were apparently influenced by the example of Sweden, where a directorate had been introduced in 1965 which resulted in a reduction in the number of police districts as well as an increase in manpower. The police themselves as well as a great number of conservative Norwegian government figures,came out in favor of this model. For this reason, the political leadership of the Labor Party decided not to speed up work on proposition 60 which contained provisions for the reorganization when they came to power in 1973. Rather the Minister of the Interior was ordered to examine the whole question of police reorganization once again. The conclusions of the commission were not officially discussed in government circles but were sent directly to the police, who gave them their endorsement. Afterwards, the Justice Ministry concentrated on the the following structure:

1. The centralized control of the police should be placed under parliamentary control within the ministry.
2. The central command within the ministry should be reorganized with the present police department being divided into two sub-departments, one being administrative and the other being charged with "organization and inspection". The latter would then be responsible for planning, organization, rationalization, oversight and information.
3. Both departments, each under control of an "expedition head" together constitute "one main department directed by a senior civil servant directly answerable in certain matters to the council of ministers".
4. A new organization-concept involving regional police bureaus would be in line with the recommendations of the Aulie Committee.
5. When necessary, the state police should be reorganized into larger and "more effective" units. In addition, a larger portion of civilian tasks should be assumed by the administration, thereby allowing the police to devote more of its time to "police work".
This new organizational structure in the Central Directorate of the Justice Ministry was indirectly accepted by the government when in 1975 it authorized the creation of ten new posts within the Division of Police. Planned also are a total of 25 new posts in the Central Directorate to be set up between 1975 and 1978. In fall of 1976, the police adopted Propositio 60 introducing the police regions and the establishment of a regional police office, which will be later discussed.

III. The organizational Form of the Norwegian Police

Since 1976 the Norwegian police have been in a state of transition. Hence one can speak of an "old" and a "new organizational structure. The "old" structure had remained essentially unchanged since the enactment of the 1936 police law.

1. The "old" organizational Structure

The Justice Mininstry's Police Division consists (1973) of five sections: the personnel office, the office of finance, organizational office, a legal office and an office for civilian tasks. They employ 49 persons. of whom five are office heads and 23 are case workers.
In the relationship between the Police Division and the local police forces, the police have always enjoyed a great

deal of autonomy. The Division of Police functioned mainly in dealing with local complaints against the police as well as local personnel and financial matters. It had no operational functions, these being in the hands of the local Police Directorate. The work of the local directors was coordinated within this old structure. For larger actions involving more than one district, an officer from one district could be given command over other districts upon issuance of a special permit by the Ministry of Justice. The relationship between the Central Directorate and the local police directors was seldom subjected to controls. Local control was exercised through instruction as well as through the distribution of manpower and material. The result was a flexible and heterogenous police organization, responsive to public needs.

Six central branches are directly answerable to the Ministry of Justice and function chiefly as "service-bodies" for the local police administration.

In the Headquarter of Criminal Investigation Department (CID) (KRIPOS) the police laboratory is located which serves the local police to solve crimes involving murder, arson etc. In the KRIPOS there exists an investigatory unit consisting of five persons who deal with grave crimes.

There is a Police College. The basic course, which consists of a practical and a theoretical part, lasts six month. There are specialized courses of instruction, as well, such as arson investigation, drug traffic control, traffic control etc.

The Central Intelligence Unit is responsible for coordinating intelligence gathering activities performed by the local police. Surveillance is intended to "prevent and resist crimes against the security and integrity of the country, its constitution and its leader and is to be employed wherever the inner security of the country is threatened or whenever public authorities, the general order or harmony are threatened by crime and underground activity." (Aulie Report,p.28)

The 1936 law had established police patrols, which were used up until the time of the war to quell unrest. Beginning in 1953, these patrols become responsible for traffic control, but could still be mobilized to quell disturbances.

As of summer 1973, this troop consisted of 200 persons taken from local forces. They had 100 vehicles, and were dispersed among the regional districts.

The control of aliens residing in Norway

COMPARATIVE FIGURES: POLICE STRENGTH OF THE FEDERAL REPUBLIC OF GERMANY

POPULATION PER OFFICER IN THE FEDERAL STATES OF GERMANY (on 1st July 1977)

Land	Population	Population p. Officer,total	Uniformed Pol.	Criminal Invest.
Baden-Württemberg	9.119.266	1 : 48o	1 : 749	1 : 3 975
Bayern	1o.812.336	1 : 367	1 : 59o	1 : 3 125
Berlin	1.944.489	1 : 136	1 : 267	1 : 1 235
Bremen	7o8.393	1 : 2o8	1 : 344	1 : 1 54o
Hamburg	1.692.o88	1 : 21o	1 : 366	1 : 1 49o
Hessen	5.538.432	1 : 394	1 : 638	1 : 2 7o2
Niedersachsen	7.226.791	1 : 464	1 : 742	1 : 2 954
Nordrhein-Westfalen	17.o62.2oo	1 : 45o	1 : 679	1 : 3 238
Rheinland-Pfalz	3.649.oo1	1 : 482	1 : 736	1 : 2 97o
Saarland	1.o88.961	1 : 332	1 : 476	1 : 2 778
Schleswig-Holstein	2.584.887	1 : 4o9	1 : 6o5	1 : 3 498
Länder	61.426.844	1 : 387	1 : 617	1 : 2 918
Hessen (FY 1978)	5.538.318	1 : 394	1 : 631	1 : 2 582

hpr 7/78 (in: hessische polizei-rundschau, Heft 7/1978,p.5)

is coordinated by a special police for foreigners. The Central Office maintains contact with foreign police forces in other countries as well as with the local police. As of 1972, 17 offices were employed in this capacity.
The task of the Police Superintendant is"to provide the police with standardized uniforms and equipment at reasonable prices."
The local police:
The 53 local police departments are heterogenous. As of 1952, the largest was in Oslo with about 1. 250 employees and the smallest was in Sorgener where eight persons were employed, three of whom worked in the office.
The concentration of police per square kilometer varies as well. Whereas the Oslo police has one officer per .37 km.^{2}, in Westfinmark, there is only one police per 376 km.^{2} . Thus the chances of seeing a policeman at any given moment are 100 times greater in Oslo than in Westfinmark.
Concerning the relation of police concentration and population, Oslo again occupies first place with one officer for every 385 inhabitants. Christianssand, Davanger, Bergen and Trontheim have one for every 500 residents. For the rest, the average is one officer for every 87 residents. The number of state police districts per police district vary as well. The Horgaland District had 26 state districts in 1970 whereas the average for the country as a whole was seven.
The rural police:
The rural police has had police as well as civilian functions for ages. The rural police commissioner serves as bailiff, auctioneer, etc. His income is largely derived from private sources, such as selling, auctioning, fund raising,etc.
The rural police commissioner is responsible for one districts in a state. In police matters, he is directly responsible to the director of police. Various officers work together with the rural commisssioners who in earlier times even paid their salary. In order to enable the rural police commissioner in the future to use these officers for his own purpose, the state has been empowered to demand back a portion of the payment to these officers.
In 1970 there were a total of 379 rural police commissioners divided over 53 state police districts. Each police commissioner was responsible for approximately 25 officers.

2. The "new" organizational Structure
As mentioned earlier, the police is currently engaged in a reorganization and rearmament phase. One can now speak of a"new" police organizational structure which has been already partially reâlized(1976). The structure is outlined in the appendix.
Changes on the various levels occured in the new structure. The "tip" of the organizational pyramid--the central administration-- has been reorganized and expanded. The old division of police has been divided into two sub-divisions-- an administrative division and a division charged with organization and oversight. Personnel is to be expanded by 20 to 30 employees during the next three years.The two divisions, each commanded by expedition head, are to be placed under the control of a police council which is in turn to be directly answerable to the Justice Ministry. Something new also emerges in the "middle"of the organizational pyramid. The country is to be divided into five police regions: Østland, Sørland, Vestland, More, Trøndelag and Nordnorwegen. A Regional Police Authority has been placed in charge of each region; thus, providing a local control of previously unknown proportions. The Justice Ministry has still to provide plans concerning the extent to which the presently

existing local autonomy is to be limited. Nevertheless, the regional police direction will be given two important powers: He will be able to send police officers anywhere in the region. Earlier,special permission was required before an officer could be sent out of his own district. In addition, he will have command over the police in other districts. Formerly, the Regional Police Director had no right to become involved in affairs concerning a district other than his own.

The change in command structure and the introduction of regional police units make possible and altered police apparatus. For one thing, it will be easier to assemble large contingents of police in one place, for example to fight strikes, demonstrations, etc. In addition, a standardized routine and method of instruction has been worked out for all the police in one region, thereby reducing the possibility of allocating police according to local need.

Changes at the "base" of the organizational pyramid have still to be made. Exactly what they will be is still unclear. As mentioned earlier, the regional and central control of the police will be intensified,that is, decisions will be made further up the pyramid.

It is still unclear what status the rural police will have in the new system. Two rationalization measures are presently occuring within the rural police:

a) A convergence of small districts with few emplozees aimed at creating more "effective" units and

b) An exclusion of tasks not proper to police work, aimed at increasing police efficiency. The decentralized and civilian character of the rural police will end.

Several Developmental Traits:

a) Number of Personnel (see table 1)

The numbers of police are constantly changing. Here, we will concentrate on the development of the police from 1945 to the present day. Category I shows the strength of the Oslo police, officials and office workers. In Category II, we find the average strength of the police in four city districts---Christiansand, Bergen, Saavager and Trontheim.

Category III, shows the average strength in the five small districts, Østerdal, Dragero, Hordeland, Søgn, Lofsten and Versteraten. Then the relation between Categories I and II and III are estimated.

Table I reveals two main tendencies:

It is the urban districts where there has been an absolute increase in police strength. The four large cities experienced a period of growth between 1945 and 1955 (20%) followed by a period of relative stability (1955-65) (4%). The period 1965 to the present is marked by a new surge in strength (19%).

The same tendency applies for the Oslo police, where growth was 28% from 1945 to 1965;0.7% during 1955-65 and 19% between 1965 and 1976.The smaller rural districts have had no increase in the postwar period. From 1950 to the present,there has been an average of 20 persons employed. In other words, there has been a shift of police concentration into the urban areas which corresponds to actual population shifts only in exceptional cases.

The table reveals that between 1950 and 1976, the Oslo police force was enlarged by 444 persons, an increase of 47.6%. During the same period of time the population increased by only 6.9% from 435,000 to 464,900 inhabitants. In short, the numbers of police increased seven times as fast as the population. Whereas in 1950, Oslo had one policeman for every 467 residents, by 1976, this had increased to 1 per 358 residents.

b) Budget (see table 2)

The picture of the police takes on a completely new aspect when one looks at the increase in per capita expenditure. Table two shows the development in Norway since World War II.

These figures show that every Norwegian

Table 1:

The Development of Personal Strength in some Police Departments 1945 - 1976

Year	Category 1 Oslo: Police	Category 2 The "biggest" four city districts	Category 3 The five "small" districts	The Proportion 2 : 1	The Proportion 3 : 2
194o	812	116	9	1 : 7,o	1 : 13
1945	89o	132	11	1 : 6,7	1 : 12
195o	932	159	19	1 : 5,9	1 : 8,4
1955	1 141	172	19	1 : 6,7	1 : 8,7
196o	1 183	173	2o	1 : 6,8	1 : 8,7
1965	1 149	179	2o	1 : 6,4	1 : 8,9
197o	1 236	188	2o	1 : 6,6	1 : 9,4
1975	1 376	214	2o	1 : 6,4	1 : 1o,7

Table 2:

The Development of Police expenditures 1946/47 - 1977

Budget Year	Population 1)	Expenditures in Mill.Crowns 2)	Crowns per head	Corrected Crowns per head 3)
1946/47	3 o91 181	32,ooo 4)	1o,35	36,o6
195o/51	3 265 126	36,o62	11,o4	35,73
1956/57	3 427 4o9	88,873	25,93	61,73
1961	3 581 239	131,8o4	36,8o	73,6o
1966	3 723 153	194,917	52,35	87,25
1971	3 877 386	338,717	87,36	1o9,2o
1975	3 985 389	642,414	161,19	161,19
1976	4 oo7 313	758,737	189,34	166,82
1977	4 o26 ooo 5)	958,661	238,12	195,34

Sources: 1) Kilde, Statistisches Jahrbuch; 2) Kilde, Regierungsproposition Nr. 1: Budgetproposal for the Police;
3) Corrected to CPI of the Statistisches Zentralbüro, base year 1974;
4) Includes 12 millions for "extraordinary Police Objects"
5) Evaluation of the population 1977 based on prognosises of the Statistisches Zentralbüro

Table 3:

The Proportion of Police Expenditures and Gross National Product

Year	Police Expenditures in Mill. Crowns	Gross National Product in Billion Crowns	Police Expenditures in per cent of the Gross National Product
195o/51	36,o26	16,6o5	o,22
1955/56	8o,865	26,229	o,3o
1959/6o	1o5,959	35,621	o,4o
1965	178,772	55,828	o,32
197o	291,632	89,983	o,32
1973	463,237	11o,156	o,42

spends about five times more to support the police than in 1946. Expenditures increased by 25.67 kronen between 1946 and 1956;25.32 kronen between 1956-66 and 79.54 kronen between 1966 and 1976.
In other words, there was a relatively modest increase until 1970. Since then however, the increase has been explosive. Between 1946 and 1971 (25 years) real expenditures for the police have increased by 73.14 kronen per citizen. For the period 1971-1976 (six years) the increase was 86.14 kronen. This increase must be seen within the overall context of the increases in state expenditure. In Table 3, expenditures for the police are compared to gross national product.
From these tables, it is clear that expenditures have commanded an ever-increasing share of postwar budgets. In 1973 police expenditures accounted for 0.42% of the Gross National Product, the highest figure of the postwar period.
c) Arming the Police: The greatest increases were in the area of transportation and material which grew at an annual rate of 9.5 % between 1960 and 1965. For the period 1965-1970 the rate was 22%; 1970-75 showed an increase of 56% and for 1975- 77 an increase of 122% per annum.
The largest portion of transportation and material costs goes to vehicles and means of communication. (The police do not normally carry guns but they can when necessary, resort to the following weapons:
- Billy clubs
- Pistols
- Carbines
- Machine guns
- Gas grenades .

Completed by the editor; source: Union Internationale des Syndicats de Police (ed.), Panorama über die Polizei in Europa, Hilden, 1977)

The Anti-Terror Squads:
The relatively new anti-terror squads are characterized by a unique organizational set-up. Originally, one squad was established out of officers from the Oslo police force in the wake of the so-called Lillehammer affair, in which Israeli agents murdered an alleged PLO agent. Since then, however, the Justice Ministry has set up similar squads in Berben, Trondheim, Stavanger, Bodø and Kristianssand. The squads presently number several hundred persons.

The anti-terror police receive commando training. They are given special training in the techniques of carrying out "physical"missions and some of them receive further specialized training in explosives, weapons, diving, parachuting and so on. They are mobilized only on exceptional occasions. Normally employed in routine police work, they can be called up during periods of impending unrest. They can be used to keep order in subways, during building occupations and demonstrations and the like. According to directives issued by the Justice Ministry, in addition to their anti-terror function, these groups can also be used against persons who are "dangerous to public safety" as well as to quell "domestic unrest."

Summary:

The police is now undergoing a reorganization without parallel in this century. This process has the following characteristics:

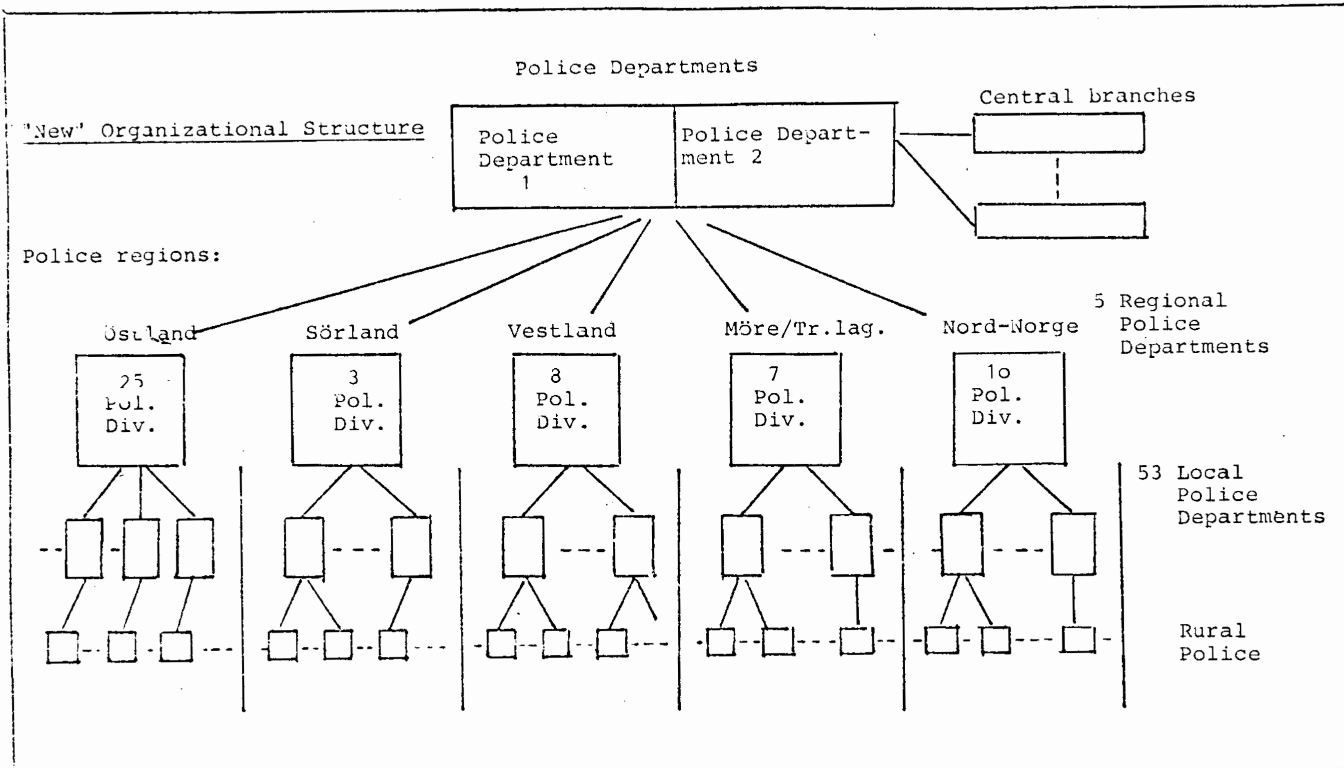
1. Local police autonomy is being reduced:
Decisions which were once left to the rural police commissioners and the police director are now being made on a regional, centralized level.

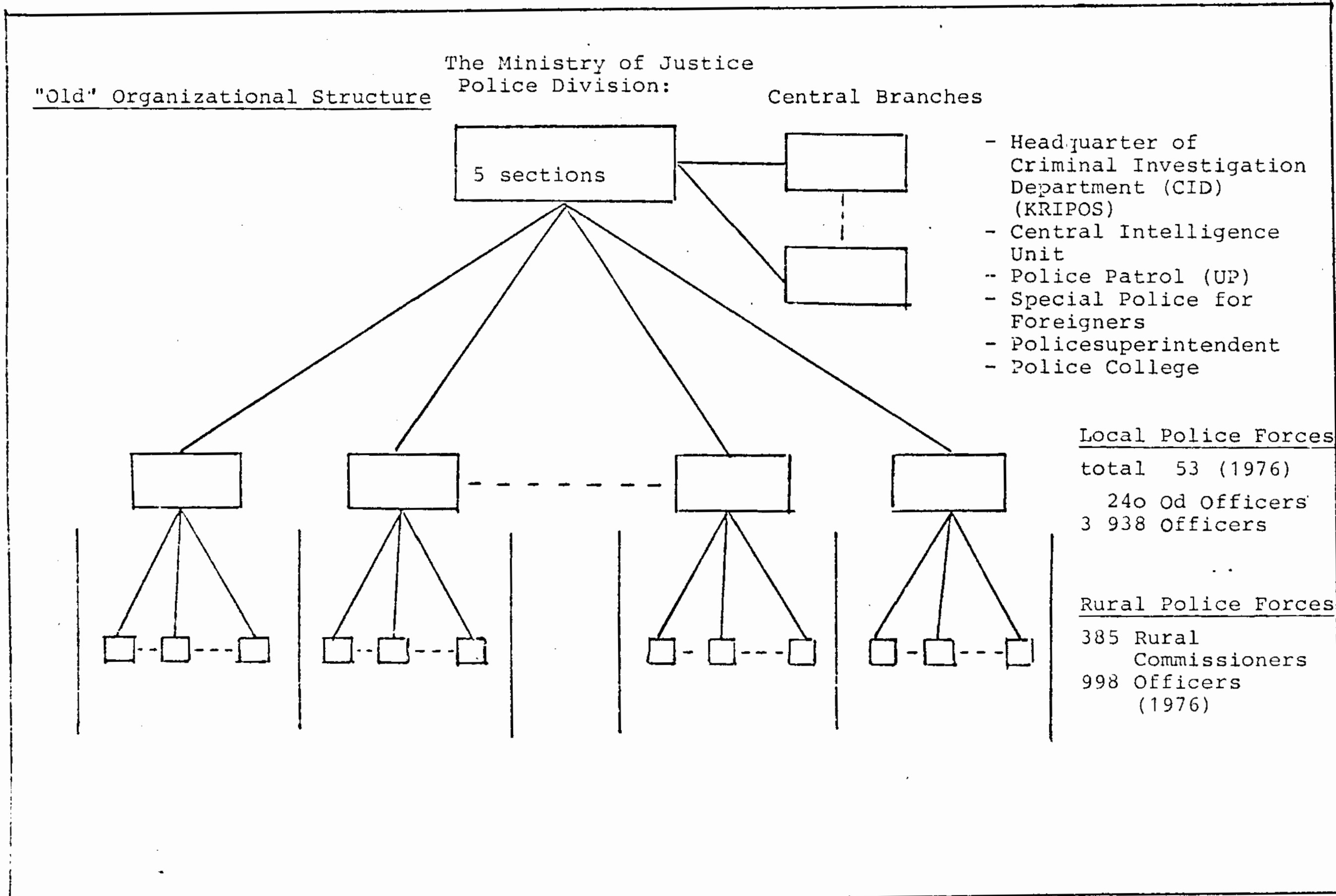
2. Bureaucratization of the police:
The introduction of regional police units and the establishment of a centralized administration signifies the creation of new organizational branches.

3. Technical modernization of the police:
The police is now receiving equipment, means of communication, investigatory techniques and vehicles to such an extent that the relationship between the police and the public is undergoing a qualitative change.

4. Arming the Police :
The police command more financial resources than ever. The large urban police forces are increasing in number while the rural forces are stagnating.

5. Militarization of the Police:
Increased emphasis is now being given to the physical training of the police which means that the military form of police organization (divisions, troops, squads,etc.) is being supplemented by a military content as well. The use of physical force during police actions has thereby become more likely.


Police Departments
"New" Organizational Structure
Police Department 1
Police Department 2
Central branches
Police regions:
Östland
Sörland
Vestland
Möre/Tr.lag.
Nord-Norge
5 Regional Police Departments
25 Pol. Div.
3 Pol. Div.
8 Pol. Div.
7 Pol. Div.
1o Pol. Div.
53 Local Police Departments
Rural Police


"Old" Organizational Structure
The Ministry of Justice
Police Division:
Central Branches
5 sections
- Headquarter of Criminal Investigation Department (CID) (KRIPOS)
- Central Intelligence Unit
- Police Patrol (UP)
- Special Police for Foreigners
- Policesuperintendent
- Police College
Local Police Forces
total 53 (1976)
24o Od Officers
3 938 Officers
Rural Police Forces
385 Rural Commissioners
998 Officers
(1976)

III. LEGAL DEVELOPMENTS

ANTI-TERROR LEGISLATION IN WESTERN EUROPE

Since 1974/75 there has been increased discussion in several European conuntries concerning changes in the penal and trial law in order to further the "struggle against terrorism". These discussions occur mainly in the wake of spectacularly violent acts, such as the Birmingham bombing in 1974, the Schleyer kidnapping in the Federal Republic of Germany in 1977, the Moro kidnapping in Italy in 1978 and the wave of assasinations in the Spanish Basque provinces in 1978.
However these discussions become quickly translated into anti-terror laws which alter the lawmaking substrata of the societies in which they are passed and leave deep impressions on their respective social orders.
Inspite of the terminological similarity used to describe the legalistic maneuvering taking place in the individual countries, one should not lose sight of the fact the "terrorism" is no general term signifying a genus of similar activities but rather that its causes vary according to the different social conditions which produce it. The seemingly universal tendency to label terrorism a European phenomenon serves more to provide mutual legitimization at the cost of divorcing the term from its social reality. In fact, however, the national differences become quite clear when one makes a comparative analysis of the situations in North Ireland, Greece and the Federal Republic of Germany.
It can be expected that the anti-terror laws which are about to be described will not only (if at all) produce changes leading to more effective action against individual acts of terror.
Rather the State's relationship to its citizens will be fundamentally altered as well. By systematically breaking with basic bourgeois democratic legal principles, the laws tend to lead to a massive reduction of the individual's protection from the almost omnipotent power of the State to dominate him. In this way, an essential element in the inner security of the land becomes lost.
We must exclude from this study an empirical analysis of the effects of these amendments such as their effectiveness, rules concerning admission of evidence in the determinat on of guilt, court procedure, etc.
A partial list of documents concerning anti-terror laws in England, Italy and Greece can be found on the last page of this issue. Its brevity is due to the lack of material generally available on the subject.

England:

Prevention of Terrorism (Temporary Provisions Act von 1974/76

The law was extended by parliament in March,1978. It consists basically of three parts:

1. Proscription: Organizations designated as terrorist by the Ministry of the Interior and which are involved in events in Northern Ireland can be proscribed.
   This applies as well to organizations which give only verbal or publicity support to such activities. Previously, only the IRA was proscribed. As a consequence of this proscription, membership in as well as support of (financial or otherwise) such an organization is legally punishable. The law also defines terrorism as a "politically motivated force" and"the applicaiton of force designed to frighten the public either in whole or in part". (see Act 1974, Section 9 (I))
2. Exclusion orders: The Minister for Northern Ireland is empowered with the right to forbid residence in Great Britain, England, Scotland, Wales and Northern Ireland, to return person or residents to Northern

Ireland or Great Britain or, in the case of foreigners, to deport persons he deems to be involved in "planning, executing or encouraging terrorist activities".
The power takes an added meaning in the light of the provisions for punishment contained in part one. Whereas suspicion of terrorist involvement must be present in preferring charges in accordance with part one, no such suspicions are necessary for an exclusion order.
3. Expansion of the Powers of Detention:
This provision is the most significant aspect of the Terrorism Act. Persons suspected of being "concerned in terrorism" can be detained by the police and immigration officials for up to 48 hours with ministerial approval. The period of detention can be extended up to five days.
The following data pertain to the numbers of arrests made during the period November, 1974 to April,1975 :
In six months there were 489 arrests, but charges were pressed in only 16 cases or 3.06% (Bunyan, the Political Police in Britain, London, 1976, p.55.)

Italy :
Italian legislation dealing with terrorism was carried out in two stages: the lex reale of May 22,1975 (Provisions concerning the preservation of the public order) and the law of March 21,1978 ("Norms of criminality and prosecution for hindering and preventing serious crimes").
This had been preceeded in October, 1974 by a basic change in the Italian system of prosecution. The police were once again granted the power to interrogate prisoners. The earlier system by which a prisoner could be interrogated only upon issuance of a judicial order, had resulted in the release of too many guilty persons.
In addition to its general provisions, the Lex Reale of 1975 consists largely of ordinances against organizations of a fascist nature. Inspite of this, the law was supported by the fascists in the Italian parliament (the almiranto group, see SÜDDEUTSCHE ZEITUNG, May, 23, 1975).
The apparant contradiction can be explained by reference to the reasons for which the law was made. Reference to fiscism was made only in order to reduce criticism on the part of communists and democrats, and to allay fears that the Lex Reale would be used primarily against left oppositional forces. In addition to it explicitly anti-fascists provisions, the Lex Reale provides for the following:

- In addition to determining identity, the police can conduct on-the-spot searches of vehicles for weapons, tools for break-in, and explosive materials, when the actions of persons arouses suspicion (article 4.)
- wearing helmets for attempting to mask one's identity at demonstrations is punishable by imprisonment fora period of from 1 to 6 months.
- Easing restrictions on the expulsion of foreigners (Article 25, based on a regulation enacted by the fascists in 1931.)
- Reducing the possibility of conditional release in cases if suspected terrorists involvement (Art. 1).
- Extension of police powers beyond apprehension without a warrant. Persons caught in the commission of a crime can be held for up to 48 hours without a warrant. Within these 48 hours at the latest the court must be notified of the arrest, and must be able to come up with a judgement on the matter within another 48 hours. Thus the police have the power to hold people for up to 4 days (Art.3.).
- Summary trial is possible in cases involving armed resistance to government authority.

So much for the Lex Reale of 1975. The newest anti-terror law of March 1978 added the following provisions:

- Persons can be held up to 24 hours for identification (Article 11).

- Judges and prosecuting attorneys are enabled to obtain documents from other trials in which the defendent was involved (Art. 4 Par. 1.).
- The same power is given to judiciary police and the Minister of the Interior.
- The police are granted the right to interrogate arrested persons in the absence of an attorney, though statements made during such interrogations may not be entered as evidence against the defendent.
- The Ministry of the Interior is given the right to tap telephones without a warrant for a period of up to fifteen (15) days with the possibility of unlimited extension (Art. 6-9).
- Penalties for holding or taking persons as hostages have been increased.
- Landlords are obliged to register with the police every time they rent or lease an appartment or house, and to provide information concerning the identities of those persons with whom the transactions are being made. (Penalty for non-compliance: no more than six months imprisonment, Art. 12.)

Greece

With the anti-terror laws of May 4, 1978 the term terrorist organization entered Greek law for the first time. The law resembles Article 129 a of the Federal German Criminal Code (Formation of a Terrorist Organization). Two or more persons can be considered to comprise a terrorist organization. Curiously, according to Article 2 of this law, individual offenders can also be punished under the provisions of the law.
The term "terrorism" already existed in Article 187, Paragraph 1 of the Greek Criminal Code. In addition, the anti-terrorist law provides for severer penalties, including, among other things, the death penalty for murder.
Persons not belonging to terrorist organizations who provide information to the authorities can receive a reward of up to 500.000 Drachma.
In principle, this reward can be paid even if the information provided turns out to be false.
Provisions contained in Article 6 provide for up to life imprisonment for persons convicted of planning or attempting to overthrow the constitution or its fundamental institutions. Such provisions already existed for this eventuality in Article 134,1, Paragraph b, bb, and Art. 135, 3, Par.3 (Treason).
The changes in the provisions concerning criminal procedure in Article 7 of the law are hardly any different from previously existing legislation. Essentially they serve to render applicable the already existing provisions contained in the anti-terror-law.
Concerning the practically unparalleled extent for the powers of the prosecutor, (increasing penalties alone does not bring about an ancrease in instances of prosecution), the question deserves to be asked as to just what purposes the Greek government hoped to serve by introducing these norms. The answer lies in the political polarization which resulted from the passage of the anti-terror laws. Although Greece itself has no real terrorism problem compared with other European countries, the permanent discussion of terrorism in the media, based on the Schleyer kidnapping in West Germany and the abduction of Moro in Italy, created a climate in which the terrorism problem took on unreal dimensions. This led to a sharp polarization of the political groups and at the same time reptured the unity of the democratic front, which had been trying to overcome the effects of the years of dictatorial rule through maintenance of a broad parliamentary consensus. The result was a strengthening of the only forces running the government, namely the governing parties. These thereby won the unimpeded power to determine and direct state power. (See in this context the interview with Prof. Tsatsos, p.

Spain

We have no recent information pertaining the situation in Spain. The press published accounts of the passage of anti-

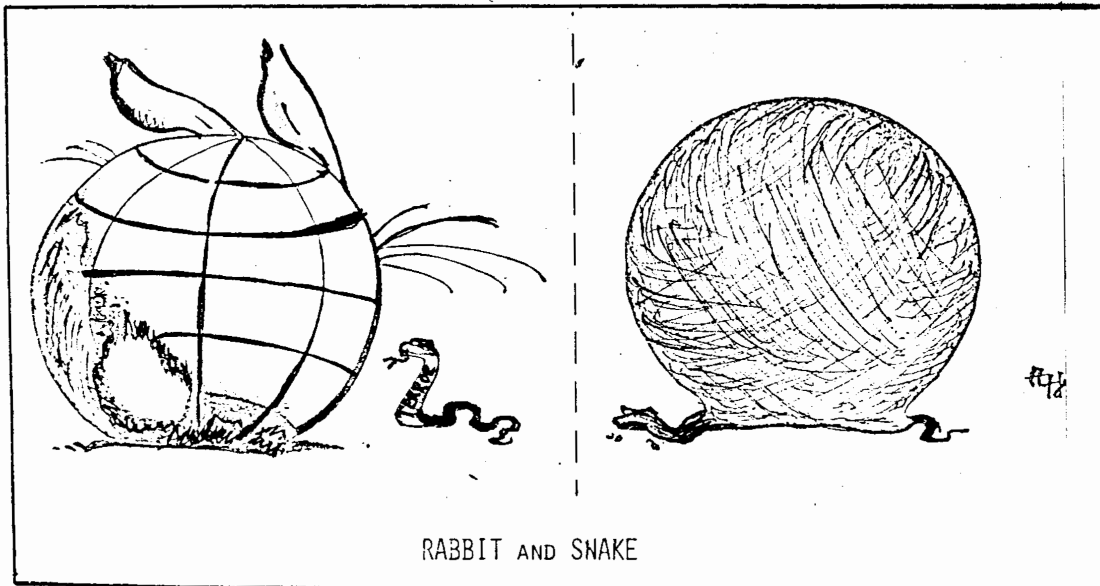
terror legislation on July 1, 1978 (Der Tagesspiegel, July 2, 1978), which is supposed to remain in effect for one year. Among other things, this law provides:

- Extension of pre-trial custody without charges, beyond the normal 72 hour limit, if the police or government obtain permission to do so from the judge charged with the disposition of the case.
- Extension of powers to monitor telephone, telegraph or postal communication.
- Changes in criminal procedure aimed at spending up trials of suspected terrorists.
- The exclusion of convicted terrorists from appeals to amnesty, mercy, reduction of sentence or exemption from imprisonment.
- The possibility for increased penalties
- The extension of the parameters of action allowed the police in criminal matters.
- Special procedural rules for sentencing and imprisoning persons convicted of acts of terrorism.

Nevertheless there do exist differences in punishment strategies.

Countries such as Italy and Greece have resorted to a drastic increase in penalties for terrorism. Others concentrate primarily on increased penalties for supportive activities which fall short of being openly illegal. These countries can resort to a widely dispersed application of a series of relatively "mild" sanctions.

The form which anti-terror legislation has taken in Greece, Italy and the Federal Republic differs from that of England/ Northern Ireland, and Spain where this legislation is still considered exceptional to the normal legal order. This is indicated by the fact that this legislation must be renewed annually, and cause must be demonstrated. Here, the parliaments have reserved for themselves an extremely useful instrument practically non-existent in the normal legislative process for limiting executive power.



RABBIT AND SNAKE

Differences and Similarities

One formal characteristic common to all the anti-terror laws, aside from their title, is that they combine a more or less complete catalogue of violent acts for which provisions have already been made in the criminal code. (One exception is the Prevention of Terrorism Act of England which is aimed chiefly at combatting the I.R.A.). The results of this combination are similar:

- provision for a special state of affairs which terrorists' acts are planned, intended or perpetrated, in contrast to the "normal" commission of criminal acts.

ANTI-TERROR LEGISLATION IN GREECE

(An interview with Dimitris Tsatsos, Professor of Public Law at Thesaloniki University)

Prof. Tsatsos received his doctorate in 1968 in the Federal Republic. In 1973 he was arrested and spent 4 1/2 months in an internment camp. After the fall of the dictatorship he was appointed Minister of Culture in the transitional government. He served as a correspondent for the opposition when the Greek parliament debatted on the new constitution.

N.: Anti-terror laws have now been passed in Greece as well. Could you give us some idea as to what they are about?

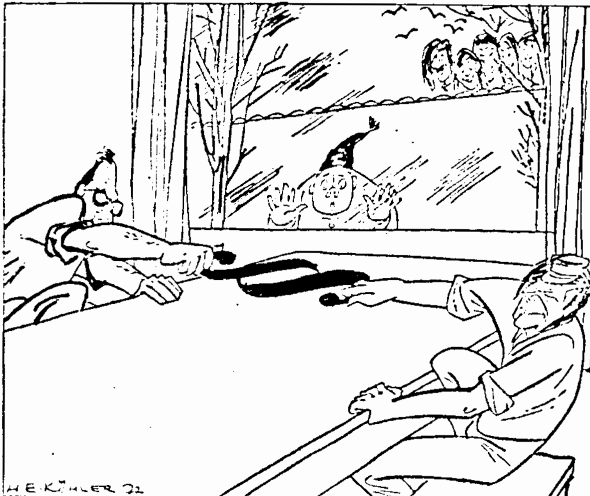
Ts.: In effect these laws are just like the ones which already exist, except that provision has now been made for the death penalty as well. Thus we have a law that provides stiffer penalties for the same offenses. Secondly, this law provides for rewarding and setting free witnesses who agree to inform the authorities of planned or commited offences.

N.: I find this surprising, to the best of my knowledge there is really no need for such a law. If I am not mistaken, Greece already has enough laws to call on the police, the intelligence services and other authorities should be need arise. Why were the new ones necessary?

Ts.: It is entirely correct that the laws on hand are adequate for defending the state. It is also true that the Greek government decision has been heavily criticized. There really aren't any terrorist activities occurring in Greece. We have been able to establish that only right wing extremist organizations are being formed and that they have been responsible for some bombings in film theaters. It is perfectly clear that these laws have not been enacted for use against the right wing. The government officially refers to what it calls "left terrorism" inspite of the fact that it cannot point to a single case typifying it. On the other hand the opposition is constantly pointing out new incidents of right wing extremist violence. But this country's police is just not "in a position" to apprehend these groups.

N.: What specific functions then do these anti-terror laws have? There is apparently no actual danger which would justify their existence, but rather only a potential danger which at first, at least, is very difficult to comprehend.

Ts.: In my opinion, this legislation has a provocation function. This government needs an anti-communist atmosphere, which is just not available, since during the period of dictatorship, communists, socialists, liberal democrats and even conservatives fought side by side against the junta This contributed greatly to a reduction of anti-communist sentiment. Still this government wants to conjure up a communist devil. I think it needs leftist terrorism on which to rebuild anti-communism. The anti-terror laws have been designed to create an atmosphere of terrorism where there simply are no terrorists.



Frankfurter Allgemeine Zeitung

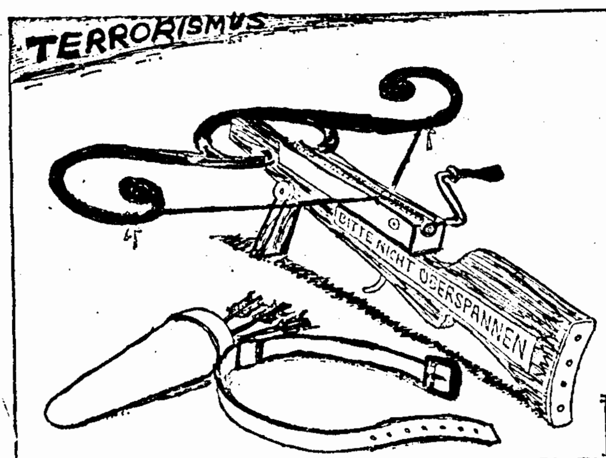
Democrats together fighting against terrorism

N.: Why then do the majority of Greeks seem to believe in the existence of a terrorist threat?

Ts.: Communication between active politicians and the people is very difficult to achieve in Greece. We have a mass media dependent on the government. Its programs reflect only the wishes of the conservative ruling majority. The opposition has no access to the media, the parliamentary opposition, nor to the large parties of the parliamentary opposition. This has resulted in a communications gap, or actually something more, since it has made a definite channeling of public opinion possible. Greek television spoke long and often of the dangers of terrorism. Of course they got a lot of material from the events in the Federal Republic and Italy. Through a constant repeat coverage of these events, television managed to import terrorism into this country and thus contribute greately to a mood which made it possible for the government to convince the people that the anti-terror laws were really necessary.

N.: One last question: How has the parliamentary and extra-parliamentary opposition reacted to these laws, as well as to the developments leading to their passage?

Ts.: In parliament, the largest oppositional party, led by Andreas Papandreu, both communist parties and the leftist groups have come out against these laws with rational and convincing arguments. The bar associations, student bodies and church groups have behaved in a similar way. The center union, which emerged from the elections weaker and which is now divided into factions, has followed no consistent line. It voted "yes" to the law in general, but "no" to its specific provisions. Nevertheless the great majority of oppositional parliamentarians reacted very well. Naturally the initiatives of the bar associations, student bodies and church groups have little effect in this country, since most people do not read the newspapers, and radio and television enjoy a communication monopoly. And this time the government exploited this monopoly very effectively.



Please,don't overdraw the bow !

THE RIGHT TO USE FIRE-ARMS BY POLICE IN WESTERN EUROPEAN COUNTRIES

The Federal Republic of Germany

This year several states in the Federal Republic of Germany will consider passage of a "draft for a unified police law". In addition to enlarging decisively the powers of the police to interfere with and control even citizens above suspicion, the right of the police to use fire-arms is being expanded. (See Art. 41 Par. 2). The provision in the law giving police the authority to shoot-to-kill represents a radical break with traditional police law. Inspite of the fact that the death penalty is prohibited by the Basic Law (Art. 1o2, Par.2), state institutions will now receive control over life and death of citizens.
Legal approval of the introduction of the shoot-to-kill provision was provided the conference of Ministers of the Interior by an extensive range of opinions prepared by German legal experts (Professors Bockelmann, Lerche and Schmidhäuser). Naturally one must keep in mind that the choice of names helped to assure beforehand which conclusions this survey would reach. There was however another legal opinion which had no influence on the draft model. The "Max Planck Institute for Foreign and Public Law" in Heidelberg conducted a comparative survey of the "draft model". The study was commissioned by the Federal Ministry of Interior. Up until now, however, no public mention has been made of this survey's findings.
The general conclusions reached by the study (This may explain its being ignored) state that "the draft model of a unified police law differs from police laws in other countries. With the exception of Swiss cantons, none of the countries studied reveals the existence of a comprehensive, systematic and detailed enumeration of police powers... it would be incorrect to assume that an enumeration of police powers alone is consistent with requirements of constitutionality. (p. 3 of the opinion). The survey makes the following appraisal of the shoot-to-kill provision:
"The regulation concerning 'the shot that will almost certainly result in death' (Sec. 41, Par. 2, sentence 2.) in the draft model can possibly be compared to the regulation concerning life-endangering use of fire-arms contained in the Austrian weapons law. The prerequisites of the Austrian version are similar to those contained in the draft model." (expert opinion, p. 13).
Passage of the law in the Federal Republic of Germany has produced a situation unique in Europe in that it definitely permits the police upon occasion to shoot a person with the intention of killing him. The Austrian law mentioned above is more restricted, since it allows only for "lift-endangering use of firearms", which does not automatically imply shooting to kill.

The extent to which the planned broadening of the German police right to use fire-arms differs from provisions in other European countries will become clear in the following descriptive survey. The material comes primarily from the 1976 Max Planck study mentioned above.
The survey is limited to the regulations, the scope of the prerequisites for the use of fire-arms, their use against crowds and the way in which their use is legitimized.

Austria

In Austria there exists a unified police law of 1969 which deals with the entire area of police activities. (Federal Police, Federal Gendarme, Community Patrol). According to provisions contained in this law the use of fire-arms is allowed for self-defense, for quelling attempts to hinder the execution of official functions, for carrying-out a legitimate arrest, for preventing the escape of legitimately arrested persons and for providing defense against potential danger emanating from some specific source. (sec. 2) In addition to preventing attacks, resistance and flight, fire-arms may be used to counter another use of fire-arms which endangers life. The use of a fire-arm is considered to endanger life when the situation is such that its use as well as the consequences

following its use, could possibly result in the loss of a human life. (Buchert, Schußwaffengebrauch, p. 122). In such a case the use of fire-arms is allowed only in the following circumstances:

1. If a clear and present danger exists.
2. When innocent bystanders will not be endangered.

This provision, which is still somewhat restricitve, must be seen, however, within the context of the overall provisions for self-defense contained in the fire-arms law (Sec. 2, but sections 7 and 8 as well) according to this there exists even a right to individual self-defense. Thus the restrictions contained within the law, such as the requirement for the existence of a clear and present danger or the requirement that innocent persons such as hostages not be endangered, lose their force and the self-defense provisions become directly applicable. Or, in the words of police directorate representative and legal counsel Jäger,

"If the institution of self-defense were not available, the "life-saving" actions (quotation marks contained in original) involving use of weapons would occur less frequently, and it would be almost impossible to use fire-arms, since this always poses dangers when there are hostages involved."
(Die Polizei, 1972, Nr.8, p. 238 f.)

Since the institution of self-defense is not regulated by principles of proportionality, its discontinuance in the weapons law amounts to providing an instrument for circumventing the general requirements contained in the fire-arms law.
Except where hostages are involved, Austrian law allows for life-endangering use of fire-arms especially in situations involving the quelling of disturbances or uprisings, as well as for capturing people who generally pose a threat to the security of the state, of persons or of private property. (sec. 7). This legal formulation allows a great deal of room for maneuverability and applies to a wide scope of situations ranging from public danger (conflagration, deluge, use of explosives, etc.) to provisions allowing for the life-endangering use of fire-arms when the danger of repetition of the same crime by the same person exists (Jäger, ibid., p. 229).
The commander of the security force engaged in quelling an uprising is charged with directing the use of fire-arms, as well as with determining the type of fire-arms to be used. It is important here to note that machine guns constitute part of the police arsenal, though not hand grenades.

Switzerland

Only the cantons in Switzerland have police powers. Recent attempts to set up a national police force have failed.
Thus the relevant provisions are only applicable within the borders of the respective canton.
As far as can be determined, all cantonal fire-arms regulations are subject to the principle of proportionality. However, the regulations are somewhat exceptional in that they make no provisions for police behavior towards crowds. To this extent the Swiss fire-arms law is only designed to deal with individual conflicts. Article 195 of the Swiss Military Organizational Law, however, does provide for such an eventuality. Accordingly, in addition to powers already granted to it for dealing with threats posed by external enemies, the military may also act to restore law and order within the country, should the police not be able to do so.
One further characteristic of Swiss law is that fire-arms may be used only in individual cases (Police Law Waadt) and only within the narrow confines of the principle of proportionality, whereas otherwise regulations usually only have the status of service rules and directives (such as, for example, cantonal decrees). Rules and directives are in no way legally binding, since they amount to nothing more than internal administrative orders which have been issued by individual security agency heads. The reason why the Swiss fire-arms law is generally not more precise legally lies, among other things, in the organization of the Swiss constitution. The plebiscitary elements contained in the constitution,

which derive from a well-founded fear of state power, render passage of a drastic fire-arms law highly unlikely.

"In Switzerland we have another complication, namely the existence of the legal referendum. I do not believe that we could win popular support for any resolution concerning the use of weapons against crowds or the use of explosives. This explains the 'escape into administrative decrees'."
(Statement made by Prof. Haller at the convention of German criminal law institutions. June 9, 1976, in VVdStr., Vol.35, 1977).

A manifestation of this 'escape into administrative decrees' is the model regulation (internal administrative decree) issued by the contonal police commanders in May 1976. This decree permits the use of fire-arms for self-defense, for defending directly endangered persons, for capturing persons who have comitted, or are only suspected of having committed a serious crime, for preventing 'serious crimes and actions directed at installations serving the public interest' and for preventing serious danger to the public. In all these cases, however, the highest degree of clear and present danger must exist.
An extremely important limitation on the police use of fire-arms lies in the criterion of proportionality, which provides the context in which decisions on the issuance of emergency powers must be made. Here Swiss law differs fundamentally from other legal systems in that the individual emergency powers corresponds to the provisions for the use of firearms contained in the public law.
Thus there is no possibility of extending the definition of what is permissible in the use of firearms on the basis of prosecution norms.
On the other hand, however, the model regulation explicitly provides for the use of firearms in 'freeing hostages'. In the case of the taking of hostages, it especially is important to note that the administrative regulation was issued as an order in 1976. Thus the use of firearms in securing the release of hostages is no longer subject to investigation only within the context of the general self-defense provisions (secs. 32 ff. the penal code), which require the existence of clear and present danger as well as the principle of proportionality, but is also justified through the command directive which provides through the requirements of official duty an extra legal justification for the police when they resort to firearms. Even in situations where the general requirements for self-defense are not fulfilled the police can resort to the use of firearms without fear of sanctions being made against them.
This conclusion is contained in an as yet unpublished commentary on the model regulation. The commentary also states that special reference was made to the taking of hostages in order to provide the basis for extending the right to use firearms as well as the issuance of the command directive. Every situation involving the taking of hostages justifies the use of firearms by the police, regardless of the circumstances. Nowhere in Switzerland have provisions been made for "shoot-to-kill", and one Canton, namely Waadt, expressly forbids this.

France

The general right to use firearms does not exist in France, due first to the fact that a large part of French administrative permits are regulated ministerially, and secondly to the lack of a unified national security force organization.
The French security forces, of which there several, are diverse and operate independently of one other. The most important of these are the National Police and the Gendarmerie.
The main firearms provisions of the self-defense law (lêgitime dêfense) of Section 327 of the French Penal Code (which compares roughly to the German law) apply to members of the Police Nationale and ordinary citizens alike. However, the French law, which provides for criteria of proportionality, is more restrictive than its German

counterpart. (See: Revue de la Police Nationale, No. 1o4, 77-2, p.16. This issue deals exhaustively with the right of the Police Nationale to use firearms. It was prepared by instructors at French police academies.)
The self-defense provision is of fundamental importance since, according to French law, the use of firearms solely to prevent the escape of a suspected criminal is not permitted; clear and present danger must also exist, either to the police themselves, or to other persons. (Revue Police Nationale, p. 11 with reverence to relevant court decisions).
This holds for the use of firearms to defend the public order as well as for prosecution (with one exception, which will be described below).
In opposition to this newer, more restrictive, interpretation prepared for an official publication, however, new provisions have been made which aim at extending the right to use firearms to the following situations:

- When a person continues to flee, even after an officer has repeated "Halt, police!" several times, leaving the police with no other means of capturing him, and
- when automobiles, boats or other means of transportation, which are not stopped even upon command can be forced to do so by no other means.

(M. Charbinat, Législation du maintien -de l'ordre, p. 6o, quoted in Gleizal, La Police Nationale, p. 1o7 f.)

These texts were written during the Algerian war, and, according to the official government publication of the Police Nationale, were repealed in 1963 (Revue Police Nationale, p.11).
A regulation in section 1o4 of the "Code Pênal" describes the only case, other than self-defense, in which firearms may be used: Accordingly, occupied land may be cleared and demonstrations broken up. In such actions firearms may only be used as a last resort. The presence of someone in "authority" (prefect, sub-prefect, mayor, police commissioner, or a member of the judicial police) is required.

This person must make his presence known and have made given warning two times without results In this way the intentions of the security force will be made clear.

Due to their military nature, however, the Gendarmerie is allowed a great deal more leeway in the use of firearms. In addition to the same powers exercised by the Police Nationale (including the since-repealed provisions mentioned above) the gendarmerie may use firearms in the following situations:

- When there is no other way to protect a person in their charge.
- When resistance can be terminated only by resorting to weapons.
- During prison revolts or escape attempts and only after the command "Halt, or I'll shoot!" which is to be given by the division commander, goes unheeded.

(M. Charbinat, Législation du maintien de l'ordre, p. 6o, in Gleizal, ibid., p. 1o8)

Attempts to give other police organizations this power have failed (Gleizal, p.1o8).
To summarize, the French firearms law makes no "shoot-to-kill" provisions, and the use of firearms for purposes other than self-defense in limited situations described in Section 1/4 of the Code Pénal.
According to Articles 17-1 of a decree issued March 12, 1973, the police may carry the following weapons: pistols, revolvers, machine guns and automatic weapons. No provisions have been made for hand grenades (Revue Police Nationale, No. 77-2, 1977, p.5).

England

There are no positive statements concerning the use of firearms in England at all. Article 3 (1) of the Criminal Law Act (1967) provides regulations concerning the use of violence which also pertain to firearms. Accordingly, every citizen can resort to violence to prevent crime, to arrest persons who have committed, or who are suspected of having committed a crime, as well as persons who are supposed to be in prison. In determining whether use of firearms is justified,

the criterion of reasonable application is decisive. Up until the passage of the Criminal Law Act, the use of firearms found justification in the general Common Law, which, due to the fact that it distinguishes between felony and misdemeanor, failed to provide any clear guidelines. (Leigh, Police Powers, p.43)

Although the new criterion "reasonable" also fails to offer a precise definition, it can nevertheless be assumed that court decisions concerning the use of firearms will tend, in spite of the unprecise formulation, to allow the use of firearms only in situations where life is endangered. (See: Verdict: Beim vs.Gazer, in Leigh, Police Powers, p. 45)
The result is a limitation of police self-defense powers in comparison with ordinary citizens (Buchert, Schußwaffengebrauch, p. 127), and therefore the requirement of the police to accept greater risks.

There are no police regulations concerning the use of firearms in crowds. Hence individual decisions are made concerning the use of violence. One reason for this could be that the military can be called upon more quickly in England than in other countries. In addition to an internal emergency situation, the military may be called up for the following situations:

1. To intimidate workers (from a law dating back to 1885).
2. Illegal assembly.
3. Tumult
4. Revolts
5. Situations where the internal order is threatened (by order of the crown issued in accordance with its prerogative powers).

(Halsbury's Laws of England, Vol. 18. Sec.974, 4th Edition, quoted from an expert opinion of a member of parliament, p. 53.)

The extensive policing powers of the military may appear to make a law concerning police firearms used to quell civil disobediance unnecessary.
At this point a few comments concerning the image of the unarmed English bobby would appear to be in order.
Contrary to popular beliefs the armed English police officer is really not a very rare phenomenon. More than 5.ooo of the ca. 14.6oo London police are armed while on duty. (Statement made by Eldon Griffith during a debate concerning the police in: International Police Information, Nr.5, p. 31 and a table contained in the International Criminal Police Review, August/Sept. 1977, pp. 211 - 214). Although undoubtedly somewhat inaccurate, these figures indicate that almost a third of the police in London is armed.
A further indication of the incorrectness of the image of the unarmed police is offered by the fact that during the relatively peaceful period between 197o and 1973 police were issued arms an average of 1oo times weekly; in addition, ca. 15 % of the nation's active police had completed advanced shooting courses (Griffith in the same parliamentary speech quoted above).
The expert opinion can rely only on press reports concerning the types of weapons available to the police. It would seem that the police do not have access to machine guns or to explosive devices (hand grenades).

The Netherlands

Although laws concerning the police exist in the Netherlands, there are none which regulate the use of firearms. The existing laws deal only with organizational matters and the allocation of duties to the relevant police authorities. The service regulations of 1966 as well are of some relevance to the police in the Netherlands.

The conditions for the use of firearms are described in Article 9. Accordingly, aside from the general provisions in the penal code relating to self-defense (Article 41), firearms may only be used in the following situations:

- Escape or attempted escape of a person suspected or convicted of having committed a serious criminal offense that in addition is regarded to be a gross violation of the legal order.
- Escape or attempted escape from state custody.

- The special conditions (serious felony/ gross violation of the legal order) do not have to exist if there are reasons to assume that the person about to be arrested is in possession of a firearm and is prepared to use it against persons.

However, these restrictive and limiting regulations receive yet another restriction. The use of firearms in capturing an unarmed person, as well as someone who is escaping, or has escaped from government custody is not permitted if on the one hand, the identity of the person in question is known and on the other hand, no special threat to the legal order is posed by delays incurred in capturing this person if firearms are not used. This last point especially must lead to a restriction on the use of firearms, since because of it, the police will first tend to use the other various instruments of control which it has at its disposal.

The use of firearms is not just regulated according to the isolated individual situation, but rather within the context of the entire range of possibilities open to the police.

The use of firearms against crowds and demonstrations and for quelling disturbances is regulated in this service regulation only very generally. Such use is permitted if the crowds or the demonstration poses a serious threat to the public order.

Provisions for the type of weapon to be used were not to be found in the opinion.

Article 9, Paragraph 2 of the service regulation is at once interesting and symptomatic.

"The behavior of the police officer must be directed towards preventing serious bodily damage or worse. He must assume that the farther removed from his target he is the less likely he is of hitting it accurately, and that shooting from a distance of more than 15 meters entails great risks. This is especially true of moving targets, including means of transport."
(Text taken from translated opinion, p.197).

Summary and Evaluation

In general it can be said that the principle of proportionality is more or less already expressed in all the countries studied. Of itself, however, this does not provide a very precise regulation of the use of firearms, as shown by the regulations concerning shoot-to-kill. Whereas in Federal Germany the shoot-to-kill provision is expressly considered as being within the standards of proportionality, countries with similar regulations, such as Austria, draw back cautiously from making any such definite statements. Still others, such as the Netherlands, Switzerland and England, explicitly reject such methods of conflict resolution.

One can distinguish between two types of state violence that which makes dominant use of the right to self-defense, and that which relies on the positive judicial regulations.

The self-defense principle offers more possibilities for legitimation than the official legal stipulations. The reason for this lies in the legal construction, concepts such as putative self-defense provide standards which are not available to official legal regulations.

To the extent that the self-defense criteria provide the primary basis for the use of firearms, they are nevertheless subject to further limitations which place restrictions on the right to self-defense. This depends on whether the right of self-defense contain the limitations. This depends on whether the principle of proportionality comes into play as a limiting factor. (In England, France and Switzerland this is the case, and in Austria it is not.)

Although they are theoretically broader in scope, the right to self-defense is more limiting than the official legal regulations.

IV. POLICE IN ACTION

WEST-GERMANY:

FIRST EXPERIENCES WITH THE CONTROL POINT PARAGRAPH 111 STPO

1. Facts: In February, 1978 the Federal German parliament passed a new section 111 of the criminal procedure as part of a series of laws designed to deal with the terrorist threat. This law represented the first time that control points received legal sanction as a means of fighting crime. Officially:

1. When certain acts give rise to suspect a crime. When there is reason to believe that a crime has been committed against Sec. 129a or 25o Par. 1,sent.1 of the Penal Code, then control points may be set up on public streets and locations, if there is reason to believe that such measures could result in the arrest of a suspect or to the securing of evidence relevant to solving the crime. At the control point everyone is required to prove his identity and to submit to a search of his belongings.
2. The authority to set up a control point falls to the judge. The prosecuting attorney and his aid may also do so if delay would cause danger (sect. 152 of the Judiciary Act).
3. The following laws apply to the identity checks and searches made in accordance with provisions in paragraph one., sec. 1o6 Par. 2, sent 1, Section 1o7, sentence 2, Section 1o8, 1o9, 11o, pars. 1 & 2, as well as sections 163 b and 163 c respectively.

Federal German Parliament, documents, 8/1482

Once again we have an after-the-fact legalization of an executive fait accompli. Such mehtods were previously concealed under sect. 36/V of the StVO. Passage of sec. 111 StPO "removes the officers' fears of overstepping the realm of legality" (Police Comissioner Mayer in: The Bayerische Polizei, 1/1978 p.13).

These fears really do not appear to have been too great. In Berlin (West) alone ca. 8o.ooo auto drivers were checked without legal justification in 1975 in the wake of the Lorenz kidnapping, according to Berlin Police Vice-president Pfennig (in: Die Polizei, 6/1978, p.173 f.).

Since then, the provisions have been applied. In Berlin, control points were authorized on May 31 of this year for a period of three months following the escape of suspected terrorist, Till Meyer. At the same time, the presiding judge issued a degree allowing for the construction of control points within 3o km of any prison where terrorists were being held -for an initial period of up to three months. The reason given for this decree was that information contained in written documents of a suspected terrorist gave reason to believe that acts were being planned to secure the release of other imprisoned terrorists.

2. Evaluation

The first two cases wherein sec. 111 StPO was applied turn out to be the first two cases where it was illegally used. Also there is a fundamental difference between this and earlier illegal use of control points that is of importance to the citizens affected by these measures. Whereas earlier, such control points were ordered by police, two in these two cases, responsibility for the decision lay on a judge. Thus, charges of illegality can no longer be made against the executive.

In Sec. 111 Par. 2 StPO one reads that the order to set up a control point is to be made by the judge- This has not resulted from any laxity in the formulation of the law. Rather the lawmakers were concerned with individual orders to set up control points. This is affirmed in a passage from a report made by the Parliamentary Judicial Committee (D.B., Documents 8/1482, p.1o).

"In accordance with the wishes of a majority of the committee the responsibility for setting up <u>one</u> control point rests with the judge. This is due to the gravity of the measure enacted. The judge shall determine if there is reason to believe that a crime (provided for in sec. 111 and StPO has been committed, and whether this fact justifies the erection of <u>one</u> control point will aid in apprehending the suspect or gathering evidence.)

In so doing, assurance is made that except when delay entails dangers, the decisions concerning 'erection of

control points' according to regulations providing for search and seizure lies with a judge."

However, in both cases the judges have transformed this clearly formulated regulation into a general authorization within a given period of time. Within a very general set of requirements the police are free to decide when, where and how many control points to set up.

The interpretation of this law now provided by the Federal Minister of Justice, Vogel, is entirely different. as revealed in a statement made by him in the Neue Juristische Wochenschrift of June 21, 1978, p. 1227:

"The second requirement (i.e. that there is reason to believe that these control points will aid in the capture of suspects or securing of evidence) means that there must exist evidence which indicates that there is a good possibility of success at the very time and place when and where the control point is set up."

In Berlin the control point decree was lifted ten days after Till Meyer's capture (3o june). The decree issued by the prosecuting judge remains in effect. The requirement that the order to set up control points be made by a judge was opposed by the CDU/CSU-faction in parliament whereas the spokesmen for the SPD/FDP praised the measure on the grounds that it "provided institutionalized control over the possible misuse of executive power". That which the SPD-FDP intended, however, has to a certain extent been undermined by representatives of the so-called third power, i.e. the judiciary. The comment made by S. Cobler in this CILIP issue applies here, namely "The intended distribution of power turns out to on the one hand more than a well-coordinated division of labour in the mutual and alternating supplying of legitimacy and legality."

The possibility of testing the legality of the control point directive individually has been practically eliminated by the wording given to sect. 111StPO by parliament. According to prevailing opinion, which has been supported by the Federal Administrative Court (see NJW 1978, p.1/1o13) judicial directives which have been enacted may not be challenged in the courts. But this is exactly what happens as a rule when control points are set up. Instead of an increase in legal guarantees we have in fact what amounts to a loss of legal guarantees.

FROM: Der Tagesspiegel, November 27,1977

"Over 4o tips daily to the police from the populace."

"...The police do not even stop at church community houses. After the words "stop the murders" were heard coming from a room where a group of children were gathered with their teachers, a heavily armed contingent of police came to investigate. 4o minutes later it was determined that the words had come from a radio broadcast of the parliamentary debate."

FRANCE

REMARKABLE DECISION CONCERNING CONTROL POINTS

In connection with the "razzia" (investigative raid) laws which enable the Federal German police to erect street controls and conduct identity checks as well as search autos and persons (CILIP no. o & 1), is a bill containing similar proposals which was proposed by the French government in December, 1976, is of some interest. The government had proposed to the parliament a "Law concerning searching of automobiles with the purpose of hindering and investigating crimes".

In the words of the government:

"The officiers of the judiciary police as well as, when authorized, the civil servants of the judiciary police, are empowered on all streets to search all autos and their contents if the owners or drivers of these autos are present. This does not apply to autos that have obviously been abandoned."

This bill is similar to § 111 of the Federal German StPO. Like it, it represents

an expression of the executive desire for the unlimited right to search its citizens. But it was declared unconstitutional in January, 1977, after an initiative on the part of members of the National Assemble had succeeded in having the matter brought before the Conseil d'Etat (Constitutional Counsel) for evaluation.

Reasons for the verdict of January 12, 1977:

"Due to the fact that...the officers and the civil servants of the judicial police, acting in their own capacity, receive unlimited powers in all cases outside of a state of legal emergency, and without violating any laws, and without being necessitated by any threatened attack on the public order and due to the extent of these powers, the nature of the situations as well as on the very general idea of the extent of the controls that would occur, ...the text violates the essential principles providing for the protection of individual freedom and for this reason is unconstitutional."

This bill was defeated because of its deficiencies. It contained no prere-quisites for its use. The reason for this lies in the fact that a legal codefication of police mobilization powers is uncommon and appears alien, i.e. appears very rarely in France.
It is not clear whether the bill would have been declared unconstitutional by the Conseil d'Etat had it contained definite prerequisites for its use.
The reasons given for rejection, namely "maintenance of public order" or "combatting a criminal act" and "exceptional powers" would seem to indicate such.
It can be assumed that this decision is one reason for the rejection of the proposal to maintain the control points erected by the police in the wake of the Empain kidnapping (Der Tagesspiegel, Feb. 16, 1978)
"Empain's kidnappers take their time".
"The French police are still gropping in the dark"
"Even the police, which was mobilized for days to search autos and houses, refused after a few days to play this role which they considered to be illegal"

Source of the verdict

"Journal Officiel de la Republique Française, January 13, 1977.

Note:
In spite of this very clear decision of the Conseil d'Etat the legal system proves its multitude: a person refused to the coverage of his car for the purpose of a search by the French police. He argued with this recent decision of the Conseil d'Etat. Nevertheless he was convicted to 1 month prison (probation) and to fine 5oo Ffr.
Legal basis: the extending powers of search because of the continuing of the kidnapping of Baron Empain (art. L4 - Code de la route; art. 734-1 - Code de procédure pénale; art. 53 - Code de procédure pénale = flagrant délit).
Source: Justice. Journal du Syndicat de la Magistrature, Juillet 78, No.62-63, p.2o.

VII. THE PUBLIC'S PREROGATIVE: CONTROL OF THE POLICE

WEST-GERMANY:

THE DOMESTIC INTELLIGENCE OFFICE AND FINDINGS - A JURISPRUDENTIAL SURVEY

By Jens Brückner

Those investigative procedures together with the implementation of professional proscriptions (*Berufsverbote*) currently in practice would not be feasible were it not for the cooperation of the Domestic Intelligence Office (D.I.O.), an assertion that even is accepted as fact by those who are strong proponents of an extensive investigation of loyalty (*Verfassungstreue*), in civil service. Increasing attention has been directed principally to the readiness with which the D.I.O. provides information to other civil service devisions. Yet that which has been neglected is of far greater import: precisely because the D.I.O. is investigating questions of loyalty (*Verfassungstreue*) with the zealousness typical of such an instrument of law and order, it is just as assiduously ignoring basic constitutional precepts. This much is evident in the boundless accumulation of information concerning private citizens, the ubiquity of D.I.O. officials, its uncanny surveillance of those citizens who demonstrate a certain incapacity or unwillingness "to adapt", and finally, in the nature of the shockingly biased personality profiles for which the D.I.O. has such a penchant.

The problems posed by the methods used in gathering, as well as the reliability of information provided by the D.I.O. first came to light through evaluations of statements and reports given in criminal proceedings by so-called contact persons. German criminal law is derived basically from the princips of directness and verbality (*Mündlichkeit*) and only admits evidence which fulfills certain legal norms. However, in a controversial decision rendered on 1 August, 1962 (BGHst. 17,282) the Third Penal Senate of the Federal Administrative Court, which is responsible for political trials, admitted as evidence testimony presented by an undercover agent. The occasion was a criminal proceeding against a former KPD functionary and state assembly representative on charges of harbouring treasonous intentions, the promotion of a treasonous organization, treasonous publications, and violation of the KPD provision. The Düsseldorf Regional Court based its verdict on, among other things, the fact that the defendent, together with forty other West Germans, participated in March 1958 in a meeting of the executive committee of the outlawed KPD, then being held in the GDR. The information was provided by an undercover agent, whose name and identity were not made available to the Court for reasons of "national security". Although the defendent denied having participated at the conference, the testimony of the undercover agent was accepted. The defendent was denied the opportunity to know his accusor, to question him, and, if possible, to challenge the veracity of his testimony. The Federal Administrative Court rejected an appeal of the verdict, essentially on the grounds that the nature and the effectiveness of the D.I.O. required maintenance of secrecy. (BGH, Verdict of August 1, 1962, 3 STR 28/62 - NJW 1962, 1876, BGH St 17, 282; see also Klaus Tiedemann, who witnessed the proceedings, in Juristische Schulung, 1965, pp. 14 - 21).

The concepts of secrecy and immunity from attack by prosecuting witnesses provided by the D.I.O., as well as materials of the office, developed by the FAC led to a political situation in which, due to the obvious futility involved, no suit has been attempted against the D.I.O.

However, on March 11, 1964, the Bavarian Administrative Court, in a widely acclaimed decision, recognized the need to safeguard the individual from statements of the D.I.O., for which administrative procedures did exist. (Decision of the Munich Ad.C., 11, March, 1964, 217 VII 62 in: DVBl. 1965, pp. 447 - 449). Until then suits against

reports or information of the D.I.O., the Military Intelligence Office or the Federal Investigation Office were generally not admitted, on the grounds that such reports and information were regarded as inner-service measures and not administrative acts, and hence had no effect. But even statements made by authorities which could not be classified as merely internal measures, but which would also have effects reaching beyond the immediate confines of an individual service, have to this day been refused legal protection by the FAC. The reason given is that the information of the D.I.O. falls under the protection of administrative discretion, and as such is not subject to regulation (see BVerwGE 2, p. 3o2 and following; BVerwGE 5, p. 325 and following; BVerwGE 11, p. 181 and following; BVerwGE in JZ 1961, p. 138 and following.)

Concerning the cooperation of the D.I.O. in the evaluation of loyalty (*Verfassungs-treue*) in civil service, four main problems areas stand out:

1. Gaining access to D.I.O. documents
2. The refusal to provide D.I.O. documents
3. Distribution of collected D.I.O. documents
4. The inadmissability and evaluation of questions directed at the D.I.O.

1. <u>Access to D.I.O. documents</u>

Legal opinions and statements are almost unanimous in their opinion that the individual has no privilege of access to D.I.O. documents. This privilege is rejected on the grounds that neither providing information about nor giving access to documents constitutes ab administrative act; thus a suit of responsibility (*Verpflichtungsklage*) is inadmissable. (BVerwG of Feb. 25, 1969, in J.R., 1969, pp. 272/4; also Holland, Verwaltungsrechtsschutz gegenüber erkennungs-dienstlichen Maßnahmen der Kriminalpolizei, JuS, 1968, p. 559). D.I.O. activities are defined as being directed towards such goals and involving such secret information, that even the individual affected by its activities must be denied access to materials. Only when this information and with it, the decision making responsibility are passed in to other offices do the principles of direct effect and therewith the interests of legal protection acquire validity.

In its decision of August 3o, 1976, the Berlin Administrative Court granted an applicant the right to see a report of the local D.I.O., as well as correspondence between the office and job-placement authorities. The case involved a civil service applicant against whom charges of disloyalty to the constitution had been made, and represented the first such case in which access to D.I.O. documents was granted. (Berlin Administrative Court, VG V A 272/76) The Administrative Court deems that there is not sufficient legal basis for granting complete access and that the office concerned is in fact authorized to submit or retain, as it sees fit, those documents.

At the same time, however, the applicant has the right, on the basis of a decision of the FCC from May 22, 1975, to knowledge of the true grounds used by the hiring authorities in rejecting his application. The right to a hearing conducted according to the principles contained in Article 1o3 Par. 1 Grundgesetz requires that the applicant be given the opportunity to state completely and factually his position concerning all doubts raised by the hiring authorities concerning his loyalty to the constitution (*Verfassungstreue*). In order to ensure the right to a fair and impartial hearing it is imperative that the applicant be familiar with the nature of the charges which in the opinion of the hiring authorities give cause to dought his loyalty to the constitution (*Verfassungstreue*).

In a more recent decision,made after the enactment of the administrative process law, another chamber of the Administrative Court rejected the validity of this claim. According to the decision, the applicant indeed has the right to learn of the nature of the doubts raised against him, yet he cannot be granted access to information concerning D.I.O. procedure itself. The principles of a fair and impartial hearing require that

the person in question should have ready access to all information touching upon his case. No significance is attached to the difference between reproachable and irreproachable information. In this, however, an attitude of silence on the part of the person affected towards information pertaining to his loyalty to the constitution (*Verfassungstreue*), but to which he has no access cannot be used against him. (Ber. Ad.C., decree of November 21, 1977, VG VII A 195/77).

Here the Berlin Administrative Court ignores the importance of the difference between reproachable and irreproachable information and the degree to which each can be utilized. (See Brückner,"Über den Umgang mit Verfassungsschutzakten", in: Brückner/Schmidt, Verfassungsschutz und innere Sicherheit, Wuppertal, 1977, p. 212 ff.)

The possibility to interpose an answer to those information of the D.I.O. which are without evidence is not only a question of political tactic but a legal one concerning the individual's political attitude (*Gesinnungsfreiheit*). It is based on the privilege of legal protection of the individual (see VG Berlin, VG VII A 17/76; VG VII A 177/76).

For the Administrative Court only accepts the access of D.I.O. information when it concerns with the appeal from the declination or employment of an applicant, although it claims that a reproach to D.I.O. information due to a lack of access to those information cannot be valued negative (VG VII A 195/77, p.5), this is in contrast with those affected as well as with the legal protection of identity (*Persönlichkeitsschutz*).

2. Denial of Access to D.I.O.information

Four decisions have been made concerning the denial of access to D.I.O. information: The decision of the Berlin Administrative Court concerning the legal action brought against the political scientist Wolf-Dieter Narr (Berlin Administrative Court decision of November 24, 1976, VG I A 159/75 and the Berlin Superior Administrative Court decision of April 18, 1978, OVG II B 13/77 as well as two decisions of the 5th and 7th sessions of the BAC).

The verdict reached by the Berlin Superior Administrative Court concerning the Narr case is of fundamental importance to the question concerning the admissibility of the requests made to the D.I.O. for information about how gathered material is being used. The case involved the following: Narr had applied for and been appointed to a position for political science at the law faculty of the Technical University of Hannover. The University sent his name to the Minister of Culture and Science in Lower Saxony for approval. The Ministry requested information from the Berlin office of the D.I.O., which it received on October 24, 1974. It amounted to a comprehensive list of information on the person Narr. Mentioned among other things was his association with members of the "new left" activities in the political science department and his political activities and involvement in general. It was determined at a hearing that most of the material was in fact incorrect, and that even if it had all been true, there was nothing in it that would raise doubts concerning Narr's loyalty to the constitution (*Verfassungstreue*). But the appeal was denied anyway. Narr's request for help from the Berlin Minister of the Interior, was rejected. Then he sued the Berlin Administrative Court to stop them from transmitting information to other offices, and to have already transmitted information retracted. The suit was rejected on the grounds that such actions would constitute rendering legal aid to another bureaucracy, the goal of this being to assist the agency which applied for the help with information for a hearing that was currently pending, which was necessary "because to do this itself would be either legally impossible or economically impractical". No demands for cessation of passing on of materials or for retraction of information already transmitted could be made against the authorities, since such actions fell under the rubric of legal aid. However, the Superior Administrative Court reversed this

decision on April 18, 1978 noting that the transmission of material and statements was in violation of the law. Earlier legal decisions concerning the D.I.O. had been purely formal and had expressed doubts concerning the transmission of information only in cases where competency was not assured. The Administrative Court, on the other hand, proceeded from a comprehensive legal interpretation and saw in such transmission of information an attack on the individual rights as contained in Article 11 and the principle of freedom in the exercise of a profession contained in Art. 12 Grundgesetz.
The actual act of transmission was considered to be an encroachment not justifiable in terms of the duties of the D.I.O. The SAC regarded the duties of the D.I.O. as being specifically defined. Thus transmission of information was permitted only in cases which had been explicitly provided for -- namely in situations where secrecy was essential and when secrets pertaining to persons and materials had to be protected.
A difference must be made between the collection and evaluation of material. Here, of course, allowances must be made for the gathering of information, reports and documents relating to activities hostile to the constitution; such will have to be assumed primarily by police and public prosecutors (verdict p. 29, also Schwagerl/ Walther, Der Schutz der Verfassung, 1968, p. 33 and following).
Allowances must even be made for the observation of persons above suspicion, so that the gathering of information will arouse no suspicion or misgivings. (decision p. 29, Evers, Privatsphäre und Ämter für Verfassungsschutz, 196o, p. 124).
With respect to the transmission of collected material to other authorities or private persons, although it is clear that the D.I.O. does not gather and evaluate evidence at whim, nevertheless, due gravity of the consequences for the persons affected, the veracity and the relevance of the claims must be carefully evaluated. (Verdict p. 32 VGH München. DVBl. 1965, 447; Evers, loc.cit., p.245; Sötje, Verfassungsfeinde und öffentlicher Dienst, Landeszentrale für politische Bildungsarbeit Berlin, Reihe "Politik - kurz und aktuell", Heft 26, p. 47, 49, 53, 56).
Accordingly, "information concerning efforts that are not directed against the constitution are also excluded from transmission, as well as information that is false" (decision p. 32). After making a few cursory legal theoretical remarks in the principle of tolerance and the difficulties entailed in determining just what and who might be considered an enemy of the constitution the court arrives at the conclusion that the concept "efforts hostile to the constitution" assumes active participation. This active participation must be motivated chiefly by the desire to disrupt or discredit the basic values of a democratic state. (Verdict, p. 37 in reference to BVerfGE 5, 85 (14o and following) and BVerwGE 39, 334 (351)).
The activities of the D.I.O. must be confined to this sphere, and the consequences of such activities must also be limited accordingly. The transmission of vague doubts concerning one's loyalty to the constitution (*Verfassungstreue*) is accordingly covered by the terms of law. The D.I.O. is prohibited from passing along to third parties information which does not clearly imply disloyalty to the constitution. In the absence of explicit legal authorities, the D.I.O. is not allowed "to place its resources and information at the service of a general examination of political persuasions" (verdict, p. 35, in reference to VG Berlin VII A 17/76; VG VII A 174/74; VG Kassel NJW 1977, 692; Schmidt JZ 1974, 241 etc.)
Not even the principles of legal aid among the government offices provide adequate basis for such acts. Accordin_ to § 5 Par.2 Nr. 1 VwVfG, one office may not fill the request of another if this is not permitted by the law. Of course, as proposed to the decisions of the 7th chamber of the Berlin Administrative Court, the court expresses no opinion regarding the fundamental question of the inadmissibility of routine requests for information -- (which derives from the prohibitions to hear and evaluate

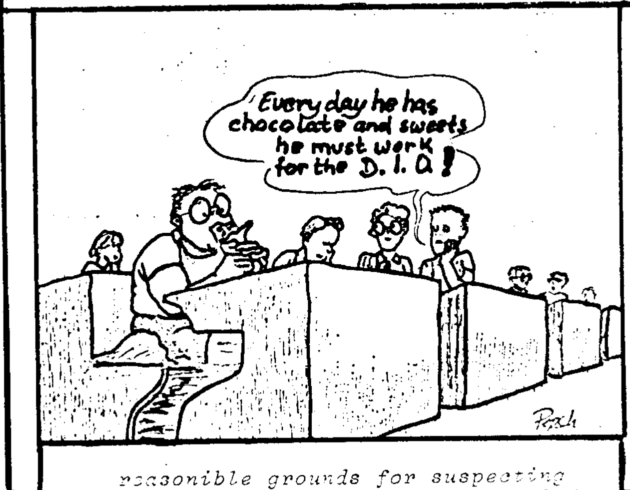
evidence). Thus they also neglected to render an opinion concerning non-transmission without sufficient legal basis.
The Berlin Municipal government's decision has since been rejected by the Superior Administrative Court. The government has announced its intention to appeal the matter to the Federal Administrative Court.
Even though this decision limits the Answer of the D.I.Offices to transmit information, they yet retain the power to decide what is relevant to a decision concerning anti-constitutional activities. To this extent even the non-transmission implies that there has occurred a process of gathering, evaluating and transmitting evidence, and thence that such material has been given to third parties. The general non-admissibility of routine requests for material is not affected -- the limitation of the transmission authorization to militant anti-constitutional groups in reference to the description of duties even implies that in such cases a transmission of information may occur in spite of the lack of legal competency.
The basic problems posed by these facts will be handled in section 4, entitled "The inadmissibility of routine investigations conducted by the D.I.O."

3. Destruction of D.I.O.documents

Though there are many suits concerning the destruction of D.I.O. documents pending in the Administrative Courts, the first verdict on the question occurred in the Roth decision. The facts of the case are as follows:
Hans Roth applied for a job as school teacher in 1974. During a hearing on his suitability for the job, he was confronted with information of the Hessian D.I.O. concerning his political activities. Based on information in a newspaper article dated January 9, 1971, the D.I.O. claimed that Roth had distributed leaflets for the "Spartacus" group for university elections. He was also alleged to have distributed leaflets for the "socialist block" for the elections to the tenth student parliament in the Giessen University in May, 1971. Thus doubts were raised as to his loyalty to the constitution (*Verfassungstreue*). Roth was hired on August 23, 1974 for a probationary term. On June 20, 1975, he received notice that the doubts concerning his loyalty to the constitution (*Verfassungstreue*) were unfounded. Roth then requested the D.I.O. to destroy the material they had on him. This request was denied. Reason: the exceptional tasks of the D.I.O. render the fulfillment of such requests impossible.

"THE VERFASSUNGSSCHUTZ (DIO) RECRUITS PUPILS AS INTELLIGENCE AGENTS.

Munich (AZ/mhb/pch)
The Bavarian Verfassungsschutz (DIO) tries to find pupils to work for the office. This was confirmed by the Bavarian Ministry of the Interior. The press-officer further declared that the Verfassungsschutz restricts his activities to secondary schools, and that the pupils asked to work for the Verfassungsschutz should be not under the age (18 years old). A 'Solid Comment' by the Minister of the Interior on the intelligence gathering activities of the Verfassungsschutz at schools was announced."
(From: Augsburger Allgemeine, 25.7.1978)



reasonible grounds for suspecting

Roth sued and on Jan. 13, 1977 the Kassel Administrative Court decided in his favor (VG Kassel IV E 494/76).
No decision was made about the fact that the information had even been collected, since retaining it was in any event not permissible. The Court based its verdict on the fact that the D.I.O. is not permitted

to play a role in determining whether an applicant is loyal to the constitution. Such decisions do not lie within the D.I.O. sphere of authority. An enumeration of the tasks of the D.I.O. revealed that the D.I.O. does not have the power to collect information on persons beyond that which could be considered necessary for the protection of the state.
In the words of the court:

Records or documents that are no longer considered of value to the investigation then being carried out by an authority of the D.I.O. are to be disposed of immediately. Adherence to this ordinance of the Federal Constitutional Court pertains to all information acquired by employees of the D.I.O. in the course of lawful investigations in which infringement of Art. 1o (guaranteeing privacy of postal and telephone communications) has been exceptionally sanctioned by provision to the same Art. 1o (concerning the restriction of privacy of postal and telephone communications) (Gesetz zu Art. 1o --G 1o-- August 13, 1968, BGBl. I p. 949) cf. BVerfGE 3o,1 (22 and following). The Federal constitutional Court infers from the Verhältnismäßigkeitsgrundsatz *(principle by which the severity of the punishment inflicted upon the offender must be dealt in measure relative to the gravity of the infringement and its foreseeable consequences, such as has been perpetrated against the spirit and letter of the Constitution) as derived from the concept of a constitutional state, that only those measures which are considered imperative to the guarantee of a particular constitutional privilege may be provided for by law, and, in extraordinary cases, undertaken (BVerfGE loc.cit. (2o)). Further, the obligation to dispose of all nature of evidence or data as described above is valid as well in other instances in which the acquired information is no longer of importance to the investigation (Evers, Bonner Kommentar, loc.cit., Rdnr. 55). The right to personal happiness and individual expression, even when understood as being in direct confrontation to the stability of the state, is nevertheless guaranteed by the Federal Constitutional Court (Art. 1 Par.1 in function with Art.2 Par.1 of the Constitution (*Grundgesetz*)). This guarantee pertains not only to the individual's private domain, but ensures his further protection with regard to all information concerning his character that is under normal circumstances available to the public.(....)*

Article 3 Par. 1 No. 1 of the law, dealing with the cooperation of federal and provincial authorities in affairs directed by the D.I.O. -- VerfSchG -- issued August 7, 1972, additionally valid for the regional office of the D.I.O. in Hessen, provides authorization for the retention of documents on the part of the accused individual. Article 3 VerfSchG particularizes the nature of the items under the safekeeping of the D.I.O. as describes in Art. 73 No. 1o and Art. 87 Par. 1 of the Grundgesetz *(Evers, Bonner Kommentar, loc.cit. Rdnr. 39). According to Art. 3 Par. 1 No. 1 VerfSchG the regional office of the D.I.O. in Hessen is in no way excluded from jurisdiction regarding the accumulation and evaluation of information, reports and other documents that indicate the intention of disruption of the liberal democratic order or the stability and security of the province or nation (....)*

The Session is of the firm opinion that no significance can be attributed to the evidence... in connection with the plaintiff for the fulfillment of the above-cited responsibilities on the part of the regional office in the year 1977."

4. <u>The inadmissibility of routine investigations conducted by the D.I.O.</u>

As touches upon practical considerations, the most radical consequences result from the finely differenciated jurisdiction concerning the admissibility of routine investigations on the part of the D.I.O. at the moment of evaluation of applicants for positions in the civil service. The initial (strictly probative) ordinance dealing with the validity of information acquired in the course of routine investigations has since been relegated to the status of general inadmissibility by the VII Session of the Berlin Administative Court.
In a decision issued on August 18, 1976 (VG VII A 113/75) the question of the admissibility of routine investigations remained undetermined as it was apparent in this case such would result in a denial of the validity of information so acquired on the strength of the *Verhältnismäßigkeitsgrundsatz*. With reference to this constitutional principle the Federal Constitutional Court declared in its decision of May 22, 1975 (NJW 1975, 1641) that an interim judgement of the applicant's loyalty (*Verfassungstreue*), based on information made available by the authorities, would be adequate; because the supervisor would have sufficient opportunity, in the course of the training period, to become thoroughly acquainted with the applicant. Seeing as a liberal democratic state must, in principle, be able to assume the loyalty of its citizens,

as concerns determination of the qualifications of an applicant for civil services, only those particulars regarding his character that remain accessible to the employer without the direct assistance of the regional office of the D.I.O. should be taken into consideration.

On the other hand the same Session issued a decision on August 25, 1977, in the case of Juliane Ströbele in which it declared that routine investigations might be carried out by the D.I.O. during the applicant's trial employment period and that such would not be in violation of the *Verhältnismäßigkeitsgrundsatz* (VG VII A 194/75). Although the court ascertained in this case that an a priori assumption of the applicant's loyalty *(Verfassungstreue)* could only be refuted on the basis of proven evidence of a contrary disposition, yet were the restrictions provided for by the *Verhältnismäßigkeitsgrundsatz*, where it became a question of the trial employment period as opposed to merely a training period for a civil service vocation, no longer applicable. Justification for this interpretation lies in the fact that, whereas the training or pre-inductive phase can be defined within specific time limits, acceptance of the candidate into the trial or inductive phase of employment implies a nominal intention on the part of the employer to retain the candidate on a permanent basis, i.e. until the age of automatic retirement. Obviously the government is dependent on the latter case in a more exact prognosis of the applicant's character in order to determine the desirability of his employment (VG Berlin, VG VII A 174/75 in ZPR 1976, 341; decision corroborated by the VG Augsburg, Dec. 1, 1975, ZPR 1976, 83 and following). The decision of October 6,1976 issued by the Berlin Administrative Court rendered inadmissible all nature of routine investigations prior to the employment of departmental assistants in the academic sphere (VG Berlin, VG VII A 76/75).

Once again on the strength of the *Verhältnismäßigkeitsgrundsatz* as pertains to routine investigations and the invalidation of information acquired in such manner *(Verwertungsverbot)* prior to employment of civil servents as well as non-tenured professional assistants -- both of whose contracts are necessarily subject to recall -- intensive examination is rendered inexpedient.

"A general waiver of the privilege of a thorough investigation of applicants, in conjunction with the imposition of a restriction as concerns the exploitation of all other sources of information regarding the candidate for civil service employment -- except in particular cases -- implies a tolerable risk; this follows from the assumption that especially serious incidents (in which the candidate might have participated) would stand in the Criminal Record and would therefore be available to the authorities at the moment at which the candidate's application is under review." (VG Berlin VII A 76/75, p.12)

That non-tenured professional assistants and those persons operating in a teaching capacity under probational contract can be given equivalent consideration in the sense of the above is the consequence of the nature of their contract (viz. not permanent, and implies the employer's privilege of immediate termination) and of their relationship to tenured professors "to whose instructions they are more or less subject". On the basis of this unrealistic approximation of situation at the universities the court sees no particular "danger" of "political partiality or agitation", as those in attendance are exclusively voting citizens of legal age (read: "mature"), and as such do not constitute what might be describes as "impressionable school children" (read: "immature"); rather, they are "autonomous members of an academic community, who, in cooperative and collaborative spirit, are but interested in the pursuit of scholarly research and investigation". (with reference to BVerfGE 35, 79).

While these decisions derive the principles of "inadmissibility of evidence" and *Verwertungsverbot* from the *Verhältnismäßigkeitsgrundsatz* and from the option of termination of contract with regard to civil service trainees, the Berlin Administrative Court, in its decision of March 3, 1977, nevertheless declared on the basis of previous jurisdiction that routine investigations, except in cases of persons directly involved

in national security, were henceforth inadmissible, and that any information acquired in the course of such investigations must be rendered null and void (VG VII A 17/76). The court reaffirmed its jurisdiction in a number of other decisions (judgement of VG Berlin, July 21, 1977, VG VII A 1o5/77; judgement of April 28, 1977, VG VII A 174/77).

The court assumes the inviolability of human dignity in character and act -- according Art. 2 Par. 1 of the *Grundgesetz* -- which inalienable right would necessarily be transgressed by the very nature of such an investigation and the consequences thereof. It is not merely a question of the scope of the investigations on the part of the D.I.O. as concerns the individual's immediate domain, but further the element of a systematic procedure by which facts regarding the individual's behaviour and interaction with association are collected in order that an "exact" character profile might be assembled; such would, according to the court, inhibit the individual's freedom of expression (cf. the reports prepared under commission of the Department of the Interior by the Committee for Data Safeguarding (*Arbeitsgemeinschaft Datenschutz*) from Messrs. Steinmöller, Lutterbeck, Mallmann, Haborg, Kolb, Schneider, Bundestagsdrucksache VI 3826, Seite 88; Benda, in: Menschenwürde und freiheitliche Rechtsordnung, Festschrift für Willi Geiger zum 65.Geburtstag, Seite 23; Entwurf der Bundesregierung zu einem Bundesdatenschutzgesetz, Bundestagsdrucksache 7/1o28, Seite 18).

The inadmissibility of participation of the regional offices of the D.I.O. in the examination of applications for civil service positions results from the fact that such cooperation on the part of authorized employees of the LfV is strictly regulated by the laws of the regional D.I.O.; further that with the exception of Bavaria, Baden-Württemberg, and Saarland, in no other province has specific litigation concerning the examination of applicants for public service yet been issued.
According to Art. 2 Par. 2 Nrs. 1 & 2 LVerfSchG Berlin (corresponding to Art. 3 Par. 2 Nrs. 1 & 2 of the federal law regulating collaboration between regional and federal offices in affairs of the D.I.O. -- VerfSchG --) the LfV is authorized to participate in the investigations of potential employees, however only inasmuch as these persons "must be, in the public interest, entrusted with articles, objects, or knowledge of a strictly confidential nature" (Nr.1) or "in such instances as these persons are involved in security operations of vital import" (Nr.2).
It then becomes necessary to distinguish those whose work might be defined as of an exceptional character (see above), and who thus merit the designation "*personeller Geheimschutz*", from all other employees of the civil service. In the case of Art.2 Par. 2 Nr. 1 LVerfSchG Berlin the restriction can be defined as one concerning persons who, "in the public interest, must deal with articles, objects, or knowledge of a confidential nature", i.e. with information that must be kept confidential "in order to guarantee the liberal democratic order or the stability or security of the nation or province" (cf. Schoen/Frisch, Zivilschutz und Zivilverteidigung, Bad Honnef 1973, § 3 VerfSchG Anm. 13a, p. 119). This is not a question of "secrets" to which every civil servent, generally speaking, has access and which are protected under the oath of confidentiality to which all employees engaged in public service are sworn (cf. § 39 *Beamtenrechtsrahmengesetz*).

As well, according to Art. 2 Par. 1 LVerfSchG Berlin (Art. 3 Par. 1 VerfSchG) is the LfV deprived of the right of collaboration in general investigations of applicants for civil service positions. This regulation provides only the authorization to collect and evaluate information, reports and documents that demonstrate an express intention "to disrupt the liberal democratic order".

An implied or tacit authorization on the part of the LfV to collaborate in the investigation of potential employees cannot be assumed, as the legislature is compelled in every case to clarify beyond any possibility of equivocation the exact signification

of a particular law with respect to the more comprehensive -- and possibly ambiguous -- spirit of the Constitution (*Rechtsstaatsprinzip*). For example, such a clarification might have resulted from either the provision of a bylaw to the law concerning the regional office of the D.I.O. (March 2o, 1974: GVBl. p. 6o2) or the bylaw to the law regulating collaboration between regional and federal offices of the D.I.O. (August 7, 1972: BGBl. I p. 1382). So much may be deduced from the fact that the legislature has been aware of the question of investigations of applicants for civil service positions since at least the issuance of the *Radikalenerlass* (extraordinary legislation introduced for the suppression of politically motivated and other acts of terrorism) on January 28, 1972.

Authorization to submit documents to a second demonstrative department may not be justified on the basis of the "permission to collect and evaluate" said documents. The wording of the ordinance is unequivocal. As submission of information in this sense is a direct violation of the right to individual expression such a measure would necessitate an exceptional legal warrant (VG Berlin, loc.cit., p. 12). In the event that a collection of information was sanctioned with a specific intent, and where the court authorized certain ("investigative") measures, the court must also justify its requirement of the information collected by and in the"interests of the authorities" (*Einstellungsbehörden*). Data is not, after all, collected "as a passing fancy"; rather with a particular intent (Simitis, NJW 1977, pp. 729, 732). This intent, moreover, determines the continued evaluation of the information. An evaluation for purposes other than that for which jurisdiction was initially provided cannot be considered inas much as the acquisitions of information itself was inadmissible ("*Zweckentfremdungsregel*"; Kamlah, DÖV 197o, pp. 361, 362; Survey of the "Arbeitsgemeinschaft Datenschutz", loc.cit. pp. 114, 115; VG Berlin loc.cit.p.12 with further evidence).

On the strength of the principle of inadmissibility of a collaborative effort between regional and federal offices of the D.I.O. in the determination of the applicant's political allegiance, the examining authorities are further prohibited from evaluation any acquired information.

This derives chiefly from the fact that the justification for a breach of the individual's freedom and privacy could not otherwise be satisfied (cf. VG Berlin loc. cit., see also Art. 27,Par. 5, Line 2 of the *Landesdisziplinarordnung*). Furthermore this inadmissibility of evaluation is the answer of the Federal Constitutional Court in the form of a reprimand, admonishing, in its own words, the "poisoning" of the political climat -- a situation which necessarily results where regional offices of the D.I.O. retain the prerogative to evaluate such material. The same restriction can be inferred from the Constitution, namely Art. 1 Par. 1, in conjunction with Art.2 Par.1 of the *Grundgesetz*. Such an evaluation might be constructed as a violation of the right of individual expression and consequently as an act contrary to the spirit of the Constitution. Accordingly, every citizen is entitled to constitutionally guaranteed protection against surveillance (*Folgenbeseitigungsanspruch*) (cf. VG Berlin, VG VII A 174/76; general comments: Evers, Privatsphäre und Ämter für Verfassungsschutz, Berlin 1969, pp. 276 - 282 m.w.N.)

A *Verwertungsverbot* may be inferred, as well, from federal jurisdiction concerning the protection of acquired information. According to Art. 27 Par.3 Line 3 BDSG, recorded data must be disposed of when the legitimacy of the recording means or methods as such can be argued. Understood here is the fact that the means by which the authorities obtained information from the recorded data could de facto be considered inadmissible; thus the relevant material must be destroyed and may in no other fashion be evaluated. The character information so acquired is ultimately inadequate and possible erroneous in every case; consequently, as a rule, the individual under investigation would necessarily have to provide a "corrective" profile. The individual, however, is not

obligated to give a personal account as this would require that he himself reveals personal data to which the authorities would otherwise not have access. In legal process this mean clarification by virtue of a hearing cannot be requisitioned as the consequence thereof could be interpreted as yet a further violation of the right of individual expression (VG Berlin, loc cit.)
However much these decisions give the impression that the omnipotence of the D.I.O. is in fact subordinate to a strict jurisdictional control, one obvious fact must not be overlooked: in comparison with those of the Domestic Intelligence Office, the (constitutionally guaranteed) privilege of the individual are notably restricted. Only the "top of the iceberg" is visible and, thanks to currently available jurisdiction, at all disputable. Accumulation of information when necessary for the protection of the state, evaluation of same, assembly of personality profiles in an almost neurotically oversimplified fashion, and practically unrestricted application of "spy" devices, all remain outside the research of such jurisdiction. And yet we should like to maintain that, even in those areas for which Adolf Arndt has provided the appropriate formula: "better not to meddle while (and where) the iron is hot", the courts have been made aware of the extensive practice of investigation contrary to the spirit and laws of a democratic state; and that, for the present at least, we are still one step ahead 1984.

WEST-GERMANY

SHADOWMEN:

ON THE VERGE OF LEGALIZING A SECRET "SECURITY POLICE"

By Sebastion Cobler

As cited in the magazine Der Stern with regard to the most recently divulged information concerning methods of the BGS and BKA+: development of a secret security police[1] -- the following provides yet further confirmation:
Munich, May 21, 1975, approx. 3:oo a.m.: spurred on by the hysterical search for members of the RAF, a "special squad" (*Sondereinsatzkommando*) of the Bavarian Police Department stormed the apartment of Günter Jendrian, a local taxi driver, and killed him with a shot through the heart. Apparently "self-defense" as reported in the morning papers. Jendrian was "suspected of maintaining contact with anarchistic elements"; not to mention that he had supposedly fired two successive pistol shots as the police burst in. As if such rationale -- not to mention spurious -- might justify lethal shots from the entering police officers. Obviously it did suffice. Indeed, the story of a pistol was soon dropped -- unfortunately it is impossible to fire two successive shots from such a weapon without first reloading -- we hasten to add that Jendrian fired not even a single shot. Yet in fact after it had been ascertained that Jendrian's"contacts" existed only in the all too vivid imagination of the public prosecutor, the court's decision with regard to the officers' coups de grâce was rendered: an act of self-defense, if questionable, presumptive self-defense.
These attempts at a cover-up as well as the peculiar circumstances of the police unit itself gave Munich youth cause to distribute handbills and pamphlets claiming charges of manslaughter against the participating officers of the special squad.
The reaction of the public prosecutor was immediate. Need we add: against the handbill

+ BGS: Border Patrol Police
BKA: Federal Crime Office

distributors. On the strength of the court's decision with regard to the police officers, charges of calumny aimed at and to the certain detriment of the Munich Police Department were issued against the demonstrators. So far nothing new. With a few possible exceptions, the standard jurisdictional procedure for the investigation of police officers, shooting and sometimes killing "in the line of duty" had followed its regular course: a policeman shoots a citizen and exculpates himself by pointing to the appropriate self-defense paragraph in the penal code or civil law. Yet the incident is not closed: should the affair subsequently result in sharp and open criticism of the conduct of the police department or court administration, then penalties for "defamation of the state", "offense or abuse aimed at the police department" or "calumnious attacks" become the order of the day. Which ultimately means that civil servants enjoy manifold protection: from the courts, and thanks to these, from the public. The perversion of justice is foolproof: punished is he who speaks with a sharp and candid tongue, not however the sharp-shooting, well-camouflaged cop. A quaint turning of the tables: caught in the act, the state takes quick revenge by donning mask and robe of the persecuted -- as one handbill distributed in Berlin chose to depict this unlikely scenario.

In the jurisdictional legerdemain so handily accomplished in the case of the police shooting of Jendrian by the Munich special squad the public prosecutor was not found wanting in further proof of expertise. Those Munich youths who had been summoned to court on the charge of "calumnious attacks" attempted to make use of their right to a comprehensive defense. They demanded a hearing in which the police officers who had participated in the killing of Günter Jendrian would take part as witnesses; the purpose of which was to authenticate their claims in the incriminating handbill. However the policemen in question could not be summoned; their names were unknown, they hadn't even been mentioned in the official report in which a full account of the inquiries concerning the incident had been transcribed. We find there merely references to "1st marksman, 2nd marksman, and 3rd marksman".

A notion from the counsel for the defense of the handbill distributors to reveal the identity of the so artfully screened police officers was answered quite to the point by the public prosecutor; this in a decision of the Bavarian Ministry of Justice:

"Exposure of the names would impair the readiness to act, and where necessary to shot in self-defense on the part of police officers who find themselves in difficult situations. Such would lead to a considerable impediment of or even endanger the accomplishment of public duties in the area of security."

The Ministry added a supplementary explanation just four months later:

"In order that police officers may, in the execution of their duties, be optimally protected against the threat of possible retaliatory acts, and in order that these police officers might demonstrate their readiness in the particularly sensitive areas of internal security, and above all in the case of those officers engaged in the search of politically motivated criminals, certain protective measures must be enforced on their behalf. Among these measures, which, incidentally are guaranteed to the public servent by the welfare and security provisions of the public service contract, is included the right to anonymity for every police officer participating in operations

"Always the same story -- first you go and wallow in the slop, and then I've got to figure out how to make you look like an officer of the law!"

of this nature... It is further irrelevant whether the special search methods undertaken by the officers in question in fact result in the discovery and arrest of politically motivated criminals, or are merely executed in the course of investigations of suspected persons... It can be unequivocally stated that the effectiveness of the police activities in this area is directly contingent on the valour and willingness to make personal sacrifices of each participating police officer." 2)

At that point the counsel for the defense of the handbill distributors, through the Munich Administrative Court, moved for an injunction against the Ministry of Justice, the purpose of which was to elicit from the latter the names of the police officers who had participated in the shooting. The counsel for the defense were of the opinion that police officers must execute their duties within the letter and spirit of the law, and that certain means of control were available, namely the courts and "public sentiment", where a possible digression or outright violation might be more thoroughly probed. Such control, however, must be rendered inefficacious when it becomes possible for the executive authority to conceal the identity of the responsible officers. And finally, as concerned the intentional censure in the official record, such could not be considered consistent with those jurisdictional principles (*Unmittelbarkeit* and *Persönlichkeit*) by which the accused might have legal resources against his accuser.
The V Session of the Munich Administrative Court rejected this injunction on the grounds of unsubstantiality. The Ministry's reticence concerning the officers' identity had, apparently, sufficient foundation. The Ministry wished,

"based on the intention of (the aforementioned) provisions of welfare and security in the public service contract, to guarantee to the utmost degree possible the safety of its police officers. It is the express desire of the counsel for the defense to extricate the accused from the threat of punishment. It cannot stressed enough that every individual has a natural interest in proving his innocence before the court by means of an exact account of the circumstances of the act in question. However, Art. 70 Par. 1 of the Bavarian Civil Service Law dictates that a precise record of events shall be pursued for the sake of justice only insofar as testimony shall not endanger the welfare of the nation, of Bavaria, or of any other German province, or in some way impede the execution of duties of any public servent. The fact that such consequences must (in this case) be considered cannot be denied." 3)

This view was confirmed by a decision of the same court, in which the statement (in part) reads as follows:

"Serious crimes can be successfully hindered only when officers of the law are prepared to act without the least hesitation. For a police officer this unconditional readiness to act is further dependent on the greatest possible guarantee of protection from those authorities ultimately responsible for his actions. Police officers engaged expressly in combat against politically motivated criminals require, for reasons that are self-evident, the guarantee of anonymity..." 4)

These, as well as previous decisions point clearly to the evolution of that to which this article was initially directed: the increasing comprehensitiveness of state approved investigate methods exercised against citizens on the strength of vague requirements of "a security devision" in addition to a tendency to exempt the state in its increasingly despotic exercise of power, under the convenient shield of anonymity, from every means of public scrunity.[5] Should one wish briefly to recall the exact background of these several court decisions, i.e. the formation, outfitting, and implementation of such "special squads", as was, for example, the case in police raids after the Lorenz abduction, or in reaction to the demonstrators against nuclear power plants in Brokdorf -- it would suffice to recall the horrifying photographs in Stern magazine: heavily armed, masked troops of such an elite security squad ("*SEK*"), who, like gangsters, chained demonstrators and then ordered them to the floor[6] -- then it becomes elementary for one to imagine just how this decision -- not yet law -- from the Munich Administrative Court effects police officers, should it be maintained: a free ticket to a judicially sanctioned, tyrannical police force, and ultimately the legalization of an anonymous "Secret Security Police".
The decision has yet further implications: it clearly demonstrates as well, the functional metamorphosis of the administra-

tive jurisdiction of an institution which supposedly serves to protect its citizens against arbitrary actions of the executive authorities, and instead, now provides "justification" for such in the obviously ambiguous sense of the word. The legal provision for a division of power/authority (checks and balances) reveals itself, once again, to be a well-coordinated division of labour/responsibility in the reciprocally and mutually expedient provision of legitimacy and legality.

References and Notes

1) Stern, Nr.28/1978; July 6, 1978, p.19
2) (Decision of the Bavarian Ministry of Justice on August 25, 1976 (Az.: IIb - 94/74) as well as the supplementary comment of the Ministry of Dec. 2o, 1976.
3) VG Munich, Decision of April 26,1977 (M 62 V 77), p. 11
4) VG Munich, Judgment of June 14, 1977 (M 233 V/76), p.11
5) Concerning the anonymity of police acitivity concurrent with the increased authority to intercede in the activities of private citizens cf. also the prohibition from photographing police operations (see OLG Bremen -- in: NJW 1977,158 f.; additionally: NJW 1977, 1o72 as well as DuR 1977, 158 and "Die Polizei", Nr.7/1978 p.2o9 and foll.) concerning the release of "*präventiver Polizeiphotos*" from participants in demonstrations (BGH - in: NJW 1975, 2o75 repeal of the decision of the LG Tübingen - in: KJ 1974, 418 and following)
6) See photos in Stern, Nr. 1o/1977; from February 24, 1977, p.22/23.

X. REQUESTS FOR INFORMATION - OPPORTUNITIES FOR COLLABORATION - CONTACTS

Contacts

From the work group "Internal Security" of the "Christians for Socialism" of Marburg
c/o Bettina Groh
Austraße 1
6482 Bad Orb

the following brochures can be requested:

Johannes Schnepel, Der Staatsbürger als Sicherheitsrisiko (The Citizen as Security Risk? - Commentary in the structure, functions, and development of "internal security policies" of the Federal Republic of Germany), May 1977, 34 pages, DM 2,--

Geheime Verfassungsschutzakten contra Menschenwürde - Eine Dokumentation zum Fall des Lehramtskandidaten Hans Roth, 83 S., DM 3,--
(Secret documents of the Domestic Intelligence Office versus Human Dignity - Documentary of the case of Hans Roth, teaching candidate, 83 pages, DM 3,-)

Requests for Information

For the next issue of CILIP the editorial staff need urgently material concerning the following subjects:

-- Instances of police shoot-outs (court cases and decisions)

-- German police assistance to the Third World

APPENDIX

ITALIAN ANTI-TERROR-LAW,
MARCH 21, 1978

"Legal process and punitive measures for the prevention and repression of serious crimes"
(Source: Gazetta ufficiale. La leggi statali e regionali, March 14 - April 3, 1978)

Art. 1

The following has been inserted after Art. 419 of the Penal Code:

"Whosoever should execute criminal acts with the intention of damaging or destroying public establishments or establishments of data research and analysis shall be punished, except where such an act constitutes a more serious crime, with incarceration for a period of one to four years.
Where such an act results in the destruction of the establishment or in the interruption of its operation the punishment of incarceration for a period of three to eight years shall be required."

Art. 2

The following supersedes Art. 63o of the Penal Code:

"Art. 63o (Sequestration of persons for the purpose of extortion, terrorism or disruption.)
Whosoever should sequester a person either with the aim of deriving an unjust profit for himself or for another as reward for the release of that person, or for the purpose of terrorism or of disruption of the democratic order shall be punished with imprisonment for a period of thirty years.
If sequestration should result on the death of the sequestered person the punishment shall be dictated in a term of life imprisonment at hard labour.
In the case of sequestration for the sole purpose of extortion, if the sequestered person is released without the reward for his return first having been paid, the punishment prescribed in the first paragraph shall be reduced. If one of the conspirators should act independently in such a way as to secure the freedom of the sequestered person, without such act arrising from the promise of a reward, he shall receive punishment as prescribed under Act. 6o5.
In the case of sequestration for the purpose of terrorism or of disruption of the democratic order if one of the conspirators should act independently and by so doing secure the freedom of the sequestered person, the punishment of incarceration for a period of two to eight years shall be required.
In the cases provided for in the latter part of Par. 3 and in Par. 4, should the victim, after his release, die as a result of his sequesteration, punishment shall be dictated in a term of incarceration respectively, for a period of six to twelve years and of eight to fifteen years.

Art. 3

The following has been added at the end of Art. 648:

"Art. 648.2 (Substitution of money or other valuables resulting from grand larceny, extortion, and sequestration of an individual with the aim of extortion.)
Except in cases of collaboration in the crime, whosoever should consent to substitute monetary or other valuable reward derived from crimes of grand larceny, extortion, or sequestration of an individual with the aim of extortion, for other monies or valuables with the intent to procure a profit for himself or for others, or to aid and abet the authors of said crimes on securing a profit from same shall be punished by imprisonment for a period of four to ten years abd with a fine of one million to twenty million Lire.
The last paragraph of the preseding Article applies here."

Art. 4:

The following has been inserted:

"Art. 165.2 (Resquest for copies of decisions and investigations transacted by the judicial authority).
The examining judge, the police magistrate, and the public prosecutor may, for the benefit of the proceedings presently under consideration, obtain from the acting judicial authority, even in abrogation of the specified prohibition contained in Act. 3o7, copies of decisions relative to other penal proceedings as well as documents pertinent to the contents of those proceedings."

"Act. 165.3 (Request for copies of decisions issued by the Secretary of the Interior)
The Secretary of the Interior may, either directly or through officials of the judicial police so appointed, request from the acting judicial authority copies of court decisions as well as documents pertinent to the contents of said decisions considered indispensable to the prevention and assessment of crimes contained in Articles 3o6, 422, 423, 428, 432 (Par.1), 433, 438, 439, 575, 628 (Par. 3), 629 (Par. 2), and 63o of the Penal Code, as well as of the crimes reviewed in Art. 1 and 2 (Par. 1) of the law (issued June 2o, 1952) n. 645, and of successive modifications, of Art. 75 of the law (issued December 22, 1975) n. 685, and of Art. 1 (Paragraphs 4 & 5) of the Ordinance (enacted March 4, 1976) n. 31, transcribed in the law (April 3o, 1976) n. 159.
The acting judicial authority may of his own initiative transmit copies and documents of the above-mentioned paragraphs: where these have been petitioned, the request should be honoured within five days.
Copies of the proceedings as well as relevant documents of the type described in the preceding paragraphs are treated as official secrets .
Should the judge consider divulgence of said information inexpedient, motivation for which is provided unter Art. 3o7, he must furnish appropriate justification of his contravention."

Art. 5:

The following has been inserted after Art. 225 of the Penal Code:

"Art. 225.2
In cases of absolute emergency and where the sole intention is to pursue the investigation of such crimes as are treated unter Art. 165.3, officials of the judicial police are entitled, without the immediate presence of counsel for the defense, to make summary inquiries of suspect, of a person arrested flagrante delicto, or of an incarcerated person, in accordance with Art. 238.
Information acquired in this fashion is not recorded and is deprived of all validity in formal proceedings.
Thus, submission of such information as testimony in a court of law is rendered a priori null and void.
It is furthermore required of the officials of the judicial police that the executive of such an interrogation be immediately reported to the public prosecutor or to the police magistrate as well as to counsel for the defense."

Art. 6:

The following has been substituted for Par. 2 of Art. 226.3 of the Code dealing with punitive procedure:
The ordinance should indicate the means and duration of the operations employed. Such duration may not exceed fifteen days; it may, however, be suspended for successive periods of fifteen days as long as stable conditions as described in the first part of the present Article persist. Such a prorogation should be justified by specific motivations.

Art. 7:

The following has been added after the final paragraph of Art. 226.3 of the Code dealing with punitive procedure:

"Authorization may be given verbally, with an indication of the means and duration of said operations; however in this case such should be confirmed in writing as soon as possible in appropriate form as described in the preceding paragraphs, with record of the date and time at which verbal prorogation was issued."

Art. 8:

Art. 226.4 of the Penal Code has been superseded by the following:

"Art. 226.4 (Execution of the operations of impediment, interruption or interception of communications or conversations.

Operations as described under Art. 226.2 shall be executed at installations under the direct surveillance of the public prosecutor or in lieu of such, and until such time as the necessary equipment can be installed, at establishments in the public services sector.

Nevertheless, when for reasons of urgency the utilization of these establishments indicated in the preceding paragraph is rendered unfeasible, the public prosecutor or the examining judge may authorize execution of the foreseen operations at establishments allotted to officials of the judicial police.

These operations should be documented accordingly in official record, including an indication of the limits of the provision of authorization, a description of the recording methods, an annotation of date and time, in addition to a list of the persons participating in the operation.

The recordings are to be put in a sealed container, and if necessary placed in a wrapper on which the number of the container as well as the number of the surveillance device have been indicated.

The recordings should be delivered immediately to the public prosecutor or to the examining judge who has authorized the operations.

Should the term as foreseen in Par. 4 of Art. 3o4.4 already have expired, the magistrate shall procede to dispose of the recordings with regard to communications, conversations, or photographic images as well as verbal transcriptions deemed irrelevant in any other legal process, ultimately providing for their destruction, whether of the original or of various reproductions.

Furthermore the magistrate shall, in accordance with the form, means and guarantees outlined in Articles 314 and the following, arrange for an integral transcription of the recorded communications. The counsels for the defense are entitled to extract copy and retain specimens on magnetic tape or record."

The information contained in the aforementioned recordings can be used as evidence in proceedings other than in those for which such information has been specifically acquired if it has relevance to crimes for which a warrant is obligatory, as well when it concerns only one or a portion of the accused persons.

The official records of activities prescribed in the preceding paragraphs together with the enclosed recordings shall be left at the Chancellery or office of the Secretary with a notice addressed to the counsel for the defense retained by the suspected or accused persons, in a manner consistent with Art. 3o4.4.

Art. 9:

The following has been inserted after Art. 226.5 of the Penal Code:

"Art. 226.6 (Preventative interception of postal communications or telephone conversations)

In addition to such cases as have been detailed in the preceding paragraphs, should a request be submitted by the Secretary of the Interior, or, under his delegation and issued through the office of the acting Prefect, by the chief municipal constable, by the commander of the Gendarme, by the commander of the guard of the Treasury, or by some other higher functionary or official commander of the Departments of Public services or Affaires, the public prosecutor of the region where such operations are to be implemented may authorize the interception of communications or conversations when it is deemed expedient for the investigations of offenses as described in Par. 1 of Art. 165.3.

Such interceptions shall be carried out by those methods indicated in Par. 2 of Art. 226.3 and in the first four paragraphs of Art. 226.4.

Any information acquired by means of telephone interception may be used exclusively for prosecution of the investigation, but is of absolutely no value in court proceedings.

The recordings shall be delivered to the public prosecutor who has authorized the operations."

Art. 1o:

The following supersedes Art. 2 of the law (October 14, 1974) n. 497:

"In abrogation of Par. 1 of Art. 5o2 of the Penal Code the public prosecutor shall procede in every case with summary jurisdiction, provided that no special investigations are considered necessary, for such offenses as are foreseen in Articles 628, 629, and 63o of the Penal Code dealing with possession of arms and explosives and for crimes possibly concurrent with those already mentioned in the above."

Art. 11:

Police officers are empowered to escort to the station and to retain there in custody for as long as necessary, but not to exceed twenty-four hours, for purposes of identification anyone who refuses to submit particulars concerning his person.

This authority can also be enforced when sufficient indications for the falsehood of that which the person under question has maintained with regard to his personal identity can be proved, or when his identification papers are in disaccord with those same statements.

The public prosecutor shall immediately be informed of the escort, and if he determines that the conditions as described above do not apply in the case in question, shall consequently order that person's release.

Art. 12:

Whosoever should transfer deed, lease, or is some other fashion permit the usage of buildings in his domain is obligated to communicate to the local authorities after consignment of those buildings, and within forty-eight hours, the precise location of same, as well as particulars concerning the buyer, the director or supervisor, and the details of personal identification of the second party in the transaction.

Failure to act in accordance with the above shall be punished with confinement for a period of six months to one year and with a fine of one to five million Lire.

Within thirty days of the enactment of the present ordinance those effected by the conditions described in Par. 1 are obligated to communicate to the local authorities all contracts, including verbal, exercuted after June 3o, 1977. Failure to comply will be punishable with a fine of 5oo.ooo to three million Lire.

Communications in accordance with the above paragraphs can be made by means of registered post; observance of the assigned deadline will be determined by postmark.

THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1976

(1976 c. 8)

SOURCE: Halsbury's Statutes of England
Vol. 46, London 1977 p. 266-282

PRELIMINARY NOTE

This Act, which came into force on receiving the Royal Assent on 25th March 1976, repeals and re-enacts with some amendments the Prevention of Terrorism (Temporary Provisions) Act 1974, Vol. 44, p. 164, which was due to expire with 25th March 1976. The provisions of the Act will, with minor exceptions, expire with 24th March 1978 unless they are continued in force by order for a further period not exceeding twelve months or are terminated at any time by order (see s. 17, *post*, and the order noted thereto).

Part I (ss. 1, 2 and Sch. 1) of the Act re-enacts the provisions of Part I of the Act of 1974 relating to the punishment of persons who belong to or support proscribed organisations concerned in terrorism occurring in the United Kingdom and connected with Northern Irish affairs and of persons who display support in public for such organisations. As under that Act, the only proscribed organisation is the Irish Republican Army but there is power by order to proscribe other organisations.

Part II (ss. 3–9 and Sch. 2) of the Act replaces the provisions as to exclusion orders in Part II of the Act of 1974 and enables the Secretary of State to exclude from Great Britain, Northern Ireland or the United Kingdom persons concerned in terrorism designed to influence public opinion or Government policy with respect to affairs in Northern Ireland. The main change is that the power to exclude a person from Northern Ireland alone did not appear in the Act of 1974.

Part III (ss. 10–19 and Sch. 3) repeats the provisions in Part III of the Act of 1974 relating the powers of arrest and detention and to the control of entry into and procedure for removal from Great Britain or Northern Ireland, but it also includes new provisions making it an offence to solicit or to provide money or other property for acts of terrorism connected with Northern Irish affairs (s. 10, *post*) and to fail to disclose to the police information which may be of material assistance in preventing a terrorist act connected with Northern Irish affairs or in apprehending, prosecuting or convicting a terrorist offender (s. 11, *post*).

PART I

PROSCRIBED ORGANISATIONS

1. Proscribed organisations

(1) Subject to subsection (6) below, if any person—

(a) belongs or professes to belong to a proscribed organisation;
(b) solicits or invites financial or other support for a proscribed organisation, or knowingly makes or receives any contribution in money or otherwise to the resources of a proscribed organisation; or

(c) arranges or assists in the arrangement or management of, or addresses, any meeting of three or more persons (whether or not it is a meeting to which the public are admitted) knowing that the meeting is to support or to further the activities of, a proscribed organisation, or is to be addressed by a person belonging or professing to belong to a proscribed organisation,

he shall be liable—

(i) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both, or
(ii) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or both.

(2) Any organisation for the time being specified in Schedule 1 to this Act is a proscribed organisation for the purposes of this Act: and any organisation which passes under a name mentioned in that Schedule shall be treated as proscribed, whatever relationship (if any) it has to any other organisation of the same name.

(3) The Secretary of State may by order add to Schedule 1 to this Act any organisation that appears to him to be concerned in terrorism occurring in the United Kingdom and connected with Northern Irish affairs, or in promoting or encouraging it.

(4) The Secretary of State may also by order remove an organisation from Schedule 1 to this Act.

(5) In this section "organisation" includes an association or combination of persons.

(6) A person belonging to a proscribed organisation shall not be guilty of an offence under this section by reason of belonging to the organisation if he shows that he became a member when it was not a proscribed organisation and that he has not since he became a member taken part in any of its activities at any time while it was a proscribed organisation.

In this subsection the reference to a person becoming a member of an organisation shall be taken to be a reference to the only or last occasion on which he became a member.

(7) The court by or before which a person is convicted of an offence under this section may order the forfeiture of any money or other property which, at the time of the offence, he had in his possession or under his control for the use or benefit of the proscribed organisation.

2. Display of support in public for a proscribed organisation

(1) Any person who in a public place—

(a) wears any item of dress, or
(b) wears, carries or displays any article,

in such a way or in such circumstances as to arouse reasonable apprehension that he is a member or supporter of a proscribed organisation, shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

(2) A constable may arrest without warrant a person whom he reasonably suspects to be a person guilty of an offence under this section.

(3) In this section "public place" includes any highway and any other premises or place to which at the material time the public have, or are permitted to have, access whether on payment or otherwise.

PART II

EXCLUSION ORDERS

3. Exclusion orders: general

(1) The Secretary of State may exercise the powers conferred on him by this Part of this Act in such way as appears to him expedient to prevent acts of terrorism (whether in the United Kingdom or elsewhere) designed to influence public opinion or Government policy with respect to affairs in Northern Ireland.

(2) An order under section 4, 5 or 6 of this Act is referred to in this Act as an "exclusion order".

An exclusion order may be revoked at any time by a further order made by the Secretary of State.

4. Orders excluding persons from Great Britain

(1) If the Secretary of State is satisfied that any person—

(a) is or has been concerned (whether in Great Britain or elsewhere) in the commission, preparation or instigation of acts of terrorism, or
(b) is attempting or may attempt to enter Great Britain with a view to being concerned in the commission, preparation or instigation of acts of terrorism,

the Secretary of State may make an order against that person prohibiting him from being in, or entering, Great Britain.

(2) In deciding whether to make an order under this section against a person who is ordinarily resident in Great Britain, the Secretary of State shall have regard to the question whether that person's connection with any territory outside Great Britain is such as to make it appropriate that such an order should be made.

(3) An order shall not be made under this section against a person who is a citizen of the United Kingdom and Colonies and who—

(a) is at the time ordinarily resident in Great Britain, and has then been ordinarily resident in Great Britain throughout the last 20 years, or
(b) was born in Great Britain and has, throughout his life, been ordinarily resident in Great Britain, or
(c) is at the time subject to an order under section 5 of this Act.

Paragraph (a) shall be construed in accordance with Schedule 2 to this Act.

5. Orders excluding persons from Northern Ireland

(1) If the Secretary of State is satisfied that any person—

(a) is or has been concerned (whether in Northern Ireland or elsewhere) in the commission, preparation or instigation of acts of terrorism, or
(b) is attempting or may attempt to enter Northern Ireland with a view to being concerned in the commission, preparation or instigation of acts of terrorism,

the Secretary of State may make an order against that person prohibiting him from being in, or entering, Northern Ireland.

(2) In deciding whether to make an order under this section against a person who is ordinarily resident in Northern Ireland, the Secretary of State shall have regard to the question whether that person's connection with any territory outside Northern Ireland is such as to make it appropriate that such an order should be made.

(3) An order shall not be made under this section against a person who is a citizen of the United Kingdom and Colonies and who—

(a) is at the time ordinarily resident in Northern Ireland, and has then been ordinarily resident in Northern Ireland throughout the last 20 years, or
(b) was born in Northern Ireland and has, throughout his life, been ordinarily resident in Northern Ireland, or
(c) is at the time subject to an order under section 4 of this Act.

Paragraph (a) shall be construed in accordance with Schedule 2 to this Act.

6. Orders excluding persons from the United Kingdom

(1) If the Secretary of State is satisfied that any person—

(a) is or has been concerned (whether in the United Kingdom or elsewhere) in the commission, preparation or instigation of acts of terrorism, or
(b) is attempting or may attempt to enter Great Britain or Northern Ireland with a view to being concerned in the commission, preparation or instigation of acts of terrorism,

the Secretary of State may make an order against that person prohibiting him from being in, or entering, the United Kingdom.

(2) In deciding whether to make an order under this section against a person who is ordinarily resident in the United Kingdom, the Secretary of State shall have regard to the question whether that person's connection with any territory outside the United Kingdom is such as to make it appropriate that such an order should be made.

(3) An order shall not be made under this section against a person who is a citizen of the United Kingdom and Colonies.

7. Right to make representations etc. to Secretary of State

(1) As soon as may be after the making of an exclusion order, notice of the making of the order shall be served on the person against whom it is made, and the notice shall—

(a) set out the rights afforded to him by this section, and
(b) specify the manner in which those rights are to be exercised.

(2) Subsection (1) above shall not impose an obligation to take any steps to serve a notice on a person at a time when he is outside the United Kingdom.

(3) If a person served with notice of the making of an exclusion order objects to the order, he may within 96 hours of service of the notice—

(*a*) make representations in writing to the Secretary of State setting out the grounds of his objection, and
(*b*) include in those representations a request for a personal interview with the person or persons nominated by the Secretary of State under subsection (4) below.

(4) Where representations are duly made under this section, the Secretary of State shall, unless he considers the grounds to be frivolous, refer the matter for the advice of one or more persons nominated by him.

(5) Where a matter is referred for the advice of one or more persons nominated by the Secretary of State and the person against whom the order was made—
(*a*) included in his representations a request under subsection (3) (*b*) above, and
(*b*) has not been removed, with his consent, from Great Britain, Northern Ireland or the United Kingdom, as the case may be, under section 8 of this Act,

that person shall be granted a personal interview with the person or persons so nominated.

(6) After receiving the representations and the report of the person or persons nominated by him under subsection (4) above, the Secretary of State shall, as soon as may be, reconsider the case.

(7) Where representations are duly made under this section the Secretary of State shall, if it is reasonably practicable, notify the person against whom the order was made of any decision he takes as to whether or not to revoke the order.

8. Powers of removal

Where a person is subject to an exclusion order and notice of the order has been served on him, the Secretary of State may have him removed from Great Britain, Northern Ireland or the United Kingdom, as the case may be, if—
(*a*) he consents, or
(*b*) no representations have been duly made by him under section 7 of this Act, or
(*c*) where such representations have been duly made by him, he has been notified of the Secretary of State's decision not to revoke the order.

9. Offences under Part II

(1) If any person who is subject to an exclusion order fails to comply with the order at a time after he has been, or has become liable to be, removed under section 8 of this Act from Great Britain, Northern Ireland or the United Kingdom, as the case may be, he shall be guilty of an offence.

(2) If any person—
(*a*) is knowingly concerned in arrangements for securing or facilitating the entry into Great Britain, Northern Ireland or the United Kingdom of, or
(*b*) in Great Britain, Northern Ireland or the United Kingdom knowingly harbours,

a person whom he knows, or has reasonable cause to believe, to be a person who is subject to an exclusion order and who has been, or has become liable to be, removed from there under section 8 of this Act, he shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or subsection (2) above shall be liable—
(*a*) on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £400, or both, or
(*b*) on conviction on indictment to imprisonment for a term not exceeding five years, or to a fine, or both.

PART III

GENERAL AND MISCELLANEOUS

10. Contributions towards acts of terrorism

(1) If any person—
(*a*) solicits or invites any other person to give or lend, whether for consideration or not, any money or other property, or
(*b*) receives or accepts from any other person, whether for consideration or not, any money or other property,

intending that the money or other property shall be applied or used for or in connection with the commission, preparation or instigation of acts of terrorism to which this section applies, he shall be guilty of an offence.

(2) If any person gives, lends or otherwise makes available to any other person, whether for consideration or not, any money or other property, knowing or suspecting that the money or other property will or may be applied or used for or in connection with the commission, preparation or instigation of acts of terrorism to which this section applies, he shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or subsection (2) above shall be liable—
(*a*) on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £400, or both, or
(*b*) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or both.

(4) A court by or before which a person is convicted of an offence under subsection (1) above may order the forfeiture of any money or other property—
(*a*) which, at the time of the offence, he had in his possession or under his control, and
(*b*) which, at that time, he intended should be applied or used for or in connection with the commission, preparation or instigation of acts of terrorism to which this section applies.

(5) This section and section 11 of this Act apply to acts of terrorism occurring in the United Kingdom and connected with Northern Irish affairs.

11. Information about acts of terrorism

(1) If a person who has information which he knows or believes might be of material assistance—
(*a*) in preventing an act of terrorism to which this section applies, or
(*b*) in securing the apprehension, prosecution or conviction of any person for an offence involving the commission, preparation or instigation of an act of terrorism to which this section applies,

fails without reasonable excuse to disclose that information as soon as reasonably practicable—
(i) in England and Wales, to a constable, or
(ii) (*applies to Scotland*), or
(iii) in Northern Ireland, to a constable or a member of Her Majesty's forces,

he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) above shall be liable—
(*a*) on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £400, or both, or
(*b*) on conviction on indictment to imprisonment for a term not exceeding five years, or to a fine, or both.

(3) Proceedings for an offence under this section may be taken, and the offence may for the purpose of those proceedings be treated as having been committed, in any place where the offender is or has at any time been since he first knew or believed that the information might be of material assistance as mentioned in subsection (1) above.

12. Powers of arrest and detention

(1) A constable may arrest without warrant a person whom he reasonably suspects to be—
(*a*) a person guilty of an offence under section 1, 9, 10 or 11 of this Act;
(*b*) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism;
(*c*) a person subject to an exclusion order.

(2) A person arrested under this section shall not be detained in right of the arrest for more than 48 hours after his arrest; but the Secretary of State may, in any particular case, extend the period of 48 hours by a further period not exceeding 5 days.

(3) The following provisions (requirement to bring arrested person before a court after his arrest) shall not apply to a person detained in right of the arrest. The said provisions are—

Section 38 of the Magistrates' Court Act 1952,
Section 29 of the Children and Young Persons Act 1969,

. . . . . .

Section 132 of the Magistrates' Courts Act (Northern Ireland) 1964, and,
Section 50 (3) of the Children and Young Persons Act (Northern Ireland) 1968.

(4) (*Applies to Scotland.*)

(5) The provisions of this section are without prejudice to any power of arrest conferred by law apart from this section.

13. Control of entry and procedure for removal

(1) The Secretary of State may by order provide for—
(*a*) the examination of persons arriving in, or leaving, Great Britain or Northern Ireland, with a view to determining—
(i) whether any such person appears to be a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism, or
(ii) whether any such person is subject to an exclusion order, or
(iii) whether there are grounds for suspecting that any such person has committed an offence under section 9 or 11 of this Act,
(*b*) the arrest and detention of persons subject to exclusion orders, pending their removal pursuant to section 8 of this Act, and
(*c*) arrangements for the removal of persons pursuant to section 8 of this Act.

(2) An order under this section may confer powers on examining officers (appointed in accordance with paragraph 1 (2) of Schedule 3 to this Act), including—
(*a*) the power of arresting and detaining any person pending—
(i) his examination,
(ii) the taking of a decision by the Secretary of State as to whether or not to make an exclusion order against him, or
(iii) his removal pursuant to section 8 of this Act,
(*b*) the power of searching persons, of boarding ships or aircraft, of searching in ships or aircraft, or elsewhere and of detaining articles—
(i) for use in connection with the taking of a decision by the Secretary of State as to whether or not to make an exclusion order, or
(ii) for use as evidence in criminal proceedings.

14. Supplemental provisions

(1) In this Act, unless the context otherwise requires—

"aircraft" includes hovercraft,
"captain" means master (of a ship) or commander (of an aircraft),
"exclusion order" has the meaning given by section 3 (2) of this Act,
"port" includes airport and hoverport,
"ship" includes every description of vessel used in navigation,
"terrorism" means the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear.

(2) The powers conferred by Part II and section 13 of this Act shall be exercisable notwithstanding the rights conferred by section 1 of the Immigration Act 1971 (general principles regulating entry into and staying in the United Kingdom).

(3) An reference in a provision of this Act to a person's having been concerned in the commission, preparation or instigation of acts of terrorism shall be taken to be a reference to his having been so concerned at any time, whether before or after the coming into force of that provision.

(4) When any question arises under this Act whether or not a person is exempted from the provisions of section 4, 5 or 6 of this Act, it shall lie on the person asserting it to prove that he is.

(5) The provisions of Schedule 3 to this Act shall have effect for supplementing sections 1 to 13 of this Act.

(6) Any power to make an order conferred by section 1, 13 or 17 of this Act shall be exercisable by statutory instrument and shall include power to vary or revoke any order so made.

(7) An order made under section 13 of this Act varying or revoking a previous order so made may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient.

(8) An order made under section 13 of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) No order under section 1 or 17 of this Act shall be made unless—

(*a*) a draft of the order has been approved by resolution of each House of Parliament, or
(*b*) it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved.

(10) Every order under section 1 or 17 of this Act (except such an order of which a draft has been so approved)—

(*a*) shall be laid before Parliament, and
(*b*) shall cease to have effect at the expiration of a period of 40 days beginning with the date on which it was made unless, before the expiration of that period, the order has been approved by resolution of each House of Parliament, but without prejudice to anything previously done or to the making of a new order.

In reckoning for the purposes of this subsection any period of 40 days, no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

15. Financial provisions

Any expenses incurred by the Secretary of State under, or by virtue of, this Act shall be paid out of money provided by Parliament.

16. Power to extend to Channel Islands and Isle of Man

(1) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such exceptions, adaptations and modifications, if any, as may be specified in the Order, to any of the Channel Islands and the Isle of Man.

(2) An Order in Council under this section may be varied or revoked by a further Order in Council.

17. Duration, expiry and revival of Act

(1) The provisions of—

sections 1 to 13 of this Act,
section 14 of this Act except in so far as it relates to orders under subsection (2) (*a*) or (*b*) below,
subsection (2) (*c*) below, and
Schedules 1 to 3 to this Act

shall remain in force until the expiry of the period of twelve months beginning with the passing of this Act and shall then expire unless continued in force by an order under subsection (2) (*a*) below.

(2) The Secretary of State may by order provide—

(*a*) that all or any of the said provisions which are for the time being in force (including any in force by virtue of an order under this paragraph or paragraph (*c*) below) shall continue in force for a period not exceeding twelve months from the coming into operation of the order;
(*b*) that all or any of the said provisions which are for the time being in force shall cease to be in force; or
(*c*) that all or any of the said provisions which are not for the time being in force shall come into force again and remain in force for a period not exceeding twelve months from the coming into operation of the order.

(3) On the expiration of any provision of this Act, section 38 (2) of the Interpretation Act 1889 (effect of repeals) shall apply as if that provision of this Act was then repealed by another Act.

18. Repeal of Act of 1974

(1) The Prevention of Terrorism (Temporary Provisions) Act 1974 (in this section referred to as "the Act of 1974") is hereby repealed.

(2) In so far as any order made, direction given or other thing done under any of the provisions of the Act of 1974 could have been made, given or done under a corresponding provision of this Act, it shall not be invalidated by the repeal but shall have effect as if made, given or done under that corresponding provision; and anything begun under that Act may continued be under this Act as if begun under this Act.

(3) The repeal shall not affect the operation of any Order in Council made under the Act of 1974 extending that Act, with such exceptions, adaptations and modifications (if any) as may be specified in the Order, to any of the Channel Islands or the Isle of Man; but any such Order may be revoked by an Order in Council under this Act as if made under this Act.

(4) Nothing in this section shall be taken as prejudicing the operation of section 38 (2) of the Interpretation Act 1889 (effect of repeals).

19. Short title and extent

(1) This Act may be cited as the Prevention of Terrorism (Temporary Provisions) Act 1976.

(2) Part I of this Act shall not extend to Northern Ireland.