Notes

[1] Report of the Committee of Experts on the Application of Conventions and Recommendations (hereafter "RCE"), Report III (4A), International Labour Conference, 62nd Session, 1976, p. 175 and direct request.

[2] ILO: RCE, ibid., 63rd Session, 1977, p. 228.

[3] ILO: RCE, ibid., 64th Session, 1978, p. 196.

[4] Official Bulletin (Geneva, ILO), 1980, Series A, Vol. LXIII, No. 1, pp. 45-46.

[5] ILO: RCE, International Labour Conference, 66th Session, 1980, p. 171; 67th Session, 1981, pp. 174-175; 68th Session, 1982, pp. 199-200.

[6] ILO: Record of Proceedings, ILC, 68th Session, 1982, pp. 31/60-61.

[7] ILO: RCE, ILC, 69th Session, 1983, pp. 216-219.

[8] ILO: Record of Proceedings, ILC, 1983, pp. 31/60-61.

[9] ILO: RCE, ILC, 71st Session, 1985, pp. 288-289.

CHAPTER 5

STRUCTURE OF THE PUBLIC SERVICE AND THE LEGISLATION GOVERNING THE PUBLIC SERVICE IN THE FEDERAL REPUBLIC OF GERMANY

109. This chapter reviews the constitutional structure of the State; the structure of the public service; the fundamental rights guaranteed by the Constitution; and the public service legislation, in particular the definition of public service and the rights and duties of officials; the concept of the duty of faithfulness to the free democratic basic order, its application in guide-lines at federal and Land level and its interpretation by the courts.

Constitutional structure of the State

110. Division of powers between the Federation and the Länder. The Constitution (Basic Law) of the Federal Republic of Germany institutes a federal State. The Constitution is based on the principle that competence vests in the Länder, the Federation being competent only to the extent recognised by the Constitution (see in particular Articles 30 and 70 of the Constitution). The Constitution (Articles 70-75) defines and enumerates the fields of exclusive competence, those of concurrent competence and those in which the Federation is competent to enact outline legislation. Article 31 of the Constitution provides that federal law shall override Land law. The Federation has the exclusive power to legislate on, inter alia, the Federal Railways, the Federal Postal Service and the legal status of persons in the service of the Federation and of corporations under public law directly subordinate to the Federation. It has concurrent legislative powers, in so far as it does not possess exclusive powers, with regard to the remuneration of members of the public service serving under a relationship governed by public law. The Federation has outline legislative powers - the right to lay down basic rules - concerning the legal relationships of persons in the public service of the Länder, local authorities and other public bodies. The Federation also possesses outline legislative powers with regard to the general principles of higher education. The effect of these provisions is that, subject to the outline legislative powers of the Federation, the Länder are competent, inter alia, in matters of education.

111. Legislative and executive powers. At the federal level legislative power vests in the Federal Diet (Bundestag), elected by universal suffrage, and the Federal Council (Bundesrat), whose members

are appointed by the Land Governments. Executive power is exercised by the Federal President, who is Head of State, elected by the Federal Convention, and by the Federal Chancellor, elected by the Bundestag, who is head of the Federal Government. The Federal Ministers, together with the Chancellor, constitute the federal cabinet; they are appointed by the Federal President on the nomination of the Chancellor (Articles 38-69).

112. At Land level legislative power is generally exercised by a single elected chamber; a bicameral system prevails in Bavaria. Some Länder are governed by a cabinet which is presided over by a Prime Minister elected by the single chamber. In other Länder, such as Bremen and Hamburg, the executive, known as the Senate, is elected. The Senate appoints a mayor (Burgermeister) (Hamburg, West Berlin) or a Senate President (Bremen). The territory of the Federation is divided into communes (Gemeinde), the administrative unit above which is generally a county (Landkreis). These communities are governed by the law on local authorities, which falls within the competence of the Länder.

113. Judiciary. Pursuant to the Constitution, judicial power is exercised by the Federal Constitutional Court, the federal courts and the Land courts (Constitution, Article 92).

114. The administrative judicial system is made up of local administrative courts (Verwaltungsgerichte), regional administrative courts (Oberverwaltungsgerichte or Verwaltungsgerichtshöfe) and the Federal Administrative Court (Bundesverwaltungsgericht). The Federal Disciplinary Court (Bundesdisziplinargericht) rules at first instance on disciplinary cases concerning federal officials. Appeals from the decisions of the Federal Disciplinary Court lie to the Federal Administrative Court. The system of labour courts comprises three levels, the highest authority being the Federal Labour Court (Bundesarbeitsgericht). The labour courts have jurisdiction in matters concerning salaried employees and wage-earners in the public service whose employment relationships are governed by private law.

115. The Federal Constitutional Court (Bundesverfassungsgericht) is the highest judicial organ. Pursuant to the provisions of the Constitution (Articles 21 and 93) it is called upon in particular to rule on disputes concerning competence between the Federation and the Länder, the constitutionality of the laws, and constitutional complaints, which may be filed by any person who claims that public authorities have infringed one of his fundamental rights or one of the rights defined, in particular, in Article 33 of the Constitution, which deals with the equality of citizens and with the public service. The Court also rules on the question of unconstitutionality of parties.

116. Execution of the laws. The Constitution provides for execution of the federal laws either by the Länder, under the supervision of the Federation or, in specified cases, by delegation from the Federation (Articles 83, 84 and 85), or by the Federation

itself in cases specified by the Constitution (e.g. the Federal Railways and the Federal Postal Service) or pursuant to the Constitution: for example, the Federation is authorised to establish, for matters on which it has the power to legislate, independent higher federal authorities, new corporations and institutions directly subordinate to the Federation, and central offices for the police, for the protection of the Constitution and for the information services (Article 87).

117. With regard to the execution of the laws of the Länder it is recognised, by reference to Article 30, that the administrative competence of the Federation may be relied upon only in so far as it derives from the Constitution.

118. The Constitution guarantees the principle of the administrative autonomy of local authorities and associations of local authorities (Article 28).

Structure of the public service

119. The constitutional and administrative structure of the country is reflected in the structure of the public service, which is subordinate either to the Federal Administration and federal services, or to the administration of the Länder and services attached to it, or again to the adminstration of local authorities.

120. Within those administrations, the following categories of staff may be distinguised according to the body or unit employing them:

- staff employed by the direct public service, i.e. by the Federation, the Länder, local authorities and associations of local authorities, the Federal Railways and the Federal Postal Service;

- staff employed by the indirect public service, i.e. by the Federal Employment Institution, social insurance institutions and supplementary welfare institutions.

121. According to the nature of the legal regime governing their employment relationships with their employer, the following categories of staff may be distinguished among the staff of the direct and indirect public service:

- officials (Beamte) whose legal status is regulated by law and whose service relationship is governed by public law;

- salaried employees (Angestellte) and wage-earners (Arbeiter) whose employment relationships are governed by private law under conditions fixed by collective agreements.

122. On 30 June 1984 the total staff employed full or part-time in the public service numbered approximately 4,554,000, including 4,311,000 in the direct public service and 243,000 in the indirect public service, representing some 17 per cent of the total economically active population.[1]

123. The tables below show the composition of the staff, by officials and judges, salaried employees and wage-earners, in the direct public service on 30 June 1984, distinguishing between full-time and part-time staff:

Table 1: Full-time staff in the direct public service
(situation on 30 June 1984)

Field of activity	Officials and judges	Salaried employees	Wage-earners	Total
Federal administration	114 579	89 573	109 499	313 651
Federal Railways	176 681	6 903	123 338	306 922
Federal Postal Service	296 384	33 950	105 671	436 005
Federation (total)	587 644	130 426	338 508	1 056 578
Länder	954 140	462 388	161 270	1 577 798
Local authorities/associations of local authorities	146 773	511 798	278 380	936 951
Syndicates of local authorities	2 039	21 508	10 875	34 422
Total	1 690 596	1 126 120	789 033	3 605 749

Source: Federal Bureau of Statistics.

Table 2: Part-time staff in the direct public service
(situation on 30 June 1984)

Field of activity	Officials and judges	Salaried employees	Wage-earners	Total
Federal administration	638	12 102	4 341	17 081
Federal Railways	495	668	1 975	3 138
Federal Postal Service	7 789	24 307	63 067	95 163
Federation (total)	8 922	37 077	69 383	115 382
Länder	107 505	167 857	42 515	317 877
Local authorities/associations of local authorities	3 099	111 281	145 689	260 069
Syndicates of local authorities	31	4 960	7 110	12 101
Total	119 557	321 175	264 697	705 429

Source: Federal Bureau of Statistics.

124. The staff in the indirect public service included, on 30 June 1984, some 26,000 officials, 195,000 salaried employees and 21,000 wage-earners. In addition there were at that date 271,000 persons undergoing training in the public service, including 120,700 with the status of officials, 98,300 as salaried employees and 52,700 as wage-earners. The staff in training in the direct public service included in particular 128,000 persons in the service of the Länder, of whom 91,000 had the status of officials.

125. By nature of work, the staff employed full-time by the Federation, the Länder, local authorities and the associations of local authorities included 1,079,000 persons in the general administrative service (Federation: 271,000; Länder: 559,000; local authorities and associations of local authorities: 248,000), of whom 475,000 were employed in political direction and central administration (Federation: 70,000; Länder: 215,000; local authorities and associations of local

authorities: 189,000) and 298,000 in services responsible for law and order (Federation: 28,000; Länder: 211,000; local authorities and associations of local authorities: 58,900). A total of 768,000 were employed in education, science and research (Federation: 9,400; Länder: 654,000; local authorities and associations of local authorities: 104,000), including 558,900 in schools and pre-school education (Länder: 487,000; local authorities and associations of local authorities: 71,200).

Fundamental rights guaranteed by the Constitution and guarantees for political parties

126. Since the question before the Commission relates to exclusion from the public service on grounds connected with political opinions and activities, it is appropriate to examine fundamental rights in respect of freedom of opinion, political activity and guarantees enjoyed by political parties.

127. The Constitution, in Chapter I (Articles 1-19), guarantees a number of fundamental rights which are binding upon the legislature, the executive and the judiciary as directly applicable law. It guarantees in particular the dignity of the human person; the free development of the personality; the right to life and physical integrity; freedom of the individual; and freedom of religious and philosophical belief (Articles 1, 2 and 4). Article 3 of the Constitution guarantees the equality of all persons before the law; Article 3, paragraph 3, provides that "no one may be disadvantaged or favoured by reason of his sex, his descent, his race, his language, his homeland and origin, his faith, or his religious or political opinions." Freedom of opinion is guaranteed by Article 5; paragraph 1 of that Article provides in particular that "everyone shall have the right freely to express and disseminate his opinion by speech, writing and pictures" and guarantees freedom of the press and freedom of reporting. By virtue of Article 5, paragraph 2, "these rights are limited by the provisions of the general laws, by the provisions of law for the protection of youth, and by the right to respect for personal honour". Paragraph 3 provides that "art and science, research and teaching shall be free; freedom of teaching shall exempt no one from the duty of faithfulness to the Constitution". Article 9 guarantees freedom of asociation. Paragraph 1 of that Article provides that "all Germans shall have the right to form associatons and societies". Paragraph 2 provides that "associations whose purposes or activities contravene the criminal laws or which are directed against the constitutional order or the idea of international understanding are prohibited". Article 12 guarantees free choice of job. Paragraph 1 of that Article provides that "all Germans shall have the right freely to choose their occupation, place of work and place of training. The practice of occupations may be regulated by or pursuant to a law".

128. Article 21 of the Constitution, which forms part of the chapter entitled "The Federation and the Länder", guarantees the free establishment of political parties, specifies the circumstances in which a party is unconstitutional and declares the Federal Constitutional Court competent to decide on the question of unconstitutionality. Article 21, which is regarded as establishing a "privilege for parties", provides as follows:

> 1. Parties shall participate in forming the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for the sources of their funds.
>
> 2. Parties which, judged by their aims or the behaviour of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality.
>
> 3. Details shall be regulated by federal laws.

129. The Federal Constitutional Court Act provides, in section 43(1), that application for a decision on the unconstitutionality of a party may be made by the Bundestag, the Bundesrat or the Federal Government. The government of a Land may make such an application only against a party whose organisation is limited to the territory of that Land (section 43(2)).

130. Pursuant to Article 21, the Federal Constitutional Court ruled in 1952 on the question of unconstitutionality of the Socialist Reich Party (SRP),[2] and in 1956 on that of the Communist Party of Germany (KPD).[3] In each of these cases the Court declared the party unconstitutional, dissolved it and prohibited the formation or continuation of substitute organisations.

131. Since giving those two decisions, the Federal Constitutional Court has not been seized of other cases under Article 21, paragraph 2, for the purpose of ruling on the unconstitutionality of a political party.

132. In the aforementioned decision of 1952 the Court considered the interpretation of Article 21 of the Constitution, spelling out in particular the conditions under which a party might be held to be unconstitutional and defining the meaning to be attached to the notion of the free democratic basic order:

> The special importance of parties in a democratic State justifies their exclusion from political life, not when they merely oppose individual provisions, or even entire aspects, of the Constitution by legal means, but only when they seek to upset the supreme basic values of the free democratic constitutional State. These basic values constitute the free democratic basic

order, which the Basic Law regards as fundamental within the general order of the State - the "constitutional order" ...

A free democratic basic order [within the meaning of Article 21, paragraph 2, of the Basic Law] is an order which, to the exclusion of any violence and arbitrary rule, constitutes a system of rule proper to a State based on law, on the basis of self-determination of the people, in accordance with the will of the prevailing majority, and of freedom and equality. The fundamental principles of this order must include at least the following: respect for the human rights defined in the Basic Law, and above all for the right to life and free development, the sovereignty of the people, the separation of powers, the accountability of Government, the legality of administration, the independence of the courts, the multiparty system and equality of opportunity for all political parties with the right, in accordance with the Constitution, to formation and practice of an opposition.

In the opinion of the Court, Article 21, paragraph 1:

recognises that parties contribute to the formation of the political will of the people, and thus raises them from the politico-sociological area to the rank of a constitutional institution. Only those parties which base themselves on the free democratic basic order can participate in a politically meaningful way in this "incorporation" of parties in the constitutional structure. This is confirmed by Article 21, paragraph 2. It has the significance to make it possible to find that a particular party may not participate in forming the political will of the people because it combats the free democratic basic order. Solely in virtue of considerations proper to a State based on law is it provided that a finding of unconstitutionality with legal effect cannot be made by anyone, not even by the Government and the administration, nor in any proceedings, but only by a judgement of the Federal Constitutional Court in proceedings serving the investigation of material truth.

133. In its decision concerning the KPD the Court found as follows:

A party is not unconsitutional merely because it does not recognise the supreme principles of a free democratic basic order; there must also be an actively combative, aggressive attitude to the existing order ... Article 21, paragraph 2, of the Basic Law does not require, like section 81 of the Penal Code, a concrete undertaking; it is sufficient if the party's political course is determined by an intention which is fundamentally and in its long-term tendency directed towards combating the free democratic basic order ... A party is unconstitutional already if it strives for a social and political

form of free democracy other than the present one in the Federal Republic in order to use it as a transitional stage, the more easily to eliminate any free basic order ...[4]

134. In 1961, with reference to the examination of the constitutionality of a section of the Penal Code, the Federal Constitutional Court had occasion to state as follows:

Until such time as the Federal Constitutional Court has ruled, no one may in law invoke the unconstitutionality of a party. To this extent such a ruling constitutes a precondition.

The privilege provided for in Article 21, paragraph 2, of the Basic Law, which in the first place protects the party organisation, also extends to the official party activity, by generally permitted means, of a party's officials and adherents. Their activity is protected by the parties' privilege even if their party is declared unconstitutional by a subsequent decision of the Federal Constitutional Court.

The legal system cannot, without violating the basic principle of the rule of law, treat as illegal ex post facto the constitutionally granted freedom to found a party and to work for it in constitutional life.[5]

135. However, when examining the constitutionality of a provision of the Civil Service Act of the Land of Schleswig-Holstein, with reference to the appointment of a candidate to the civil service, the Federal Constitutional Court, in a decision of 22 May 1975, ruled as follows:

An element of behaviour that may be important in the evaluation of the candidate's personality which is required here may also be the fact of joining or belonging to a political party that pursues aims hostile to the Constitution, regardless of whether that party has been found unconstitutional by judgement of the Federal Constitutional Court or not. It would be quite arbitrary to exclude that element of personality from evaluation, and thus to compel the employer to affirm an official's faithfulness to the Constitution because there is no decision of the Federal Constitutional Court on the unconstitutionality of a party - a decision, moreover, that depends on an application which is left largely to the applicant's discretion and is most unlikely to be made solely in order to make it possible to reject candidates for the civil service or to take disciplinary action against officials for breach of their duty of political faithfulness.

The fact that the decision reserved to the Federal Constitutional Court concerning the unconstitutionality of a political party has not yet been taken does not mean that the conclusion cannot be reached and relied upon that that party

pursues aims hostile to the Constitution and ought therefore to be combated politically.[6]

136. The Court thus distinguished between the "unconstitutionality of a party", to be found by decision of the Court pursuant to Article 21, paragraph 2, and "aims hostile to the Constitution" of a party, the finding of which does not depend upon such a decision.

Public service legislation

137. Definition and composition of the public service. The basic provisions concerning public service are set forth in Article 33 of the Constitution, which provides as follows:

(1) Every German shall have in every Land the same civic rights and duties.

(2) Every German shall have equal access to every public post according to his ability, qualifications and occupational performance.

(3) The enjoyment of civil and civic rights, admission to public posts and rights acquired in the public service shall be independent of religious faith. No-one may suffer any disadvantage by reason of his adherence or non-adherence to a faith or outlook.

(4) The exercise of sovereign powers as a permanent function shall as a rule be entrusted to members of the public service who are in a relationship of service and faithfulness governed by public law.

(5) The law of the public service shall be regulated with due regard for the traditional principles governing service as officials.

138. Article 33 is not limited to the situation of persons who have the status of officials. In particular, the guarantees laid down in paragraphs 2 and 3 relate to employment in the public service in general, irrespective of the nature of the service relationship.

139. The Federation has adopted two main Acts concerning the status of officials: the Federal Civil Service Act (Bundesbeamtengesetz, BBG)[7] and the Civil Service (General Principles) Act concerning officials of the Länder (Beamtenrechtsrahmengesetz, BRRG).[8] In accordance with the latter, the Länder have adopted Acts regulating conditions of service of their officials.[9]

140. The Federation and the Länder have, in their respective spheres of competence, adopted Acts on disciplinary procedure and staff representation for officials.

141. The Federal Civil Service Act governs the conditions of service of officials of the Federation. It deals in particular with their service relationships, rights and duties.

142. According to section 2 of the Act, the expression "federal official" means any person who is in a relationship of service and faithfulness under public law with the Federation or with a corporation, institution or foundation under public law directly subordinate to the Federation (section 2(1)). An official who has the Federation as his employer is a direct federal official. An official who has as his employer a corporation, institution or foundation under public law directly subordinate to the Federation is an indirect federal official (section 2(2)).

143. According to section 4 of the Act, appointment as an official is permissible only for the performance of:

(1) functions which involve the exercise of sovereign powers (hoheitsrechtliche Aufgaben), or

(2) functions which, for the purpose of maintaining the State or public life, may not be entrusted exclusively to persons who are in an employment relationship under private law.

144. The Act distinguishes several categories of officials, namely officials for life, officials on probation, revocable officials, honorary officials and temporary officials.

145. According to section 5, a person may be appointed an official for life (auf Lebenszeit) if he is to be employed permanently in functions within the meaning of section 4, and on probation (auf Probe) if he has to complete a period of probation with a view to subsequent employment as an official for life. A person may be appointed a revocable official (auf Widerruf) if he has to complete the prescribed or customary preparatory service (Vorbereitungsdienst) or is to be employed in functions within the meaning of section 4 only incidentally or temporarily. A person who performs functions within the meaning of section 4 in an honorary capacity is an honorary official (Ehrenbeamter). Lastly, the Act provides that the statutory provisions under which persons may be appointed as officials for a specified period (Zeitdauer) remain unchanged.

146. A candidate for the civil service must fulfil certain conditions with regard to training, must in principle be of German nationality and must satisfy the authorities that he will at all times uphold the free democratic basic order within the meaning of the Basic Law (section 7).

147. The Civil Service (General Principles) Act for the Länder contains provisions to be observed by the Länder in regulating their own civil services, with due regard for the traditional principles of the civil service and the common interests of the Federation and the

Länder. The provisions of the General Principles Act and those of the Federal Civil Service Act largely correspond.[10]

148. The status of an official is characterised in particular by the following:

- the formal nature of that status (admission to the civil service, termination and promotion are governed by a formal decision);
- recruitment, in principle, for life: the official undertakes on oath to perform his professional duties conscientiously and to abide by the law;
- the employer undertakes to provide financially for the official's needs through payment of a salary or, in the case of a retired official, a pension (non-contributory system);[11] an official for life may be dismissed on the employer's initiative only in virtue of formal disciplinary proceedings in which removal from the service is decided upon by a disciplinary court;[12]
- the performance of service on the career principle.[13]

149. With regard to the other two categories of public servants, i.e. salaried employees (Angestellte) and wage-earners (Arbeiter), section 191 of the Federal Civil Service Act provides that the employment relationships of salaried employees and wage-earners in the service of the Federation or of a corporation, institution or foundation under public law subordinate to the Federation shall be governed by collective agreements.

150. There is a collective agreement that covers salaried employees in the service of the Federation (except the Federal Railways and the Federal Postal Service), the Länder and local authorities to the extent that distinct agreements have not been concluded.[14]

151. The wage-earners employed by the Federation,[15] the Länder[16] and local authorities, for their part, are also covered by general collective agreements.

152. There are specific agreements for, among others, the Federal Railways and the Federal Postal Service.

153. Although the Constitution (Article 33, paragraph 4), the Federal Civil Service Act (sections 2 and 4) and the Civil Service (General Principles) Act for the Länder (section 2(2)) distinguish between officials and other categories of members of the public service according to the functions they are to perform, it has been noted that in reality it is not the nature of the public servant's activity that determines whether he is an official, a salaried employee or a wage-earner. The sole deciding factor is whether he has been appointed as an official or recruited on a labour contract. That

is why persons performing functions which involve the exercise of sovereign powers may be salaried employees and, conversely, persons not performing such functions may be appointed officials. The latter situation is the more frequent, because Article 33, paragraph 4, of the Constitution allows functions involving the exercise of sovereign powers to be assigned to non-officials only in exceptional cases.[17]

154. It has also been noted that the situation in the various services, in particular the budgetary situation with regard to jobs, as well as historical developments, do not allow any strict delimitation of the functions assigned to officials on the one hand and to salaried employees and wage-earners on the other.[18] Over the years, the fields of activity of officials and salaried employees have intermingled. On the one hand, officials have been employed in functions not involving the exercise of sovereign powers, e.g. in the Postal Service and the Federal Railways; on the other, salaried employees have taken jobs involving the exercise of sovereign powers formerly reserved to officials.[19]

155. The rights and safeguards of officials in the recruitment process. The basic provisions governing access to the public service are laid down in Article 33, paragraphs 2 and 3, of the Constitution. Article 33, paragraph 2 provides that "every German shall have equal access to every public post according to his ability, qualifications and occupational performance".

156. Article 33, paragraph 3, provides, inter alia, that no one may suffer any disadvantage by reason of his adherence or non-adherence to a faith or outlook.

157. Moreover, Article 3, paragraph 3, of the Constitution guarantees non-discrimination on grounds of political opinion among others, and Article 5 guarantees freedom of expression.

158. According to certain writers,[20] Article 33, paragraph 2, of the Constitution merely guarantees access without discrimination to employment, but does not confer a right to be recruited to a post. The courts originally took the view that this Article merely conferred the right to submit one's candidature. Later they recognised that it conferred a justiciable right to an objective evaluation, and they intervene when a candidate can prove that he has been rejected on erroneous or irregular grounds. The courts are in principle authorised only to annul the decision and to refer the matter back for further decision by the recruiting authority. Some authors consider that Article 33, paragraph 2, confers a general right of access to the public service according to ability and qualifications.[21]

159. The Federal Civil Service Act (section 8) and the Civil Service (General Principles) Act for the Länder (section 7) provide that candidates shall be selected according to their ability, qualifications and occupational performance, without regard to sex, descent, race, creed, religious or political opinions, origin or connections.

160. Under section 9(2) and section 6(2) respectively of those Acts, the employment relationship of an official on probation is to be converted to that of an official for life after not more than five years if the official satisfies the conditions prescribed for that purpose.

161. The procedure for the selection and evaluation of candidates is not governed by the Civil Service Acts. The Federal Civil Service Act provides only for the advertisement of vacancies (section 8(1)). The Federal Staff Representation Act confers on the staff committee a right of co-determination in matters of recruitment and appointment (section 76(1)).

162. A candidate who has been rejected without proper explanation may contest the recruiting authority's decision. This compels the authority to prove that it has taken an objective decision. It is required to submit the documents in the case to the court, which allows the candidate to examine them. The administrative courts, however, refuse on grounds of confidentiality to allow him to examine his competitors' files.[22]

163. The salaried employees and wage-earners of the public service, to whom Article 33, paragraphs 2 and 3 of the Constitution apply, are selected accorded to essentially similar rules. The staff committee has a right of co-determination in matters of recruitment of salaried employees and wage-earners also (Federal Staff Representation Act, section 75(1)). The labour courts are competent to examine complaints from applicants concerning decisions rejecting them.[23]

164. Job security. Upon final appointment, an official is appointed for life. Under sections 28-51 of the Federal Civil Service Act, the relationship may be terminated, apart from the official's death, by his resignation or dismissal, loss of the rights attached to the official capacity, revocation on disciplinary grounds, or retirement.[24]

165. In the case of an official on probation, the Federal Civil Service Act lays down a number of additional grounds for termination and periods of notice which should normally be observed (section 31). Thus an official on probation may be dismissed for behaviour which in the case of an official for life would lead to disciplinary measures resulting from disciplinary proceedings; in that case the official on probation may be dismissed without notice.[25] Grounds for dismissal also include deficient ability, qualifications or occupational performance; invalidity; and the abolition or restructuring of the service.

166. A revocable official may be dismissed at any time by revocation with the same notice as an official on probation (section 32). The Act provides that a revocable official should be given the opportunity to complete his preparatory service (Vorbereitungsdienst) and to take his examination. His status as an official ends with the

examination[26] in so far as that is provided for by statute or administrative regulations.

167. Under the Federal Disciplinary Regulations (Bundesdisziplinarordnung) an official for life may be dismissed only through formal disciplinary proceedings before the disciplinary courts. Under the Federal Staff Representation Act, the institution of formal disciplinary proceedings is subject to mandatory consultation of the staff committee (section 78(1)). This also applies to the dismissal of officials on probation and of revocable officials.[27]

168. With regard to salaried employees and wage-earners, the provisions of the Protection against Dismissal Act apply to establishments and offices under public law.[28] A dismissal is socially unwarranted and invalid, inter alia, if it is not based on reasons connected with the person or conduct of the employee or on urgent operating requirements or the works council has raised objections to the dismissal. The burden of proving the facts on which the dismissal is based lies upon the employer. Under the Federal Staff Representation Act, the staff committee participates in a case of ordinary dismissal and must be heard in a case of dismissal without notice or extraordinary dismissal. The dismissal of a member of the works council is not permitted unless there is a major reason warranting dismissal without notice. In this case the staff committee must give its consent; if it withholds its consent, the administrative court may, upon the employer's application, give its consent in lieu if the dismissal is warranted in the light of all the circumstances. Clause 53 of the Collective Agreement of Salaried Employees of the Federation prescribes the periods of notice to be given in cases of dismissal; after 15 years' service, a salaried employee aged 40 years or over may no longer be dismissed, save under the conditions and in accordance with the procedure prescribed in clause 55.

169. The duties of officials. The Federal Civil Service Act and the Civil Service (General Principles) Act for the Länder contain detailed provisions on the duties of officials, some of a general nature and others dealing with specific aspects such as professional secrecy, secondary occupations, the acceptance of rewards, hours of work, etc. The general obligations are set forth in sections 52, 53 and 54 of the Federal Civil Service Act and sections 35 and 36 of the Civil Service (General Principles) Act, which provide as follows:

> An official serves the entire people and not a party. He shall perform his functions impartially and justly and in so doing shall have regard to the welfare of the community.
>
> An official shall by his entire conduct bear witness to his support for the free democratic basic order within the meaning of the Basic Law and shall act to uphold it (section 52(1) and (2) and section 35(1) respectively).

An official shall, in political activity, maintain such moderation and reserve as are called for by his position in relation to the public and the duties of his office (sections 53 and 35(2) respectively).

An official shall devote himself to his occupation with total commitment. He shall perform his duties disinterestedly and conscientiously. His conduct in and outside the service shall be in keeping with the respect and confidence required by his occupation (sections 54 and 36 respectively).

In accordance with section 58 of the Federal Civil Service Act, a federal official must take the following oath:

"I swear to uphold the Basic Law of the Federal Republic of Germany and all laws in force in the Federal Republic and to perform the duties of my office conscientiously ..."[29]

170. In the event of non-fulfilment of his obligations, an official may be subject to disciplinary action. Section 77 of the Federal Civil Service Act and section 45 of the Civil Service (General Principles) Act define the notion of a disciplinary offence and refer to the laws on disciplinary procedure (at federal and Land level) for proceedings in respect of disciplinary offences. According to these sections, an official commits a disciplinary offence if he culpably violates the obligations of his office. Conduct by an official outside the service constitutes a disciplinary offence if, according to the circumstances of the particular case, it is especially liable to impair respect and confidence in a manner significant for his functions or for the prestige of the civil service.[30]

171. In the case of a retired official, activity directed against the free democratic basic order or participation in attempts to impair the existence or security of the Federal Republic, among other actions, constitutes a disciplinary offence.[31]

Duty of faithfulness to the free democratic basic order

172. Historical and doctrinal context of the duty of faithfulness. As already noted, Article 33, paragraph 5 of the Constitution provides that public service law shall be regulated with due regard for the traditional principles governing service as officials. According to a decision of the Federal Constitutional Court dated 22 May 1975,[32] the duty of faithfulness to the free democratic basic order constitutes one of those traditional principles. The Court observed that the duty of faithfulness had been a continuous feature of the history of the German civil service since the end of the eighteenth century.

173. In the days of the German Empire (1871-1918)[33] a twofold orientation was discernible in the relationship of an official (Beamtenverhältnis). The idea that prevailed in practice, going back to historical tradition, was that of a relationship of personal faithfulness to the monarch, extending also to the Government appointed by the monarch and subordinate to him. Political statements against the Government, even if made unofficially, and, more particularly, membership in an anti-monarchist political party were regarded as breaches of the official's duty of faithfulness. In writings on the subject, on the other hand, the prevailing idea was that of a body of officials placed in a situation of service to the State, governed by rights and duties. The duty of faithfulness was viewed as "the ethical side" of an official's relationship; its content lay in the requirement that the official should perform his duties with a heightened conscientiousness, and not in an existential personal bond with the monarch or the State. This conception was reflected in the Imperial Civil Service Act of 1873: the fundamental duty of the official as prescribed by the Act was related and limited to the conscientious performance, in accordance with the Constitution, of the functions incumbent on him; the formula "to be faithful and obedient" to the Emperor appeared only in the official's oath.

174. Under the Weimar Republic (after 1919) the Constitution guaranteed general access to public posts according to qualifications and occupational performance (section 128); it expressly guaranteed to officials freedom of political opinion and freedom of association (section 130). With regard to officials' duties, the provisions of the Imperial Civil Service Act remained the standard, with an obligation as to conduct (Verhaltenspflicht). Article 130 of the Constitution provided as follows: "An official serves the community, not a party. Freedom of political opinion and freedom of association are guaranteed to all officials ..." (Article 130, paragraphs 1 and 2).

175. The situation at that time with regard to freedom of political opinion has been described as follows:[34]

In any case, an official cannot be subjected to a disciplinary penalty merely for having declared himself in favour of a political party. An official would be committing a disciplinary offence only if he sought to promote by specific acts the aims of the party he supported and if those aims included the violent overthrow of the existing state order. Freedom of opinion is not restricted, even in relation to unconstitutional aims or means. However, direct participation in acts directed towards achieving a party's aims by illegal means is incompatible with the holding of a public post. Outside the service, in exercising the rights guaranteed to him by Article 118 (freedom of opinion in general) and Article 130, an official, when participating in public demonstrations likely to go to extremes in the political field, should maintain the greatest reserve and be mindful of the various currents of political opinion. With regard to freedom of association, the question arises whether an official may promote,

support or carry out other activities for a party or an organisation which is working, publicly or in secret, for the forcible overthrow of the existing state order and is in that sense revolutionary, or whether he may belong to such a party. According to the decisions of the courts, mere support of such a party is permitted to an official (OVG case 77); on the other hand, working on behalf of uch a party through specific acts is forbidden (OVG case 78).

176. Similarly it has been pointed out[35] that, with regard to the question whether membership or activity by officials in a revolutionary political party was compatible with the duties of those officials, the criteria on which to determine whether a party was revolutionary were not the political aims it pursued but the revolutionary - i.e. illegal and forcible - means of achieving them.

177. Owing to the political controversy associated with the new democratic foundation of the State, the constitutional and legislative provisions were fairly quickly made subject to limitations. The officials' oath took on the form of an oath of faithfulness ("I swear to be faithful to the Constitution"); an Act of 21 July 1922 on the duties of officials to protect the Republic added to the duties connected with the performance of their functions a general duty to uphold the constitutional and republican authority of the State (section 10(a)). This duty, however, was regarded not as a duty to profess faithfulness (Bekenntnispflicht) but as an obligation as to conduct connected with occupational activity (Verhaltenspflicht).

178. In publications concerning civil service law, the concept of faithfulness underwent reappraisal. The status of officials was characterised as a relationship of faithfulness to the State. The duty of faithfulness to a person - the monarch - reflected in conduct towards that person, and particularly in obedience to his orders, was supplanted by the duty of faithfulness to an impersonal entity (the State) or to normative principles (the Constitution).

179. The Nazi period strengthened this concept of faithfulness and at the time exaggerated and perverted it.[36]

180. Section 4 of the Act on the reform of the career civil service dated 7 April 1933 provided: "Officials who, through their political activities, fail to satisfy the authorities that they will uphold the national State unreservedly at all times may be dismissed."

181. The Act of 30 June 1933 to amend certain provisions concerning officials provided: "No one may become an official unless he satisfies the authorities that he will uphold the national State unreservedly at all times" (section 3(2)(a)).

182. The German Officials Act of 26 January 1937 replaced the words "national State" by "National Socialist State". Section 1 of the Act provided: "A German official is, in relation to the Führer

and the Reich, in a situation of service and faithfulness under public law (status of an official)." Section 3(2) provided as follows: "An official shall uphold the National Socialist State unreservedly at all times and shall be guided in all his conduct by the fact that the National Socialist Workers' Party, in indissoluble union with the people, is the bearer of the idea of the German State."

183. Pursuant to section 4 of the Act, an official was required to confirm his special attachment to the Führer and the Reich by taking the following oath: "I swear that I shall be faithful and obedient to the Führer of the Reich and of the German people, Adolf Hitler; I shall abide by the laws and conscientiously fulfil the duties of my office ..."

184. Since 1945 the texts concerning the status of officials have provided that the situation of an official is "a situation of service and faithfulness under public law". At the same time officials are called upon to share in the concept of a "militant democracy" (streitbare, abwehrbereite, wehrhafte Demokratie) which, through institutional and legal arrangements, strives to protect itself against attack or elimination by enemies of the democratic order taking advantage of political freedom.[37]

185. Some writers have observed that, just as the content of the Constitution is strongly determined by the will to create a free democratic State, that content also is fundamentally determined by the will to guarantee that the Federal Republic shall always remain a free democratic State.[38] The will to protect the free democratic character of the Federal Republic is shown by the provisions for forfeiture of certain fundamental rights if they are abused for the purpose of combating the free democratic basic order (Article 18), the provisions under which parties may be ruled unconstitutional (Article 21) and the provisions prohibiting amendment of certain constitutional provisions (Article 79: federal structure, participation of the Länder in the legislative process, and basic principles laid down in Articles 1 to 20).[39]

186. According to this view, a body of officials prepared to commit themselves to and identify themselves with the free democratic basic order appears to be necessary in order to prevent the recurrence of totalitarian upheaval. Democracy is looked to for active self-defence. It cannot allow persons regarded as extremists who wish to challenge that democratic order to enter the civil service.[40] The normative connecting link through which to attain that goal lies in the character of the official's status as a relationship of faithfulness to the democratic State and in the provisions of the Civil Service Acts.[41]

187. Legislative provisions at present in force. The Federal Civil Service Act (section 7, subsection 1(2)) and the Civil Service (General Principles) Act for the Länder (section 4, subsection 1(2)) provide that no one may be appointed as an official unless he

"satisfies the authorities that he will at all times uphold the free democratic basic order within the meaning of the Basic Law".

188. According to section 52(2) of the Federal Civil Service Act and section 35(1), third sentence, of the Civil Service (General Principles) Act, an official must "by his entire conduct bear witness to his support for the free democratic basic order within the meaning of the Basic Law and act to uphold it".

189. By virtue of section 2 of the Federal Civil Service Act, which defines the scope of the Act, the duty of faithfulness rests upon all officials in the service of the Federation or of a corporation, institution or foundation under public law subordinate to the Federation.

190. Similar provisions imposing a duty of faithfulness to the free democratic basic order are laid down in the civil service legislation of the Länder.

191. According to the courts, the duty of faithfulness to the free democratic basic order is binding on an official in his entire conduct, both in the performance of his functions and outside the service.[42]

192. Principles for the verification of faithfulness. On 28 January 1972 the Federal Chancellor and the Prime Ministers of the Länder agreed upon a set of principles concerning the verification of faithfulness to the free democratic basic order of public servants and applicants for employment in the public service (commonly referred to as the "Radicals Decree" - Radikalenerlass). These principles were in turn reflected in decisions approved for the federal service and for service in the Länder. The latter text, also dated 28 January 1972, read as follows:

> The Heads of Government of the Länder, in consultation with the Federal Chancellor on 28 January 1972, adopted the following principles on the proposal of the Permanent Conference of Ministers of the Interior of the Länder:
>
> Under the Civil Service Acts, no one may be appointed as an official in the Federation or the Länder unless he satisfies the authorities that he will at all times uphold the free democratic basic order within the meaning of the Basic Law.
>
> Officials are bound to work actively within and outside the service to uphold that basic order.
>
> These are mandatory provisions. Each individual case must be examined and decided on its merits. The following principles shall be applied for that purpose:

Applicants:

> An applicant who engages in activities hostile to the Constitution shall not be appointed to the public service. If an applicant belongs to an organisation which pursues aims hostile to the Constitution, such membership warrants doubts as to whether he will uphold the free democratic basic order at all times. Such doubts in general justify rejection of the application for appointment.

Officials:

> If an official, by his actions or by reason of his membership in an organisation having aims hostile to the Constitution, fails to fulfil the requirements of section 35 of the Civil Service (General Principles) Act binding him to bear witness by his entire conduct to his support for the free democratic basic order within the meaning of the Basic Law and to act to uphold it, the employer shall, on the basis of the facts ascertained in each case, draw the required conclusions and in particular examine whether the removal of the official from office should be sought.
>
> The same principles shall apply to salaried employees and wage-earners in the public service in accordance with the provisions of the relevant collective agreements.

193. Each Land adopted its own guide-lines for the application of these principles. They led to extensive verification, sometimes systematic but differently organised from one Land to another, of the faithfulness of applicants for employment in the public service and of officials.

194. On 22 May 1975 the Federal Constitutional Court, in a leading decision, enunciated principles applicable to verification of the faithfulness of applicants and officials (see paragraphs 214 et seq. below).

195. On 24 October 1975 the Bundestag adopted a resolution which, in the light of the Constitutional Court's decision, called for the respect of certain principles in the examination of the faithfulness of candidates. The resolution requested the Federal Government to ensure that those principles were respected within its sphere of competence. It also requested the Länder to standardise their procedures on the basis of these principles. The resolution stressed the need to protect the legitimate interests of applicants, particularly in being ensured a fair and verifiable procedure.

196. On 19 May 1976 the Federal Government adopted new principles to be followed in the procedure for verifying the faithfulness of an applicant for employment in the public service, taking into account the Federal Constitutional Court's decision of 22 May 1975 and the above-mentioned Bundestag resolution of 24 October 1975.

197. On 17 January 1979 the Federal Government adopted a new version of the 1976 principles; this came into force for the Federal Administration on 1 April 1979[43] and read as follows:

I

The determination whether an applicant offers the requisite guarantee of faithfulness to the Constitution shall be made by the federal authority competent to take that decision with due regard for the Federal Constitutional Court's decision 2 BvL 13/73 of 22 May 1975 and the principles set forth in the resolution of the German Bundestag of 24 October 1975 and in the light of all the circumstances of the individual case.

II

In determining whether an applicant offers the requisite guarantee of faithfulness to the Constitution for appointment to the public service, the following procedural principles shall be uniformly observed:

1. In deciding whether the authority for protection of the Constitution should be asked for information, the principle of proportionality shall be applied:

1.1 requests for information should not be made as a matter of routine;

1.2 a request should be made if there are factual indications that the candidate does not fulfil the requirements for appointment to the public service. Such indications may be obtained in particular during the preparatory service and the period of probation;

1.3 a request may be made only where an appointment is actually contemplated and faithfulness to the Constitution is the last prerequisite for appointment remaining to be checked;

1.4 no request shall be made if the applicant is under 18 years of age.

2. For the purposes of communication from the authority for protection of the Constitution in response to requests from the appointing authorities of the Federation, the following principles shall be observed:

2.1 only judicially admissible facts which may warrant doubts as to a candidate's faithfulness to the Constitution may be communicated to the authorities entitled to request information;

2.2 information in the possession of the authorities for protection of the Constitution which relates to activities before the eighteenth birthday of the person concerned may not be communicated unless they are the subject of pending criminal proceedings;

2.3 information concerning activities concluded more than two years previously may not be communicated unless communication is required in view of the special importance of the information according to the principle of proportionality;

2.4 information subject to a statutory obligation of secrecy may not be communicated.

3. The highest federal authorities shall, in their sphere of activity, ensure that any judicially admissible facts which may be communicated by the authority for protection of the Constitution are examined for relevance by a central authority which they shall designate.

4. The appointing authorities of the Federation shall be bound to communicate in writing any reservations with regard to the appointment of an applicant and the relevant facts.

5. The applicant shall be entitled to express himself thereon orally or in writing.

6. If a hearing is held, a record shall be kept. The applicant shall be allowed to consult it on request.

7. The applicant shall be allowed the assistance of a legal adviser if he so requests. Such assistance shall be limited to advising the applicant and to questions of procedure.

8. In cases in which the applicant's suitability cannot be established, the decision shall rest with the highest service authority, i.e., in principle the Federal Minister.

9. Rejections may be based only on judicially admissible facts.

10. The grounds for rejection, accompanied by the facts on which they are based, shall be communicated to the applicant in writing, at least if he so requests. The communication shall include information on the right of appeal.

11. Facts which may not be communicated by the authorities for protection of the Constitution to the appointing authority (clauses 2.2, 2.3 and 2.4) may not be used by that authority if they are communicated to it from another quarter.

12. If an appointment is made despite the existence of facts known to the authorities for protection of the Constitution, all documents submitted from the sphere of those authorities shall be removed from the personnel files.

III

The guide-lines for security checks on persons employed by the Federation shall remain unaffected.

198. Certain Länder also amended their guide-lines, according to the same principles as the Federation (Berlin, Bremen, Hamburg, Hessen, North Rhine-Westphalia, Saarland). Rhineland-Palatinate, after making limited modifications in 1979, issued a new version in December 1985, which incorporated the principles concerning the duty of faithfulness enunciated by the Federal Constitutional Court in 1975, but did not change the substance of the earlier guide-lines.

199. On 26 March 1982 the then Minister of the Interior introduced a bill to amend section 77 of the Federal Civil Service Act and section 45 of the Civil Service (General Principles) Act for the Länder concerning disciplinary offences in relation to the duty of faithfulness to the Constitution; its purpose was to ensure that actual conduct and the nature of the functions exercised be taken into account in determining whether conduct outside the service constituted a disciplinary offence. Section 77 of the Federal Civil Service Act was to be amended by the addition of the following sentences:

> A breach of the duties incumbent upon an official under section 52(2) of the Federal Civil Service Act shall constitute a disciplinary offence if, in the individual case, a minimum of weight and evidence of breach of duty is established. In determining whether conduct outside the service constitutes a disciplinary offence in relation to the duties incumbent upon the official under section 52(2), the nature and extent of the behaviour, and the functions assigned to the official shall be taken into account. A disciplinary offence shall be deemed to have been committed if conduct outside the service cannot be accepted even with due regard to the official's fundamental rights, in particular the right to freedom of expression.[44]

200. This bill was withdrawn in October 1982 after the change in the Federal Government.

201. In June 1985 the Government of the Saarland cancelled the 1979 guide-lines for verification of faithfulness to the Constitution. In this connection it published the following text:

> The Saarland Government has cancelled the 1979 guide-lines for verification of faithfulness to the Constitution in the public service.
>
> This decision is based on the following principles and considerations:
>
> 1. It is a traditional principle, and one to be respected, of service as an official anchored in the Basic Law for the Federal Republic of Germany that the official has a special duty of political faithfulness to the State and its Constitution. Therefore, also under the provisions of the Saarland Civil Service Act, no one may become an official unless he offers a guarantee that he will at all times uphold the free democratic basic order. The same applies under the German Judges Act to appointment to a judgeship.
>
> The Saarland Government confirms this legal situation. In its view, what really matters is that an official should, in performing his duties, uphold the Constitution with conviction. The official confirms his faithfulness to the Constitution, not by professions of faith and outlook, but primarily by the manner in which he discharges his duties.
>
> 2. In a democratic State in which all state authority emanates from the people (Article 20, paragraph (2), first sentence, of the Basic Law), the citizen is entitled to expect that the organs of the State should manifest confidence in him. Hence the authorities have no cause and also no democratic legitimacy to put in doubt the faithfulness of citizens to the Constitution in the absence of indications of activity directed against the Constitution. For that reason an applicant for a post as an official or as a judge need neither declare nor prove that he is ready at all times to uphold the free democratic basic order.
>
> 3. By cancelling the guide-lines for verification of faithfulness to the Constitution in the public service, the Saarland Government is making a contribution to greater tolerance in political debate and thus to more democracy in our country. This is more in keeping with the spirit of our Constitution than checks on states of mind which - as the Federal Constitutional Court has stated - "poison the political atmosphere", "irritate not only those concerned in their confidence in democracy" and "discredit the free State".
>
> 4. In addition, the new Saarland Government considers it necessary to cancel the "Guide-lines for verification of faithfulness to the Constitution in the public service" for the following reasons:

(a) The guide-lines are based on the Radicals Decree of 1972, whose implementation created in the Federal Republic a climate of fear of a witch-hunt that is detrimental to a living process of democratic opinion-forming and will-forming. The implementation of the Radicals Decree was dubious from the legal standpoint and foolish from the political standpoint. It was liable "to darken the luminosity in the Federal German constitutional order through witch-hunting" (Helmut Simon, judge of the Federal Constitutional Court).

(b) The practice of the Radicals Decree has damaged the international prestige of the Federal Republic of Germany.

For example, the European Commission of Human Rights has objected to the Radicals Decree as a loyalty check on servants of the State which is "not necessary for a democratic society" and is disproportionate, and the International Labour Organisation (ILO) - an organisation of the United Nations system - has made the practice of the Radicals Decree the subject of an inquiry.

5. That the implementation of the Radicals Decree has been a bureaucratic wrong tack, with lamentable side-effects, is also clear from the fact that in the Saarland, in the guide-lines that applied here, the formation of a commission to verify faithfulness to the Constitution, its composition and its functions are described at length and take up many pages; in fact the Commission has acted only once since 1972 and the previous routine examination involving a request for information from the authority for protection of the Constitution in no case led to the rejection of an applicant.

Thus, the cancellation of the guide-lines for verification of faithfulness to the Constitution in the public service also makes a contribution to de-bureaucratisation.

202. In 1986, the following guide-lines were applicable at the federal and Land levels:

At the federal level: verification principles of 1979.

At the Land level:

- Baden-Württemberg: guide-lines of 15 October 1973;
- Bavaria: guide-lines of 18 April 1972 and 27 March 1973;
- Berlin: guide-lines of 24 July 1979;
- Bremen: guide-lines of 14 March 1977 and 7 February 1983;

- Hamburg: guide-lines of 13 February 1979;
- Hessen: guide-lines of 9 July 1979;
- Lower Saxony: guide-lines of 20 July 1977 (with annexes);
- North Rhine-Westphalia: guide-lines of 28 January 1980;
- Rhineland-Palatinate: guide-lines of 12 December 1985;
- Saarland: guide-lines cancelled in June 1985 (see above);
- Schleswig-Holstein: [Text not obtained.]

203. In some Länder requests for information on applicants for the civil service are systematically and routinely addressed to the authority for protection of the Constitution. These routine requests (Regelanfragen) are made in Baden-Württemberg and Bavaria; in Lower Saxony for higher officials (including teachers) and officials of certain services, e.g., the police, when the applicant has already been selected; and in the Rhineland-Palatinate when the applicant reaches the short list. In other Länder such a request is made only when the appointing authority knows facts which may warrant doubts as to an applicant's faithfulness to the Constitution, an appointment is actually contemplated, and faithfulness to the Constitution is the last prerequisite remaining to be checked (Berlin, Bremen, Hamburg, Hessen, North Rhine-Westphalia).

204. In several Länder an applicant for the civil service is invited to make a declaration to the effect, inter alia, that he is prepared to bear witness by his entire conduct to his support for the free democratic basic order within the meaning of the Constitution and to act to uphold it, and that he does not support any endeavours hostile to the Constitution or to fundamental principles (Baden-Württemberg, Bavaria, Lower Saxony, Rhineland-Palatinate). In three of these Länder the applicant is required to state that he is not a member of any organisation directed against the Constitution or its fundamental principles (Baden-Württemberg, Bavaria, Rhineland-Palatinate). In other Länder the candidate is not formally bound to make a declaration but is guilty of fraud if he conceals his participation in such attempts (Hessen).

205. In most Länder it is expressly stated that the guide-lines for security checks remain unaffected.

206. Situation with regard to preparatory service (Vorbereitungsdienst). A period of preparatory service in the public service is a prerequisite for admission to certain professions, especially for teachers and lawyers. Their training does not end until the preparatory service has been completed. They are required to perform

this service even if they do not intend to work in the public service later on.

207. The Federal Constitutional Court, in its decision of 22 May 1975, stated:

> It is open to the State to require the successful completion of a period of preparatory service as a prerequisite both for State service as an official and for an independent profession, and generally to organise it in such a way that the service may be performed in an employment relationship under civil law or in a special relationship under public law other than the relationship of an official. It if opts for a preparatory service which must be performed under a relationship of official, then for those who contemplate a profession outside state service it must either offer an equivalent, non-discriminatory preparatory service which can be performed without appointment as an official or include in its civil service regulations provision for an exception allowing the preparatory service to be performed, if desired, outside a relationship of official.

208. The guide-lines for verification of faithfulness to the Constitution in certain Länder (Hessen, North Rhine-Westphalia) provide that requests for information shall not be addressed to the authority for protection of the Constitution in the case of candidates for a preparatory service which is required for the practice of a profession that is also carried on outside the public service, such as teacher training or legal training. A similar exception is to be found in Lower Saxony.

209. Some Länder have admitted candidates to preparatory service as salaried employees to enable them to complete their training with a view to the practice of a profession outside the public service.

210. In Bavaria, under section 5, subsection 1(1) of the Bavarian Act on Teacher Training, as amended by an Act of 25 May 1985, preparatory service for teacher training may be completed only in the status of an official. An applicant for preparatory service must fulfil the prerequisites for appointment as an official and must therefore satisfy the authorities that he will at all times uphold the free democratic basic order. Similar requirements also exist in Baden-Württemberg. On 2 October 1986 the Federal Labour Court ruled that Baden-Württemberg was nevertheless obliged to provide an opportunity to all persons seeking qualification as a teacher to perform the requisite preparatory service, even if doubts existed as to their faithfulness to the Constitution. Cases concerning the corresponding problem in Bavaria are pending before the same Court.

211. Situation of salaried employees and wage earners. Under collective agreements, persons employed in the public service under a contract of employment are also subject to an obligation of faithfulness to the Constitution.

212. Thus clause 8, subclause 1(2) of the Federal Collective Agreement for Salaried Employees - which applies to salaried employees of the Länder and local authorities as well as to those of the Federation - provides that a salaried employee "shall bear witness by his entire conduct to his support for the free democratic basic order within the meaning of the Basic Law". Similar provisions appear in the collective agreements for wage earners employed by the Federation, the Länder and local authorities and in those for salaried employees and wage earners of the Federal Postal Service and the Federal Railways.

213. Decisions of the courts. A number of judicial decisions concerning the duty of faithfulness to the free democratic constitutional order for officials and applicants for appointment to the civil service, as well as some decisions concerning the duty of faithfulness for salaried employees and wage earners, constitute important elements for appreciation of the practice followed in the Federal Republic in applying the duty of faithfulness to the Constitution.

214. The Federal Constitutional Court, in a leading decision of 22 May 1975 commonly referred to as the "Radicals Decision" (Radikalenbeschluss),[45] spelt out its interpretation of the concept of faithfulness to the free democratic basic order for officials and applicants for appointment to the civil service.

215. Acçording to the Court, a feature of the history of the German civil service since the end of the eighteenth century has been the special obligation laid upon officials in the form of a duty of faithfulness. In the course of time, there developed out of that duty a number of specific duties such as those prescribed in the Civil Service Acts. The Constitution maintains this duty of faithfulness as a traditional principle of the civil service. The nucleus of the duty of faithfulness is the duty of political faithfulness: that is to say, readiness to identify oneself with the idea of the State which the official is to serve, with the free democratic basic order of that State. The official's duty of political faithfulness to the State and its Constitution thus constitutes a traditional principle of service as an official within the meaning of Article 33, paragraph 5, of the Constitution. This duty requires of the official adherence to the state order and constitutional order in force and in particular requires him to dissociate himself clearly from groups that attack, combat or defame the State, its constitutional organs and the constitutional order. A party which in its programmes advocates the dictatorship of the proletariat or approves the use of force to overthrow the constitutional order, if circumstances permit, is pursuing aims hostile to the Constitution. The traditional duty of faithfulness gains especial significance from the fact that the Constitution institutes a "militant democracy". This fundamental notion of the Constitution precludes a situation in which the State admits to, and keeps in, its service officials who reject and combat the free democratic basic order.

216. The Court stated that a breach of the duty of faithfulness justifies in principle the dismissal of an official on probation or a revocable official and may lead, after (judicial) disciplinary proceedings, to the removal from office of an official for life.

217. With regard to access to the civil service, the Court considered that Article 33, paragraph 5, of the Constitution and statute law make it a prerequisite for admission to the civil service that the applicant should satisfy the authorities that he will at all times uphold the free democratic basic order. The conviction that an applicant does not satisfy this condition is to be based on an evaluation of his personality, which includes a forecast and depends on many factors which vary from case to case and on the assessment of those factors. One such factor which may be of importance in evaluating the applicant's personality may be his joining or belonging to a political party that pursues aims hostile to the Constitution, regardless of whether that party has been found unconstitutional by judgement of the Federal Constitutional Court, in accordance with the special procedure prescribed in Article 21, paragraph 2, of the Constitution, or not.

218. The Court held that the legal principles deriving from Article 33, paragraph 5, apply to the relationship of every official, whether he be a revocable official, an official on probation or an official for life. Those principles allow of no differentiation according to the nature of the official's functions.

219. The Court further concluded that, since the duty of faithfulness to the free democratic basic order has constitutional force under Article 33, paragraph 5, of the Constitution, it limits the fundamental rights guaranteed in the Constitution, in particular freedom from discrimination by reason of political opinions (Article 3, paragraph 3) and freedom of opinion (Article 5), and does not conflict with Article 12 concerning in particular free choice of occupation.

220. The Court stated that a similar obligation of faithfulness rests upon salaried employees in the public service, although the requirements are less stringent for them than for officials.

221. The courts in the Federal Republic of Germany have held, by reference to the programme adopted by the DKP (German Communist Party), that the party's aims are hostile to the Constitution, taking the general view that the DKP attacks, combats and defames the existing free democratic basic order, and they have drawn conclusions from this with regard to the faithfulness to be expected of applicants for appointment to the civil service and of officials.

222. According to the Federal Administrative Court,[46] the DKP combats essential elements of the free democratic basic order and aspires to an order of society differently structured and to a corresponding body politic; the DKP rejects the fundamental principles

of a free democracy based on law (as evidenced by its own statements, the objectives of the Mannheim programme adopted on 20-22 October 1978 and earlier statements). In the Court's view, the conclusion to be drawn from these declarations is that the DKP is the successor to the KPD (Communist Party of Germany), which was banned by the Federal Constitutional Court in 1956; for example, the DKP professes its attachment to Marxism-Leninism, a mode of action which, according to earlier usage, was to lead to the "socialist revolution" and the "dictatorship of the proletariat" and which now pursues the same goals under different names. According to the Court, the profession of support for the democratic principles of the Constitution which appears in the preamble to the Party's programme is in irreversible opposition to that party's aims.

223. The DKP - according to the Court - not only attacks and combats the constitutional order but also defames it. In this connection the Court mentioned in particular that the party had described the existing economic order as one of "capitalist exploitation". In the Court's opinion, special significance attached to the campaign conducted against the so-called "Berufsverbote" (job bans) which the Court considered to be aimed at discrediting the Federal Republic at home and abroad. It considered "the repeated and irritating indication that in other Western countries communists were not kept out of the State service" to be defamation of the Federal Republic and its organs. In a decision of 21 December 1983 (Eckartsberg case),[47] the Administrative Court of Hanover referred to the fact that the DKP emphasised negative manifestations in the life of the Federal Republic, such as unemployment and income disparities, without mentioning the great increase in the standard of living in recent years, the free choice enjoyed by individuals as regards training, occupation, way of life and use of their income, the opportunities enjoyed also by workers to build up capital, the influence which freely constituted trade unions can exert, the opportunities to express politically opposed views, and free elections of legislative bodies. The same court also attached significance to the aims of the DKP with regard to the central control of credit as creating extensive means of exerting influence on private undertakings which continued to exist, observing that Article 15 of the Constitution (which authorises the nationalisation of land, natural resources and means of production) did not provide for the socialisation of credit. Although this judgement was reversed on appeal by the Disciplinary Court of Lower Saxony, the latter court confirmed that there had been an objective breach of the duty of faithfulness, merely considering that in the particular circumstances there was no subjective guilt.[48]

224. The Federal Administrative Court has given two important decisions with regard to the faithfulness of officials to the Constitution, dated 29 October 1981 (Peter case)[49] and 10 May 1984 (Meister case).[50] These cases related to officials who had worked in the Post Office Telecommunication Service for more than 25 years. The Court emphasised that the duty of faithfulness to the free

democratic basic order was binding on an official in all his conduct, outside the service as well as in the performance of his functions. That duty bound every official without distinction as to the nature of his functions. The Court held that irreproachable conduct in the service was not enough. In both cases its finding that the official had violated his duty of faithfulness was based on the official's political activities outside the service. The Court considered that membership of the DKP might or might not, according to the facts of the case, constitute sufficient evidence of a breach of the duty of political faithfulness, although not a necessary element of such a breach. However, active participation by an official in the DKP or on its behalf (in particular by holding office in the party or standing as a DKP candidate in local, regional or federal elections) would be evidence of identification with aims hostile to the Constitution and hence of a breach of the duty of faithfulness.

225. Having held the aims of the DKP to be hostile to the Constitution, the Court considered it to be irrelevant that the official concerned and the party itself had declared that they had no intention of changing the State order by violence, and that the official had declared that the free democratic basic order formed the basis of his understanding of the Constitution and that he was prepared to uphold it. A person who declared his adherence to a party having aims hostile to the Constitution thereby also declared himself in favour of those aims and against the Constitution.

226. In the Meister case, the Federal Administrative Court accordingly reversed the decision given at first instance by the Federal Disciplinary Court, which had accepted the official's statements as relevant. The Federal Disciplinary Court had taken the view that, so long as the official's aims remained consistent with the Constitution and the official expressly and unequivocally upheld the State and the Constitution, he could not be compelled to dissociate himself from a party which was not prohibited.

227. The judgements in the Peter and Meister cases establish the case law of the Federal Administrative Court. They have had a direct influence on the policy and administrative practice of the authorities in respect of disciplinary proceedings against officials active for the DKP and other parties or organisations regarded as pursuing aims hostile to the Constitution. They have also provided a decisive basis for judgements in many cases confirming or ordering the exclusion of officials from the civil service.

228. In this connection mention may be made of several decisions which show the effects of this case law. Thus in a judgement of 26 June 1985 concerning a teacher who was an official for life (Eckartsberg case), the Disciplinary Court of Lower Saxony[51] concluded that, through his active participation and his standing as a DKP candidate in the 1981 local authority elections, the official had violated his duty of faithfulness. The Court, however, annulled his dismissal on subjective grounds, considering that there had been no

culpable violation of that duty owing to the legal uncertainties resulting from the attitude of the Land authorities employing him and in view of the official's statement that he would examine the Court's judgement and take it into account if the DKP should invite him again to stand for election.

229. Following that decision, the Government of Lower Saxony published a circular drawing the attention of all officials to two judgements of the Court of Lower Saxony (including the above-mentioned judgement in the Eckartsberg case) concerning the duty of faithfulness to the free democratic basic order. The circular drew particular attention to the Court's statement that standing for election on behalf of the DKP constituted by itself a breach of the duty of political faithfulness and that, in such a case, the employer was bound to institute disciplinary inquiries.

230. The Administrative Court of Neustadt-Weinstrasse, Rhineland-Palatinate, in a judgement of 26 February 1986 concerning a teacher who was an official for life (the Jung case),[52] held that, by his active participation in the DKP before 1984, when he had held various functions in the DKP, the official had supported a party whose aims were hostile to the Constitution and had thereby violated his duty of political faithfulness and committed a disciplinary offence. The Court found, however, that throughout his 25 years of service the official's conduct had not been reflected in any way in the professional field and that neither in his teaching nor in his contacts with his pupils, parents, colleagues or superiors had he conducted himself as an active member of the DKP. He had at no time, in his teaching, tried to influence the children along communist policy lines, and there was no danger that he would do so in the future. His professional performance was good; he was on good terms with pupils, parents and teachers; he had been a member of the school staff council for ten years; and outside school he had distinguished himself in the vocational training field. Although the Court held that the official had not expressly dissociated himself from the DKP and hence had not respected the duty of political faithfulness, it considered that he had probably not committed any disciplinary offence for the past two years and that there was accordingly no reason to order his dismissal. The Court ordered a 15 per cent reduction in salary for a period of three years so that the official would not resume his pre-1984 activities; it stated that a resumption of activities for the DKP of the kind mentioned in the judgement would be likely to result in removal from the service.

231. Among judicial decisions concerning the official's duty of faithfulness to the free democratic basic order, mention should be made of the divergent attitude taken by the Federal Disciplinary Court - which is competent to rule at first instance in disciplinary cases concerning federal officials - in the Peter and Meister cases and more recently in those of other postal officials (Bastian, Brück, Elsinger and Repp cases).

232. On 26 June 1985 the Federal Disciplinary Court[53] gave judgement in favour of a postal worker who had been an official for life since 1977 (Repp case), on the grounds that the official had not committed a disciplinary offence by reason of his membership of the DKP and his activities on behalf of that party. The Court observed that in earlier times, particularly during the Weimar Republic, the duty of faithfulness had been defined in a relatively strict manner, so that only misuse of an official's functions or conduct aimed at changing the existing order by violent or illegal methods was prohibited. The Court considered that the situation in the Weimar Republic could serve to clarify the effect of the Federal Constitutional Court's decision of 1975. It accordingly concluded that an official did not commit a disciplinary offence by support for a party which was not prohibited or by activities for such a party, including membership, holding of party office and standing for election on behalf of the party.

233. With regard to persons working in the public service under a contract of employment, it should be noted that the Federal Constitutional Court, in its decision of 22 May 1975, stated: "Although salaried employees in the public service are subject to less stringent requirements than officials, they nevertheless owe their employer loyalty and conscientious performance of their service functions; they too may not attack the State in whose service they are, or its constitutional order; they too may be dismissed without notice for gross violation of those service obligations; and they too may be refused employment if there is reason to think that they will be unable or unwilling to discharge the duties connected therewith."

234. The Federal Labour Court has held that the requirement of faithfulness should be differentiated according to the nature of the duties attached to the post when an applicant for employment in the public service is to work under a contract of employment and not with the status of official. The requirements to be met by an applicant for work as a salaried employee derive solely from Article 33, paragraph 2, of the Constitution. To deduce from the duty of faithfulness embodied in the collective agreements a uniform duty of political faithfulness, divorced from their functions, for all members of the public service would be to place unnecessary and disproportionate limitations on the fundamental political rights of salaried employees, freedom of opinion and freedom of political activity in a party.[54]

235. Thus with regard to the duty of faithfulness required of an applicant for admission to preparatory service as a teacher, the Court has noted that he need not satisfy the authorities that he will at all times uphold the free democratic basic order; it is enough if he takes what may be regarded as a neutral attitude to the State and the Constitution and is not expected to question, in his teaching, the fundamental values of the Constitution.[55] Active membership of the DKP and the MSB-Spartakus is not enough in itself to justify serious doubts as to the candidate's faithfulness.[56]

236. With regard to the dismissal of a salaried employee from the public service, the Court observed in a judgement of 6 June 1984 that political activity by a salaried employee in the public service (in the specific case, standing as a DKP candidate in local authority elections) in principle constitutes a ground for ordinary dismissal of the individual concerned only if, having regard to the authority's tasks, the employee cannot be considered suitable for the functions he has to perform in connection with his work. Dismissal on grounds of conduct presupposes that political activities outside the service specifically impair the employment relationship.[57]

Notes

[1] Total economically active population in 1984 (rounded to the nearest thousand): 25,173,000. Source: Federal Bureau of Statistics.

[2] BVerfGE (Decisions of the Federal Constitutional Court), judgement of 23 October 1952, 1 BvB 1/51. NJW 1952, p. 1407.

[3] BVerfGE, judgement of 17 August 1956, 1 BvB 2/51, NJW 1956, p. 1393.

[4] BVerfGE, judgement of 17 August 1956, principles 5, 6 and 8.

[5] BVerfGE, judgement of 21 March 1961, 2 BvR 27/60, NJW 1961, p. 723.

[6] BVerfGE, decision of 22 May 1975, 39 (357-361).

[7] Federal Civil Service Act, entered into force on 1 Sep. 1953, published in the Bundesgesetzblatt of 6 Mar. 1985 in a new version valid with effect from 1 Mar. 1985.

[8] Civil Service (General Principles) Act, entered into force on 1 Sep. 1957, published in the Bundesgesetzblatt of 6 Mar. 1985 in a new version valid with effect from 1 March. 1985.

[9] See for example Civil Service Act: Bavaria (17 Nov. 1978), Lower Saxony (28 Sep. 1978), North Rhine-Westphalia (1 May 1981).

[10] See in particular section 2(2), section 3 and section 4 of the Civil Service (General Principles) Act concerning officials of the Länder. Under section 2(3), the exercise of sovereign powers as a permanent function should as a rule be entrusted to officials.

[11] The retirement pension scheme is governed by the Act on Provision for Officials and Judges in the Federation and the Länder (Beamtenversorgungsgesetz, BeamtVG) of 24 Aug. 1976.

[12] Federal Disciplinary Regulations (Bundesdisziplinarordnung) of 20 July 1967 and Disciplinary Regulations of the Länder (see also para. 167).

[13] "La gestion du personnel publique en République fédérale d'Allemagne", Hans Joachim von Oertzen, Ministerialrat, Bonn, in Revue internationale des sciences administratives, 2/1983, pp. 215-222.

[14] Collective Agreement of Salaried Employees of the Federation (Bundesangestelltentarifvertrag - BAT) of 1 Apr. 1961 in the version of 12 Dec. 1984, clauses 1, 2 and 3.

[15] Collective Agreement of Wage Earners in the Service of the Federation (Manteltarifvertrag Bund - MTB).

[16] Collective Agreement of Wage Earners in the service of the Länder (Manteltarifvertrag Länder - MTL).

[17] Reinhard Mussgnug: "Der Zugang zum öffentlichen Dienst europäischer Staaten", in Verfassungstreue im öffentlichen Dienst europäischer Staaten, Duncker and Humblott: "Schriften zum öffentlichen Recht", Vol. 379, pp. 417 and 418.

[18] von Oertzen, op. cit., p. 215.

[19] Federal Employment Institution, Employment and Professional Market Research Institute, Bei AB 88, p. 428.

[20] See R. Mussgnug, op. cit., pp. 424-428.

[21] E.W. Böckenförde: "Rechtsstaatliche politische Selbstverteidigung als Problem" in Extremisten und öffentlicher Dienst, Nomos, p. 23. See also: Council of Europe, European Court of Human Rights, Cour (85) 33, Memorial of the Government of the Federal Republic of Germany (Kosiek case), paras. 25 and 29.

[22] R. Mussgnug, op. cit., p. 430.

[23] idem, pp. 430-431.

[24] Civil Service (General Principles) Act, sections 21-32.

[25] Section 31(1), clause 1, and section 31(4).

[26] Section 32(2).

[27] Act of 15 March 1974 on the representation of federal personnel, section 78(1). This Act also contains provisions applicable to the Länder. See also von Oertzen, op. cit., p. 221.

[28] Protection against Dismissal Act, 25 Aug. 1969, ILO Legislative Series 1969-Ger. F.R.3.

[29] Civil Service (General Principles) Act, section 40(1): "An official shall take a service oath. The service oath shall contain a commitment to the Constitution."

[30] Section 77(1), second sentence, and section 45(1), second sentence, respectively.

[31] Section 77(2) and section 45(2) respectively.

[32] BVerfGE, 39, 339. Decision known as the "Radicals Decision" (Radikalenbeschluss).

[33] Böckenförde, op. cit., pp. 2-39.

[34] Gerhard Anschütz, "Die Verfassung des Deutschen Reichs", 14th edition, 1933, pp. 602-607.

[35] Böckenförde, op. cit., p. 19, note 15.

[36] idem, pp. 19 and 20.

[37] idem, p. 21.

[38] Andreas Sattler: "Die rechtliche Bedeutung der Entscheidung für die streitbare Demokratie", Nomos, 1982.

[39] idem.

[40] Böckenförde, op. cit., pp. 21-23.

[41] idem, p. 23: "Guarantee clause and clause on support for the free democratic basic order".

[42] See paras. 224 et seq. below.

[43] Presse- und Informationsamt der Bundesregierung: Bulletin (Bulletin of the Federal Government Press and Information Office), No. 6, p. 45, 19 Jan. 1979. The full text, including the statement of grounds, is reproduced as an annex.

[44] Similar amendment to section 45 of the Civil Service (General Principles) Act.

[45] BVerfGE 39, 339.

[46] BVerwG, judgement of 29 October 1981. NJW 1982, 779.

[47] Administrative Court of Hanover, decision of 21 Dec. 1983.

[48] See para. 228.

[49] Judgement of 29 October 1981, op. cit.

[50] BVerwG, judgement of 10 May 1984. DVBL 1984, 955.

[51] NDH A(1) 4/84.

[52] 3K 1/85.

[53] BDiG I VL 25/83.

[54] BAG, judgement of 31 March 1976. The employing authority must state the facts and, if the applicant challenges them, prove the assertions on which it bases its doubts as to his faithfulness to the Constitution. BAG, judgement of 29 July 1982.

[55] BAG, judgement of 9 December 1981.

[56] BAG, judgement of 5 August 1982.

[57] BAG, judgement of 6 June 1984, NJW 1985, p. 507.

CHAPTER 6

THE ALLEGATIONS SUBMITTED AND RELATED DOCUMENTATION

Allegations made by the WFTU

237. In its representation of 13 June 1984 the World Federation of Trade Unions alleged that the Government of the Federal Republic of Germany had failed to fulfil the obligations incumbent on it by virtue of its ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The WFTU considered that the non-observance by the Federal Republic of Germany of its obligations was the result of discriminatory practices currently applied, for political reasons, to public servants, and to applicants for employment in the public service.

238. The WFTU recalled that the Governing Body of the ILO, at its 211th Session in November 1979, had discussed an earlier representation submitted by the WFTU on the same matter, and had declared the closure of the procedure on the basis of the report of 15 June 1979 of the Committee appointed to examine the representation.[1] The WFTU alleged that since that time the Government of the Federal Republic of Germany had not made serious efforts to bring either legislation or practice into conformity with the Convention.

239. In support of its claim, the WFTU referred to the observations concerning the application of Convention No. 111 in the Federal Republic of Germany made by the Committee of Experts on the Application of Conventions and Recommendations in its report to the Conference in 1983.[2] Despite these observations, the Government of the Federal Republic of Germany had continued to misinterpret Article 1, paragraph 2 of Convention No. 111 (inherent requirements of a particular job) and Article 4 (activities prejudicial to the security of the State) to justify its discriminatory practices, which were in contradiction with the Convention.

240. The WFTU alleged that since 1979 there had been several hundred cases of discriminatory measures taken to the detriment of applicants for employment in the public service or public servants. Between autumn 1983 and February 1984 there had been new disciplinary court decisions in 12 cases and new disciplinary measures in 17 cases.

241. The WFTU stated that the discriminatory practices had been condemned by the workers concerned as well as by trade union congresses in the Federal Republic of Germany. It transmitted