

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

resolutions adopted by recent congresses of the Deutsche Postgewerkschaft, IG Metall, IG Druck und Papier, and the Gewerkschaft Erziehung und Wissenschaft.

Information and documentation
provided by the WFTU

242. In its representation and the appended documents the WFTU named 79 persons stated to have been affected by discriminatory measures and supplied details concerning their cases. Most of them were officials holding lifetime appointments; others were officials on probation or performing preparatory service, applicants for public service employment or salaried employees. Twenty-four cases concerned the Federal Post Office; five, other federal services; 41, the teaching profession. Among the remaining nine cases, two concerned church employees. The measurees said to have been taken against a number of these persons ranged from dismissal, threat of dismissal, denial of employment, transfer and threat of transfer to denial of promotion. In other cases, reference was made to disciplinary proceedings, the threat of a disciplinary inquiry, or a security interview.

243. According to the information supplied, the grounds for the measures taken were most commonly membership in the German Communist Party (Deutsche Kommunistische Partei (DKP)) and activities for this party, such as standing as a candidate in parliamentary or local elections; in some cases the grounds were participation in the activities of other organisations or in public demonstrations or the signing of public appeals.

244. With its representation, the WFTU supplied documentation relating to a number of the cases mentioned by it, including official communications, court judgements and documents analysing and describing disciplinary proceedings. In particular, it communicated a detailed analysis of the judgement of the Federal Administrative Court of 29 October 1981 ordering the dismissal from the Federal Post Office of a telecommunications technician, Hans Peter.³ In response to the invitation addressed to it by the Commission to present further information and observations, the WFTU communicated an analysis of current case law,⁴ and referred to a debate in the Federal Diet (Bundestag) in January 1986⁵ as well as to the reports of the Committee on the Application of Conventions and Recommendations of the International Labour Conference, 1981, 1982 and 1983.⁶

245. As noted in Chapter 2, the WFTU presented six witnesses at the Commission's second session, four of whom were persons who had been affected by measures taken in application of the provisions relating to the duty of faithfulness to the free democratic basic order, whereas the two other were legal experts. In the course of the hearings of witnesses, the WFTU transmitted a number of further documents, including a publication by the Deutsche Postgewerkschaft⁷

and information on measures affecting employment in the public service in Baden-Württemberg.⁸

246. At the end of June 1986, the WFTU presented further comments, referring to the observations submitted to the Commission by the Government of the Federal Republic of Germany, to which it appended a document commenting on the replies given by the Government to questions in the Federal Diet⁹ and extracts from a series of legal writings. At the same time, the WFTU also submitted additional documentation on individual cases. In its comments, the WFTU observed that in all the cases submitted to the Commission the measures taken by the Government of the Federal Republic or Länder Governments had been determined only by the political opinions of the individuals affected. The WFTU's communication contained detailed comments on a number of issues: the special situation of the Federal Republic and the lessons to be learnt from the Weimar Republic; the doctrine of totalitarianism; the illegality of occupational bans under the constitutional law of the Federal Republic; the distortion of the concept of the free democratic basic order; the interpretation of the provisions of Convention No. 111; the exhaustion of local remedies; measures to ensure the security of the State and the allegation of espionage; the "liberality" of the practice of occupational bans in the Federal Republic in comparison with practices in other countries.

247. The WFTU agreed with the assertion by the Government in its communication of March 1986 that a body of officials of inherently democratic convictions constituted a guarantee of a free democracy. However, the WFTU considered that such a democratic conviction could not be achieved by depriving public servants of their political rights and denying them the right to share the opinion of a radical but legal opposition party or to commit themselves to organisations and movements that the Government of the Federal Republic considered "hostile to the Constitution".

248. The WFTU observed that the Weimar Republic had not collapsed because it lacked sufficient measures to protect the Constitution or because it had not imposed occupational bans. The authority to ban political organisations had frequently been used. Towards the end of the Weimar Republic this authority and especially political penal law had, however, been directed almost exclusively against organisations on the political left. There had also been occupational bans in the Weimar Republic. The decrees adopted by the social-democratic governments of Prussia and Hamburg, under which membership of the NSDAP or the KPD were considered to be a violation of an official's duty of faithfulness, had not reduced the NSDAP's influence in the civil service. Hardly any officials belonging to that party were dismissed; on the other hand, especially after the prohibition on NSDAP membership was lifted in 1932, many higher ranking officials who were members of the SPD were replaced by persons with a "national" attitude. The few KPD members had already been dismissed. The occupational bans towards the end of the Weimar Republic paved the way for the purge following the seizure of power by the fascists in 1933. Precisely the "lessons of history" spoke against the practice of occupational bans.

249. The WFTU stated that the identification, in accordance with the theory of totalitarianism, of fascism with communism was practised with particular persistence in the Federal Republic so as to discriminate against communists. That theory had no basis in the Federal Republic's Constitution. Indeed, communists had participated in the parliamentary council set up by the occupying powers to elaborate the draft Constitution for the Federal Republic. By contrast, hardly any theme of the Constitution was as strong as the rejection of a fascist political order. Consequently, there were no constitutional grounds for an identification of fascists with socialists or communists.

250. The WFTU observed that the Government's assertion that those affected by occupational bans intended to eliminate human rights and the free democratic basic order had not been substantiated by the Commission's hearings. Even the government witnesses had stated that the alleged human rights violations consisted solely in the individuals concerned not being willing to distance themselves from their outlook and political convictions. The Government based its allegation not on the deeds of the individuals concerned, but on its contention that the party to which they belonged or with which they sympathised intended to do away with the free democratic basic order. However, there was no decision of the Federal Constitutional Court (the only body competent in the matter under the Federal Republic's Constitution) declaring the DKP's aims to be incompatible with the free democratic basic order. In respect of the public service, the Government acted as if the Federal Constitutional Court had prohibited the DKP in accordance with Article 21, paragraph 2, of the Basic Law. Before 1972 the view generally expressed in authoritative legal publications was that such a practice would be contrary to the Constitution. That view had also been taken by the Federal Administrative Court in a decision of 14 March 1973 concerning a soldier. The Court had held that measures taken on the ground of his membership of and activities for a party that had not been banned by the Federal Constitutional Court violated Article 3, paragraph 3 (non-discrimination) and Article 5, paragraph 1 (freedom of expression) of the Basic Law, as well as the "privilege for political parties" under Article 21, paragraph 2, of the Basic Law. The former Court had stated that until a party had been banned no one could claim, to the disadvantage of a public servant, that the party was contrary to the Constitution, that it did not act to uphold the existing democratic State Constitution, or that membership of and activities for it were incompatible with a commitment to the free democratic basic order. That was a decision in favour of an officer who was a member of the NPD. Just two years later, on 6 February 1975, another chamber of the same Federal Administrative Court took the diametrically opposed position: the rejection of an applicant teacher on account of her membership of the DKP was found to be in accordance with the law. Shortly afterwards the Federal Constitutional Court, in its leading decision of 22 May 1975, ruled that membership of a party that was not banned but hostile to the Constitution was a part of the conduct to be taken into account by an employing authority in verifying an applicant's faithfulness to the

Constitution. The WFTU observed that, although the Basic Law did not provide for a status between prohibition of a party under Article 21, paragraph 2, of the Basic Law and protection of its freedom of action, the Federal Constitutional Court had created a grey area with its concept of "hostility to the Constitution" as a result of which the party concerned, its members and supporters were largely removed from constitutionally-guaranteed freedoms.

251. The WFTU asserted that even the assumption that public servants had to be more faithful to the Constitution than other citizens could not transform activities in conformity with the Constitution into illegal activities hostile to the Constitution, or give employing administrations a competence that was not theirs under the Constitution, namely, that of judging the constitutionality of political parties. It appeared contradictory to regard as a violation of faithfulness to the Constitution the exercise by officials of basic rights protected by the same Constitution. Moreover, the Government had not produced a single statement from a DKP programme to substantiate its allegation that the party intended to abolish the free democratic basic order.

252. The WFTU observed that, in accordance with the rules for the interpretation of international treaties set down in the Vienna Convention on the Law of Treaties (Articles 31 and 32), Convention No. 111 should be interpreted, first, in accordance with the terms of the Convention itself. Article 1, paragraph 1, of the Convention contained a precise legal definition of discrimination. Of importance for the precise determination of the contents of the Convention were those bodies that, on the basis of the ILO Constitution, considered the interpretation of Conventions; in this case particularly the Committee of Experts on the Application of Conventions and Recommendations, in accordance with article 22 of the ILO Constitution, and Committees set up to deal with representations under article 24 of the Constitution. These organs did not impinge on state sovereignty. An interpretation of Convention No. 111 on the basis of undefined concepts in other international treaties, which would have the consequence of ruling out in the state sector a differentiation according to specific jobs, would, moreover, be inadmissible "in the light of the object and purpose" of the Convention (Vienna Convention, Article 31, paragraph 1). Furthermore, when the Federal Republic ratified the Convention in 1961, neither prevailing legal opinion nor administrative or judicial practice disputed that membership of a political party could not be a ground for exclusion from the public service unless the party concerned had been declared unconstitutional under Article 21, paragraph 2, of the Basic Law or the right of the individual concerned had been forfeited under Article 18 of the Basic Law. In the year the Convention was ratified the Federal Constitutional Court had given the decision that confirmed that domestic legal situation (BVerfGE 12, p. 296 ff.). The distinction between "hostile to the Constitution" and "contrary to the Constitution", which had been made before the KPD was banned in 1956, was expressly invalidated. The distinction reappeared in legal theory and court case law only

after the decree on radicals was adopted in 1972. It was therefore to be presumed that the Federal Republic had based its ratification of Convention No. 111 on an understanding of its terms that was in accordance with the present interpretation of the Convention by the ILO's supervisory bodies.

253. The WFTU observed that the Government considered membership of the DKP and activities for that party, including standing as candidate in elections for public office, as an attack on the security of the State. However, it had not been able to explain in any concrete case in what manner the activities of persons excluded from the public service constituted a threat to the security of the State. In addition the Government had constructed the theory of a threat to security in times of crisis. It attributed that risk equally to anyone employed as a teacher or a customs official, or in the postal or railways service, if his ideas came close or could come close to those of the DKP. The legal opinion of Professor Doebling went a step further and accused the DKP of espionage for a foreign power. The WFTU vigorously rejected, as defamatory and discriminatory, the suspicion that members of the DKP who earned their living in the public service were spies and constituted a threat to the security of the State.

254. Referring to two comparative studies published in the Federal Republic (Doebling et al: Verfassungstreue im öffentlichen Dienst europäischer Staaten, Berlin, 1980; Böckenförde, Tomuschat, Umbach: Extremisten und öffentlicher Dienst: Baden-Baden, 1981) the WFTU stated that, contrary to their interpretation by Professor Doebling, the country studies clearly showed that the administrative and judicial measures developed in the Federal Republic discriminating against applicant officials on the basis of their political opinions found hardly any counterpart in the countries surveyed. In his comparative analysis Professor Tomuschat had concluded that in the countries examined, in so far as the duty of faithfulness to the constitutional order existed at all, it was conceived functionally and related to the post; the Federal Republic, with its general duty of faithfulness, departed significantly from this Western European common denominator. The WFTU added that the judicial protection provided in the Federal Republic was of little value to the individuals concerned as the higher administrative courts approved the practice of occupational bans.

255. As regards the Government's contention that local remedies had not been exhausted, the WFTU observed that the procedures provided for in the ILO Constitution - contrary to the European Convention of Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights - did not require the exhaustion of local remedies. Consequently, the rule did not apply in this procedure. Even if it did apply it would have to be regarded as having been fulfilled. For one thing, there was the decision of the Federal Constitutional Court of 22 May 1975; for another, that Court had given its basic approval to the Federal Administrative Court's

case-law on occupational bans (Bundesverfassungsgericht, NJW 1981, p. 2683).

Information and documentation
received from other sources

256. Indications have been given in Chapter 2 of the decisions taken by the Commission to seek information from various sources other than the WFTU and the Government concerned and also to take into consideration communications received from individuals and organisations in the Federal Republic of Germany. Consequently, it has had at its disposal a large volume of information, mostly giving particulars of individual cases arising from the application of the provisions relating to the duty of faithfulness to the free democratic basic order. Such information has come directly from the persons affected or their legal representatives, from trade union organisations representing various categories of public servants (particularly postal workers and teachers), and from a number of non-governmental organisations campaigning against "Berufsverbote".

257. The Commission received a communication from Dr. Siemantel, a lawyer acting on behalf of the DKP. The letter observes that even the Federal Government does not claim that the DKP advocates the use of violent methods, and points out that the party programme makes clear that the party's ultimate aim of establishing a socialist society in the Federal Republic is not to be attained by means of putsch or plot but, on the contrary, expressly rejects such a course. The communication adds that, in both its objectives and its action, the DKP respects also those elements of the basic order which, under Article 79, paragraph 3, of the Constitution, are not open to amendment.

258. The information received in respect of individual cases frequently includes relevant documentation, such as notifications of dismissals or suspensions, complaints and other pleadings filed in judicial proceedings, and court judgements. There are statements made by official bodies, such as Land parliaments or municipal councils, trade unions or staff councils, representatives of political parties, parents' councils and other citizen groups, as well as press articles. There are also publications issued by trade unions or non-governmental organisations documenting individual cases or groups of cases.¹⁰ The "Bürgerinitiative gegen Berufsverbote", Freiburg, communicated, on the basis of computerised records, brief descriptions of approximately 600 cases of persons affected in their employment or occupation by measures taken on account of their political affiliations or activities. Many of these cases had occurred in the 1970s; however, in some 250 instances, measures had either been initiated or been the subject of further action by the executive or judicial authorities since 1979, the year of adoption of the revised guide-lines for verification of faithfulness to the Constitution of applicants for federal employment.

259. During the testimony of the witness representing the authorities of Bavaria, the representative of the WFTU sought information on two individuals stated to have been refused employment in the Bavarian public service. Detailed information concerning these cases was subsequently communicated by the Government of the Federal Republic of Germany. As mentioned in Chapter 2, the Commission also decided to take into consideration the public documents available in respect of two cases pending before the European Court of Human Rights.¹¹

Analytical summary of documented cases

260. An analysis of data provided to the Commission from various sources in the course of its inquiry regarding the number of persons affected in their employment or occupation by measures related to their political affiliations or activities will be found in Chapter 9.

261. Presented below is a table giving brief indications of 73 cases for which the Commission has received documented information from the different sources previously mentioned, followed by a summary of the facts of 15 selected cases (which, in the table, are identified by an asterisk). Account has been taken of information received up to the time of the Commission's third session, in November 1986.

262. In approximately three-fifths of the cases mentioned in this table, the disciplinary proceedings or other measures concerned were initiated in the years from 1982 onwards.

263. All the cases mentioned in the table involve the issue of fulfilment of the duty of faithfulness to the free democratic basic order and arise out of activity within, affiliation or association with a party or organisation the aims of which have been considered hostile to the Constitution. Most cases involve membership and activity in the German Communist Party (DKP). Isolated cases involve association with other Communist organisations, namely, the Kommunistischer Bund Westdeutschlands and the Bund Westdeutscher Kommunisten.¹² Several cases concern persons active in student organisations within the social democratic political spectrum.¹³ One case arose out of activity in the Association of Democratic Lawyers, considered a Communist-influenced organisation.¹⁴ Other cases arose out of activity in the German Peace Union¹⁵ or organisations of conscientious objectors to military service.¹⁶ Two of the cases in the table concern persons active in the National Democratic Party of Germany (NPD).¹⁷

264. In some cases the persons concerned have denied the activities alleged to prove their association with the party or organisation in question. In others the measures taken have been based on refusal to answer questions about membership of the DKP.

265. The grounds for the measures taken. The central allegation made against persons who have been refused admission to the public service or whom it was proposed to dismiss from the public service on the ground of deficient faithfulness to the basic order has been that of identifying themselves, directly or indirectly, with a party whose objectives are considered to be hostile to the Constitution. Within that framework, a wide range of actions or omissions have been regarded as evidencing a violation of the duty of faithfulness or, in the case of applicants, failure to guarantee that they would at all times uphold the free democratic order. For example, as regards association with the DKP - which is at issue in the majority of the documented cases brought to the attention of the Commission - the allegations range over the following matters: suspected activities in or for the DKP and refusal to answer questions about them and to dissociate oneself from the party; activities for an organisation said to be connected or influenced by the DKP; past activities, as a student, for an organisation influenced by the DKP; membership of the DKP; association in party activities such as attendance at meetings of the DKP, speaking at such meetings, writing articles for party publications, distributing party publications, soliciting funds for the party, or applying for permission for a party information stand in a public place; holding office in the DKP; standing as a DKP candidate at elections; being a DKP member of a municipal council. In any given case there is usually a combination of such allegations.

266. In its decision of May 1975, the Federal Constitutional Court stated that officials must unequivocally distance themselves from groups and endeavours which combated, attacked and defamed the State, its constitutional organs and the existing constitutional order. The Court also ruled that the fact of joining or belonging to a party which had aims hostile to the Constitution might constitute one of the elements taken into account in judging whether an applicant for the public service would at all times uphold the free democratic basic order. In the legal opinion by Professor Doebling submitted to the Commission by the Federal Government, it is observed that, if an applicant for a post in the public service states that, knowing the basic principles of the DKP, he intends to maintain this political affiliation, the rejection of his application would appear justified. Asked to comment on this statement when giving evidence before the Commission, the Federal Disciplinary Prosecutor observed that membership in a party such as the DKP, which expected special activity from its members, also when they were public officials, could have a decisive significance in considering whether to engage an applicant.¹⁸ He also indicated that the Federal Administrative Court had left open the question whether mere membership by an official in a party having aims hostile to the Constitution might constitute a violation of the duty of faithfulness.¹⁹ The witness representing the authorities of Baden-Württemberg stated that in all cases which had arisen in that Land, whether of refusal of applicants or dismissal, there had been activities beyond mere membership, so that there had been no occasion for deciding whether mere membership of a party with aims hostile to the Constitution was incompatible with

the duty of faithfulness.²⁰ The witness representing the authorities of Bavaria stated that mere membership in the DKP or NPD did not constitute a sufficient ground for refusing an applicant or for dismissal, but that in every case there must be facts which showed that the person concerned actively supported endeavours against the constitutional order; this requirement was established by the case-law of the courts.²¹ The witness representing the authorities of Lower Saxony stated that membership of a party hostile to the Constitution was considered as an indication pointing to the need for further inquiry. If an applicant admitted such membership, he was asked whether he wished to support the party's aims and adopt them as his own.²² The authorities of Lower Saxony indicated to the Commission, during its visit to the Federal Republic, that an applicant who cut himself loose from the aims of such an organisation could be accepted; on the other hand, if he held on to them, he could not. The report of the Office for the Protection of the Constitution of Rhineland-Palatinate for 1985 indicates the factors borne in mind in determining whether membership in a party with objectives hostile to the Constitution justifies the conclusion that an applicant for employment in the public service fails to guarantee faithfulness to the Constitution; they include voluntarily joining the party, failure to distance oneself from the party's constitutionally hostile objectives, and maintaining membership.²³

267. For example, Reinhilde Engel, a teacher employed in Baden-Württemberg as an official on probation since 1972, was dismissed in June 1981 on the ground of alleged membership of the DKP at least from 1973 to 1975 and because she declined to answer questions concerning her present relationship to the party and to dissociate herself from its aims. The Administrative Court, Karlsruhe, annulled the dismissal in December 1984, holding that inactive membership by an official in a lawful party did not violate the duty of faithfulness. The Land Government has appealed against that decision. In the case of Gesa Groeneveld, a social worker employed as a salaried employee at Esslingen, Baden-Württemberg, the employing authority, in a statement issued to the press in March 1986, indicated that it would have been prepared to discontinue proceedings for dismissal if Mrs. Groeneveld had declared her willingness to give up her membership of the DKP and activities for the DKP. In a series of letters addressed to the teachers' union (GEW) between March 1983 and May 1985 with reference to disciplinary proceedings against lifetime officials working as teachers in Rhineland-Palatinate, the chairman of the district administration of Rheinhessen-Pfalz stated that membership of the DKP or the NPD was contrary to the duty of officials to uphold the free democratic basic order. Astrid Weber was refused employment as a teacher in Rhineland-Palatinate in 1983 because she had not given an unambiguous reply to the question concerning present membership of the DKP; the letter of refusal stated that, according to several judgements given by the Federal Administrative Court in 1982, in such circumstances the requisite conviction of the applicant's future faithfulness to the Constitution could not be gained. In the cases of Thomas Bürger and Rainald Königs, officials on probation working as

teachers in Schleswig-Holstein, measures for dismissal have been based upon suspected membership of the DKP and refusal to answer questions concerning such membership or to dissociate themselves from that party.

268. Some of the cases brought to the attention of the Commission involve requirements of a statement of attitude towards a party of which the person concerned was not a member. For example, the judgement of the Bavarian Administrative Court in the case of Gerhard Bitterwolf (November 1985) indicates that a series of questions put to him to determine his fitness for appointment required him to comment on aspects of the aims and programme of the DKP, to which he did not belong.

269. The nature of the measures taken. In most of the documented cases before the Commission the measure the administration has applied or is seeking to apply is the exclusion of the person concerned from the public service. This has taken the form of disciplinary proceedings against officials for life; the dismissal of revocable officials, officials on probation, and salaried employees; refusals to admit qualified applicants to the public service; refusals of admission to the preparatory training service. Other cases have involved reduction in pay, reduction in pension, transfers for security reasons and refusal to allow contractual employees to become officials. The general application of the policy has led to very many inquiries, investigations, and interrogations.

270. Basing themselves largely on what is considered established case-law resulting from the judgements of the Federal Administrative Court in the Peter and Meister cases, some administrations have suspended officials for life with a reduction in pay or dismissed other categories of officials or salaried employees pending the conclusion of judicial proceedings.

271. The information available shows that in 1984 the Federal Post Office gave Herbert Bastian, Wolfgang Repp and Gustav Steffen the choice of immediately distancing themselves from the DKP or being suspended from their jobs pending the conclusion of the judicial proceedings against them. They refused to put an end to their DKP activities and were consequently suspended with a reduction in pay. Also the Post Office officials Axel Brück, Berthold Goergens and Egon Momberger, as well as the customs official Uwe Scheer, have been suspended; the railways official, Ulrich Eigenfeld, was suspended before his definitive removal from the service. The Federal Post Office did not lift the suspensions of Bastian, Brück, Goergens and Repp after the Federal Disciplinary Court had found in their favour on the substance of their cases, because the Federal Disciplinary Prosecutor appealed to the Federal Administrative Court against these judgements, which therefore did not take effect.²⁴

272. Suspensions of officials subject to disciplinary proceedings have also occurred at the level of the Länder. For example, in July 1986 the Lower Saxony authorities suspended Irmelin Schachtschneider

and Dorothea Vogt with a 50 per cent reduction in pay; in August 1986 they suspended Karl-Otto Eckartsberg.

273. Incidental effects of exclusion from the public service. Communications received from a number of the individuals concerned referred to the indirect effects that exclusion from the public service has had or was likely to have on their employment and occupation. They stated that they had not been or probably would not be able to find another job in the occupation for which they had been trained. If they found a job at all, it was, or was likely to be in another occupation and with a much lower grade than the one held previously.

274. Witnesses appearing before the Commission stated that the reason that had led to the exclusion of persons from employment in the public service would tend to stand in the way of their finding employment in the private sector. Private employers would be reluctant to employ someone dismissed from or not admitted to the public service on the ground that he was held to be hostile to the Constitution.²⁵ Employers in security-sensitive areas might have even more stringent political requirements than the public service.²⁶ As regards the prospects of excluded teachers, witnesses noted that there were, in any case, few private schools.²⁷ The current level of unemployment limited further the prospects of finding alternative employment.²⁸

Employer Name	Employment status	Nature and result of decisions and proceedings
I: FEDERAL SERVICE		
<u>Federal Post Office</u>		
*Herbert Bastian	Official for life (postal clerk)	Disciplinary proceedings; judgement in official's favour by Federal Disciplinary Court. Prosecutor's appeal pending before Federal Administrative Court.
Heinz-Jürgen Brammer	Salaried employee	Refusal of appointment as official.
Axel Brück	Official for life (telecommunications technician)	Disciplinary proceedings; judgement in official's favour by Federal Disciplinary Court. Prosecutor's appeal pending before Federal Administrative Court.

Employer Name	Employment status	Nature and result of decisions and proceedings
Karl Elsinger	Official for life (postal inspector)	Disciplinary proceedings; judgement in official's favour by Federal Disciplinary Court. Prosecutor's appeal pending before Federal Administrative Court.
Hans-Joachim Gerhus	Salaried employee	Refusal of appointment as official.
Berthold Goergens	Official for life (telecommunications technician)	Disciplinary proceedings; judgement in official's favour by Federal Disciplinary Court. Prosecutor's appeal pending before Federal Administrative Court.
Günter Hütter	Official for life (telecommunications technician)	Disciplinary proceedings initiated.
*Hans Meister	Official for life (telecommunications technician)	Disciplinary proceedings; dismissal ordered by Federal Administrative Court.
Volker Metzroth	Wage earner (telecommunications craftsman)	Transfer for security reasons to other, less qualified job; appeal against immediate entry into effect upheld by Labour Court.
Egon Momberger	Official on probation (telecommunications technician)	Investigations initiated.
*Hans Peter	Official for life (telecommunications technician)	Disciplinary proceedings; dismissal ordered by Federal Administrative Court.
Peter Pipiorke	(telecommunications craftsman)	To be transferred for security reasons.

Employer Name	Employment status	Nature and result of decisions and proceedings
*Wolfgang Repp	Official for life (postman)	Disciplinary proceedings; judgement in official's favour by Federal Disciplinary Court. Prosecutor's appeal pending before Federal Administrative Court.
Werner Siebler	Official on probation (postman)	Complaint against dismissal pending before Administrative Court.
Gustav Steffen	Official for life (postman)	Disciplinary proceedings initiated in Federal Disciplinary Court.
Helmut Wörz	Wage earner (telecommunications craftsman)	Transfer for security reasons to other, less qualified job.

Federal Financial Administration

*Uwe Scheer	Official for life (customs official)	Disciplinary proceedings initiated in Federal Disciplinary Court.
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Federal Railways

*Ulrich Eigenfeld	Official for life (railways clerk)	Disciplinary proceedings; dismissal ordered by Federal Disciplinary Court and upheld by Federal Administrative Court. Constitutional complaint not admitted by Federal Constitutional Court.
Joachim Mende	Official for life (railways clerk)	Investigations concluded. Disciplinary proceedings expected.

Employer Name	Employment status	Nature and result of decisions and proceedings
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Federal Social Security Institute for Salaried Employees

Edith Wiese-Liebert	Official on probation (superintendent)	Dismissal upheld by Land Administrative Court. Refusal of leave to appeal confirmed by Federal Administrative Court.
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II: SERVICE IN LANDER

BADEN-WÜRTTEMBERG

Teachers

Sigrid Altherr-König	-	Claim to be engaged as contractual employee rejected by Land Labour Court.
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Christa Asprion	Revocable official (preparatory service)	Revocation of appointment upheld by Administrative Court. Appeals pending.
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Reinhilde Engel	Official on probation	Complaint against dismissal upheld by Administrative Court. Government appeal pending before Land Administrative Court.
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*Gerlinde Fronemann	Official on probation	Complaint against dismissal upheld by Federal Administrative Court. New proceedings under consideration.
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Julika Haibt	-	Complaint against refusal of admission to preparatory service as contractual employee upheld by Federal Labour Court.
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Employer Name	Employment status	Nature and result of decisions and proceedings
Rolf Kosiek	Official on probation	Dismissal upheld by Land Administrative Court. Appeal dismissed by Federal Administrative Court. Constitutional complaint not admitted by Federal Constitutional Court. European Court of Human Rights held that there had been no interference with a right protected under the European Convention of Human Rights.
*Klaus Lipps	Official on probation	Complaints against dismissal upheld by Land Administrative Court. Government's complaint against refusal of leave to appeal rejected by Federal Administrative Court.
Hans Schaefer	Official on probation	Dismissal upheld by Land Administrative Court. Refusal of leave to appeal confirmed by Federal Administrative Court.
Martin Zeiss	Official on probation	Complaint against dismissal pending before Administrative Court.
<u>Judicial service</u>		
Gerd Wernthaler	Official on probation	Appointment as official for life after delay due to investigations.
<u>Social worker</u>		
Gesa Groeneveld	Salaried employee	Judgement of Land Labour Court upholding complaint against dismissal quashed by Federal Labour Court, and case referred back to Land Labour Court.

Employer Name	Employment status	Nature and result of decisions and proceedings
BAVARIA		
<u>Teachers</u>		
*Gerhard Bitterwolf	-	Refusal of appointment as official on probation, after completion of preparatory service, upheld by Land Administrative Court. Refusal of leave to appeal confirmed by Federal Administrative Court.
Hans Heinrich Häaberlein	-	Complaint against refusal of admission to preparatory service upheld by Land Administrative Court. Applicant subsequently appointed official on probation and then official for life.
Alfred Karl	-	Judgement of Land Labour Court upholding refusal of appointment as university assistant quashed by Federal Labour Court. New judgement of Land Labour Court pending.
Manfred Lehner	-	Complaint against refusal of admission to preparatory service upheld by Land Administrative Court. Applicant subsequently admitted and later appointed official on probation.
Friedrich Sendlesbeck	-	Refusal of admission to preparatory service as contractual employee upheld by Land Labour Court. Appeal to Federal Labour Court pending.

Employer Name	Employment status	Nature and result of decisions and proceedings
<u>Judicial service</u>		
Beate Büttner	Salaried employee (legal trainee)	Refusal of admission to legal training as revocable official upheld by Administrative Court.
Cornelia Lindner	Salaried employee (legal trainee)	Refusal of admission to legal training as revocable official upheld by Administrative Court.
*Charlotte Niess-Mache -		Refusal of appointment as judge on probation, after completion of preparatory service, upheld by Land Administrative Court.
Thomas Rosenland	Salaried employee (legal trainee)	Refusal of admission to legal training as revocable official upheld by Administrative Court.
Maria Wittgen	Salaried employee (legal trainee)	Refusal of admission to legal training as revocable official upheld by Administrative Court.
HESSEN		
<u>Teachers</u>		
Mario Berger	-	Refusal of appointment as official on probation, after completion of preparatory service, upheld by Land Administrative Court. Engaged as contractual employee after change of Land Government's policy in 1984.

Employer Name	Employment status	Nature and result of decisions and proceedings
Angelika Wahl	-	Refusal of appointment as official on probation in 1975. Refusal of engagement as salaried employee after change of Land Government's policy in 1984 (based on level of qualifications) upheld by Labour Court. Appeal pending before Land Labour Court.
LOWER SAXONY		
<u>Teachers</u>		
*Karl-Otto Eckartsberg	Official for life	Disciplinary proceedings; judgement in official's favour by Land Administrative Court. New disciplinary proceedings initiated.
Heike Flessner	Official for life	Disciplinary proceedings initiated in Administrative Court.
Alies Klüver	Official for life	Dismissal ordered by Administrative Court. Appeal to Land Administrative Court pending. Warning of new disciplinary proceedings.
Heinze-Udo Lammers	Salaried employee	Dismissal without notice and subsequent dismissal with notice annulled by Labour Courts. Government appeal pending before Federal Labour Court. New notification of dismissal.
Helga Lange	Official for life	Disciplinary proceedings initiated.

Employer Name	Employment status	Nature and result of decisions and proceedings
Ulrich Lepa	Official on probation	Dismissal.
Ulrike Marks	Official for life	Disciplinary proceedings initiated in Administrative Court.
Hans-Joachim Müller	Official on probation	Disciplinary proceedings; judgement in official's favour by Federal Administrative Court. New notification of dismissal.
Heiko Pannemann	Official for life	Disciplinary proceedings; judgement in official's favour by Administrative Court.
Udo Paulus	Official for life	Dismissal ordered by Administrative Court. Proceedings before Land Administrative Court terminated by agreement between the parties.
Irmelin Schachtschneider	Official for life	Disciplinary proceedings initiated in Administrative Court.
*Matthias Schachtschneider	Official for life	Disciplinary proceedings initiated in Administrative Court.
Rolf Schön	Salaried employee	Dismissal without notice and subsequent dismissal with notice annulled by Labour Court. Government appeal pending before Land Labour Court. New notification of dismissal.
Thomas Schultze-Kranert	Official for life	Disciplinary proceedings; judgement in official's favour by Administrative Court.

Employer Name	Employment status	Nature and result of decisions and proceedings
Dorothea Vogt	Official for life	Disciplinary proceedings initiated in Administrative Court.
Thomas Weber	-	Engagement in university faculty of chemistry as contractual employee halted pending investigations.
Elisabeth Welters	-	Refusal of employment.
Matthias Wietzer	-	Refusal of appointment as official on probation upheld by Administrative Court; appeal pending. Refusal of appointment as contractual employee upheld by Land Labour Court.
<u>University administration</u>		
Helga Wilhelmer	Official for life	Disciplinary proceedings initiated in Administrative Court.
<u>NORTH RHINE-WESTPHALIA</u>		
<u>Teacher</u>		
Julia Glasenapp	Official on probation	Revocation of appointment in 1975 upheld by Land Administrative Court. Constitutional complaint not admitted by Federal Constitutional Court. European Court of Human Rights held that there had been no interference with a right protected under the European Convention of Human Rights.

Employer Name	Employment status	Nature and result of decisions and proceedings
RHINELAND-PALATINATE		
<u>Teachers</u>		
Evelyn Barthel	Official for life	Disciplinary proceedings initiated.
Elke Burkart	Official for life	Disciplinary proceedings initiated.
Ulrich Foltz	Official on probation	Dismissal upheld by Administrative Court.
*Wolfgang Jung	Official for life	Disciplinary proceedings; 15 per cent reduction in earnings for three years ordered by Administrative Court.
*Maria Lachmann	Official for life	Disciplinary proceedings initiated.
Rüdiger Quaer	Official on probation	Dismissal upheld by Federal Administrative Court. Constitutional complaint not admitted by Federal Constitutional Court. Complaint pending before European Commission of Human Rights.
Walter Schmitt-Mix	Official for life	Investigations initiated.
Astrid Weber	-	Refusal of appointment as official on probation.
SCHLESWIG-HOLSTEIN		
<u>Teachers</u>		
*Thomas Bürger	Official on probation	Disciplinary proceedings pending before Administrative Court.
Rainald Könings	Official on probation	Notification of dismissal.

Case descriptions

Federal level

275. **Herbert Bastian.** Bastian was engaged by the Federal Post Office in 1960, when he was 14 years old. In 1971 he was appointed official for life. He has been promoted three times. He worked in the mail sorting division of the Marburg Post Office. Bastian joined the DKP in 1973. Since 1974 he has been a member of Marburg municipal council as a DKP representative. Bastian is also a member of the Deutsche Postgewerkschaft (DPG), and was the DPG representative in the Marburg mail sorting division.

276. A performance appraisal made in August 1979 described Bastian's performance as "fully satisfactory"; his conduct in the service was free from reproach, and nothing unfavourable was known outside the service. Bastian stated that his activity in the Marburg city council had always been marked by an active commitment to the democratic and social principles of the Basic Law, the Constitution of Hessen, and the constitutional order in general. He had seen his elective office as a mandate to act to improve the conditions of life of the population. In accordance with the relevant legal provisions, the Federal Post Office had always given him time-off to attend the council's sessions.²⁹

277. In 1979 the Post Office initiated investigations into his membership of and activities for the DKP, especially his membership of the Marburg municipal council as a DKP representative. So as to put an end to the disciplinary proceedings, the Federal Ministry for Posts and Telecommunications in 1981 offered to keep Bastian on as a wage earner if he requested his discharge from the status of official. In evidence before the Commission Bastian stated that the offer had been made by the SPD-FDP government in response to growing criticism at home and abroad; he had refused it because he did not wish, by requesting his discharge from the status of official, to accept a practice of political persecution and discrimination or to be an accomplice of those who annulled constitutional rights and freedoms.³⁰

278. When questioned in August 1982, Bastian was asked for his opinion on the judgement of the Federal Administrative Court of 1981 in the Peter case. He stated that he did not consider himself to be bound by the judgement, especially as it had been criticised by a number of jurists.³¹ In 1983 the Federal Minister for Posts and Telecommunications initiated disciplinary proceedings against him in the Federal Disciplinary Court.

279. On the grounds that he expected the courts to order Bastian's dismissal, the Federal Minister for Posts and Telecommunications suspended him at the end of September 1984 with a 20 per cent reduction in pay. When informed in August 1984 of the Ministry's intention to suspend him, he was again asked whether, in view of the

settled case law of the Federal Administrative Court - the Peter judgement (1981) and the Meister judgement (1984) - he was willing to dissociate himself from the DKP and to give up all his activities for that party, including his municipal council mandate for the DKP.

280. In November 1984 the Federal Disciplinary Court ordered the cessation of the proceedings because of procedural defects in consulting the staff council. In December 1984 the Federal Disciplinary Court also annulled Bastian's suspension. However, that decision did not take effect, as the Federal Disciplinary Prosecutor appealed against it. Both decisions of the Federal Disciplinary Court were reversed by the Federal Administrative Court in February 1985; it ordered the Federal Disciplinary Court to deal with the substance of the case.

281. In a judgement of 20 October 1986, the Federal Disciplinary Court held that Bastian had not violated the duty of faithfulness by his membership of and activities for the DKP.³² It found, however, that Bastian had violated his duty of restraint and respect by a newspaper article impugning the objectivity and independence of the Federal Administrative Court, and imposed a 5 per cent reduction in pay for six months. The Federal Disciplinary Prosecutor has appealed against the first of these decisions to the Federal Administrative Court.

282. In his evidence before the Commission, Bastian observed that the training he had received was specific to the Post Office; it would not qualify him for skilled work elsewhere. If he were dismissed from the service - and that was the aim of the proceedings against him - he would have to do casual or unskilled work. In effect, there would be an occupational ban against him.³³

283. In his decision to suspend Bastian, the Federal Minister for Posts and Telecommunications stated that neither the vast majority of the officials of the Federal Post Office nor public opinion would understand why an official charged with serious breaches of duty that could be expected to lead to his dismissal should remain in the service. Bastian told the Commission that the response of his colleagues and the concern shown by the public had shown the contrary to be true. With a view to supporting him in the proceedings before the Federal Disciplinary Court, some 1,240 persons had signed a full-page statement in the local paper, and the Marburg-Biedenkopf branch of the DGB had organised a solidarity meeting for him, in which some 500 trade unionists had taken part.³⁴ The Mayor of Marburg wrote to the Minister for Posts and Telecommunications in March 1983 and again in August 1984. In the former letter, he requested the Minister to abandon the proceedings against Bastian, for legal, personal and political reasons. While stressing that he himself was opposed to the DKP, he said he found it unjustifiable that membership of the municipal council should be held against Bastian, whose attitude in the council had in no way been hostile to the Constitution. One

had to consider also that Bastian had for 24 years had an irreproachable record of service, and that as a postal clerk he would not be in a position to threaten seriously the free democratic basic order of the Federal Republic. In the second letter, the mayor asked the Minister not to suspend Bastian. He observed that the mere exercise by Bastian of his rights of freedom of association and expression, without engaging in activities that were hostile to the Constitution, should not be the subject of disciplinary proceedings. The mayor also referred to the local authority regulations of Hessen, according to which no one should suffer prejudice at his workplace as a result of exercising an elective mandate. On both occasions, the Minister replied that he could not accede to the mayor's request, since Bastian had committed a serious breach of duty.

284. In October 1984 the Hessen Diet adopted a motion criticising the Federal Minister's decision to suspend Bastian (as well as Axel Brück and Wolfgang Repp) and demanding the withdrawal of the decision. In October 1985 the Marburg municipal council adopted a motion protesting against Bastian's suspension and the disciplinary proceedings against him.

285. Ulrich Eigenfeld. Eigenfeld was appointed a clerk in the Federal Railways in May 1971, and official for life in August 1974. In 1978 he was refused a promotion, as he was suspected of continually violating his duty by standing as a candidate for and holding office in the NPD.

286. According to appraisals referred to in the judgement of the Federal Administrative Court, Eigenfeld's performance in his service had always been favourably assessed; he had sometimes received the grade of "very good".

287. By its judgement of 26 April 1984 the Federal Disciplinary Court ordered Eigenfeld's dismissal on the grounds that he had violated his duty of political faithfulness: he had been a member of the NPD since 1969; he had held various offices in the party, including the deputy chairmanship of the Lower Saxony NPD and membership of the NPD's federal committee; he had stood as a NPD candidate in local, Land and federal elections; as the director of the NPD's department for relations and planning, he was currently in charge of redrafting the NPD's programme. The court stated that the NPD, which Eigenfeld objectively supported by his activities, was a party that pursued objectives that were incompatible with the Constitution. The party's real intentions could not be inferred from its programme or statutes, but rather from the statements of party supporters, officials and members, of organisations that were close to or connected with the party, as well as from printed material and articles in the official party newspaper, "Deutsche Stimme".

288. Eigenfeld appealed against the judgement of the Federal Disciplinary Court; during the ensuing proceedings he was suspended from his job. In his appeal Eigenfeld argued that, as a member of the

party's federal committee, he was in a position to oppose statements and publications that conflicted with the party's intentions and work and that were directed against the free democratic basic order. It was thanks to him and his supporters that certain NPD office-bearers had been expelled for presenting views that had led to the wrong conclusions being drawn about the party's intentions. As a result, the image of the party had changed in the past few years; the Federal Disciplinary Court had not taken this into account.

289. In its judgement of 12 March 1986 the Federal Administrative Court rejected Eigenfeld's appeal. The duty of political faithfulness, stated the Court, applied to an official's conduct outside his service as well as in his service. That Eigenfeld's political opinions had had no effect on the way he carried out his duties or on his dealings with colleagues, and that he had stated that he was committed to the Constitution were not considered to be relevant. The court stated also that, given his public identification with the party, it did not matter whether he supported the NPD's objectives as a whole or only in part. Recent statements made by leading party officials made it clear that the NPD's basic attitude had not changed, despite the repeated changes in the party's leadership and the purported expulsion of certain members. Although it conceded that the NPD's statements had become more moderate, and that, in particular, it had recently refrained from statements inspired by National Socialism, the Court observed that the party had not explicitly dissociated itself from its previously expressed opinions. By his activities in and for the party, Eigenfeld had identified himself with its ideology. An official's duty to distance himself from such a party was not fulfilled if, while working inside the party to turn it away from objectives hostile to the Constitution, he nevertheless publicly supported its programme and policy by accepting candidatures for and positions in it and acted as its representative. At no time had Eigenfeld publicly dissociated himself from those statements by party officials of which he disapproved. Since he refused to put an end to his work in the NPD, he had to be dismissed. That conclusion could not be affected by the fact that the Federal Railways had, during the preliminary investigations, offered to continue to employ him as a contractual employee in the field in which he had worked up till then if he gave up his status of official. The courts could not be bound by the opinion of the employer, which was often guided by considerations of expediency.

290. In view of his long and otherwise irreproachable service, the Court decided to accord him a financial allowance of 75 per cent of his earned pension during six months, which might be prolonged by the Federal Disciplinary Court on proof of inability to find other employment.

291. The Federal Constitutional Court in June 1986 refused to admit Eigenfeld's constitutional complaint on the grounds of insufficient prospect of success.

292. Hans Meister. Meister was engaged by the Federal Post Office in 1959, when he started his apprenticeship. In July 1964 he became a qualified engineer. From 1968 until his dismissal he worked in a telephone exchange in Stuttgart. In July 1970 he was appointed official for life, and in 1974 he was promoted to the position of senior technical telecommunications official. Meister told the Commission that in this position he was among those responsible for organising the work in his branch.³⁵

293. In an official appraisal referred to in the judgement of the Federal Disciplinary Court, Meister's performance was described as very good and well above average. There were no grounds to believe that he had sought, during his working time, to enlist support for an extremist political party. He was described in the appraisal as one of the most professionally and personally respected officials in the telephone exchange.

294. As from 1970 he was a member of the examinations committee for telecommunications workers during two four-year periods. He had been nominated by the DPG, and sometimes acted as chairman of that committee.

295. Meister joined the DKP in 1970, and has regularly engaged in activities for that party. He was a member of the Baden-Württemberg council of the DKP, and from 1975 onwards was a DKP candidate in various local and national elections and for the office of mayor of Stuttgart.

296. As an active member of the DPG, Meister was the union's representative and group chairman at the telephone exchange.

297. In July 1979 the Federal Minister for Posts and Telecommunications initiated disciplinary proceedings against Meister. In his evidence before the Commission, Meister said that already in 1973 an application he had made for a job had been rejected on political grounds; in 1978 he had been transferred for security reasons.³⁶

298. In November 1979 the official investigator concluded that the evidence received had not confirmed the complaint. In his evidence before the Commission, Meister stated that, as a result of this conclusion, the Federal Minister for Posts and Telecommunications had informed the Federal Disciplinary Prosecutor that he intended to abandon the proceedings. The Prosecutor, however, opposed this and initiated disciplinary proceedings against Meister in the Federal Disciplinary Court.³⁷ In the Prosecutor's complaint, Meister was accused of having, since 1971, continually violated his duty of faithfulness, by his membership of and activities for an organisation hostile to the Constitution, the DKP.

299. Meister told the Commission that in 1981 the Ministry for Posts and Telecommunications had offered to keep him as a contractual employee if he requested his discharge from his status of official;

at the same time, he would have been transferred to a position that was not "security-sensitive". He had refused the offer because he would not have been able to retain a job as an electrical engineer, and because he did not want to recognise the allegations that he was a threat to the Constitution and a security risk. Meister told the Commission that the administration had produced no concrete evidence to show that he was a security risk; he had merely been told that in a crisis he would have to be so regarded. Meister stressed that he had never handled confidential material in his work, which was based on information to which any member of the public could have access.³⁸

300. The Federal Disciplinary Court, in November 1982, found in Meister's favour. The Court observed that Meister could see no conflict between the free democratic basic order set down in the Constitution and the objectives of the DKP. Nevertheless, he did not want to be judged by the DKP programme, but by his own intentions and convictions. His socio-political objectives were also contained in the programme of his union, the DPG. The Disciplinary Court stated, in accordance with the judgement of the Federal Administrative Court in the Peter case (29 October 1981), that the objectives of the DKP were incompatible with the free democratic basic order. It nevertheless found in Meister's favour because it had not been established that, by his membership of the DKP and by exercising a function in that party and being its elective candidate, he had violated his duty of faithfulness. Meister's membership of a party pursuing objectives hostile to the Constitution did not necessarily mean that he himself disapproved of and combated the free democratic basic order and intended, from his position as an official, to destroy it. The Court accepted as credible his statement that he did not intend to change the Federal Republic's state structures by force. It also noted that his aims were consistent with those of his trade union, the DPG. The resolution of the conflict between the unambiguous judicial decisions concerning the anti-constitutional objectives of his party and Meister's equally unambiguous statement of support for the Constitution was not a matter for the Court to settle, but a problem for his conscience. The Court considered that Meister could not be reproached for his political activities which went beyond mere membership in the party. In respect of candidacies in elections, the Court observed that, as long as the party in question was not banned, they should - all the more to protect democracy and the free expression of the will of the people - not be impeded.

301. On appeal by the Federal Disciplinary Prosecutor, the Federal Administrative Court on 10 May 1984 reversed the decision and ordered Meister's dismissal. Particulars of this judgement will be found in Chapter 5, paragraph 224.

302. In his evidence before the Commission, Meister observed that in its decision of May 1975 the Federal Constitutional Court had stated that, in judging whether the duty of faithfulness to the free democratic basic order was fulfilled, only the individual case under consideration was to be taken into account, with an evaluation of a

series of factors that varied from one case to another. Meister observed that the Federal Disciplinary Court, after evaluating the specific features of his case, had found in his favour. He had been able to explain in detail and reply to the Court's many questions about his political convictions, activities, and political aims. In contrast to the Federal Disciplinary Court, the Federal Administrative Court had shown no interest in his personality, actions, and aims. The court had not asked him a single question about his political activities. No account had been taken of a statement he had made to the Court, of the copies of public speeches he had made, and of the programme he had put forward in the elections for the mayor of Stuttgart. Not he had been in the dock, but his party, the DKP.³⁹

303. Meister also told the Commission that already when he was heard in October 1979 he had clearly stated that he was committed to the basic principles underlying the free democratic basic order: respect for human rights, sovereignty of the people, separation of powers, accountability of the Government to Parliament, the independence of the courts, the multi-party system and the right to form an opposition.⁴⁰

304. In his evidence before the Commission, Prof. Däubler, who had acted for Meister before the Federal Administrative Court, said that the Court had taken no account of Meister's assurances that he supported and would act in conformity with the Constitution.⁴¹

305. Noting his long and otherwise irreproachable service and constantly recognised performance, the Federal Administrative Court granted Meister 75 per cent of his earned pension during six months after his dismissal, a payment which might be prolonged by the Federal Disciplinary Court on proof of inability to find other employment.

306. Meister informed the Commission that since his dismissal in May 1984 he had not been able to find a job in the occupation, for which he had been trained, despite the shortage of electrical engineers on the labour market. His dismissal on political grounds had deterred those who might have employed him. After a long period of unemployment he was trying to support his family by working as an independent journalist. That was very difficult, and brought many problems.

307. During the proceedings against him, Meister received support from workers' representatives and trade unions. The central staff council at the Federal Ministry for Posts and Telecommunications in May 1979 opposed the initiation of the disciplinary proceedings. A resolution adopted by the 14th DPG Congress (1983) stated that the proceedings against Meister before the Federal Administrative Court typified the intensification of the practice of occupational bans (Berufsverbote) and urged the Federal Disciplinary Prosecutor to withdraw his appeal against the judgement of the Federal Disciplinary Court.

308. Hans Peter. Peter was engaged by the Federal Post Office in 1951, and worked at a telephone exchange in Stuttgart. He was appointed official for life in 1959, and promoted chief technical telecommunications secretary in 1971. In an official appraisal referred to in the judgement of the Federal Disciplinary Court, his performance was described as "good to very good"; his effort and conduct were outstanding, and he was one of the most respected officials at the telephone exchange.

309. Peter was an active trade unionist: he held various trade union offices, including membership of the council of the DPG at his place of work.

310. Peter joined the DKP in 1969 and was publicly active for the party. He stood as a candidate for the DKP in elections, was responsible for local newspapers, and was for a few years a member of the council of the DKP, Stuttgart. No comments were made on his activities until 1972, when he was heard by two post office officials. After the hearing, he was informed that the impression was that he acted within the Constitution.

311. Five years after this hearing, the Federal Post Office initiated investigations. Peter was alleged to have violated his duty of the faithfulness to the free democratic basic order by being a member of the DKP; writing articles for and being presented in DKP journals; being a DKP candidate in various local elections; visiting with other DKP members the GDR for political purposes. In April 1978 Peter was questioned by the investigator, a director of the Post Office, who concluded that there was no evidence of concrete activities hostile to the Constitution. Also the central staff council at the Federal Ministry for Posts and Telecommunications was of the opinion that Peter had not committed a breach of duty. Nevertheless, at the end of 1978 Peter was transferred for security reasons to a job in the postal order section, and in January 1979 the Federal Disciplinary Prosecutor initiated disciplinary proceedings in the Federal Disciplinary Court.

312. In March 1980 the Federal Disciplinary Court found in Peter's favour. The Court held that the DKP's objectives were incompatible with the free democratic basic order. On the other hand, it stated that DKP membership fell within the scope of "having a conviction and declaring it", which was protected by the decision of the Federal Constitutional Court of 22 May 1975. The Court considered that editing a DKP journal, holding office in the party, and being a DKP candidate in elections were evidence of an objective breach of duty, but that Peter's activities for the DKP did not constitute a culpable breach of duty as provided in section 77(1)(1) of the Federal Civil Service Act, mainly because his supervisors had not been able to inform him unequivocally whether those activities would have disciplinary consequences; in the Federal Post Office the legal situation was considered to be uncertain. The burden of this legal uncertainty should not fall on Peter.

313. On 29 October 1981 the Federal Administrative Court reversed the decision. It held that Peter had constantly violated his duty of faithfulness to the State and to the Constitution and ordered his dismissal. The Court observed that the application of a less severe sanction would have no effect on Peter, since he intended to continue his activities. His otherwise irreproachable conduct could not affect the Court's judgement.

314. The Federal Administrative Court did not grant any temporary financial allowance to Peter, as his wife had an income greater than the highest possible allowance that could have been granted. Further particulars of this judgement will be found in Chapter 5, paragraph 224.

315. In its comments to the Commission, the DPG observed that the only reason for Peter's dismissal was that he was an active member of the DKP; neither in nor outside his service had he engaged in activities that were hostile to the Constitution.

316. Wolfgang Repp. Repp is a postman in Frankfurt/Main, Hessen. He has been in the service of the Federal Post Office since 1965. He was promoted to the rank of senior postal clerk in 1972, and was appointed an official for life in 1977.

317. In a decision of the Federal Disciplinary Court in 1984 Repp's performance was described as "good"; it was also stated that he had not engaged in political activities in service. In March 1982 the Post Office management, Frankfurt/Main, appointed him member of an examinations committee. Repp is an active member of the DPG and of the staff council of Post Office 1, Frankfurt/Main.

318. Repp was first questioned in April 1975 about his membership in the DKP and his DKP candidacies in local elections in 1972 and 1974. In June 1976 he was informed that the Federal Ministry for Posts and Telecommunications had concluded that, because of his activities for the DKP and its front organisations, he could not expect to be appointed official for life in 1977; he would be dismissed if by that time he was unable to dispel doubts about his faithfulness to the Constitution. Nevertheless, after protests by colleagues and members of the public, he was appointed official for life in June 1977.

319. In June 1978 the Federal Post Office suggested that, to avoid disciplinary proceedings, Repp give up his functions in and activities for the DKP. He refused to dissociate himself from the DKP. Preliminary investigations were initiated against Repp in June 1979 for suspected breach of the duty of faithfulness on the grounds of membership of the DKP, activity in that party since 1972, unwillingness, despite advice, to give up these activities, standing as a candidate for the DKP in the 1978 elections to the Land Diet, and membership of the committee of the Hessen branch of the DKP.

320. In 1981 Repp was informed that, if he requested discharge from his status of official, the Federal Ministry for Posts and Telecommunications would be willing to employ him as a wage earner. He refused this offer, saying that to accept it would be to disregard his own constitutional rights. In May 1982, he was asked whether, after learning of the Federal Administrative Court's decision of 29 October 1981 (Peter judgement), he was willing to put an end to his activities for the DKP.

321. In 1983 the Federal Minister for Posts and Telecommunications initiated proceedings against Repp in the Federal Disciplinary Court. In March 1984 that court rejected the complaint, on the ground that Repp's appointment as official for life despite his DKP activities had been a "deliberate, definitive and unconditional decision" of the Federal Ministry for Posts and Telecommunications and, as such, a decision to refrain from dismissing him. In July 1984 the Federal Administrative Court quashed that decision: it ruled that the complaint against Repp was admissible and must be heard by the Federal Disciplinary Court.

322. In September 1984 the Federal Minister for Posts and Telecommunications decided to suspend Repp, with a 25 per cent reduction in pay. In November 1984 the Federal Disciplinary Court annulled that decision for procedural reasons. The Post Office did not allow him to resume work, because the Federal Disciplinary Prosecutor appealed against the Court's decision. The Federal Disciplinary Court in December 1984 ordered the Post Office to allow him to resume work, pending the Federal Administrative Court's decision on the appeal. In January 1985 the Federal Administrative Court reversed that Court's decision, so confirming Repp's suspension and pay reduction.

323. On the substance of the case, the Federal Disciplinary Court decided in Repp's favour in June 1985 on the ground that his membership in and activities for the DKP did not constitute a disciplinary offence. Further particulars of this judgement will be found in Chapter 5, paragraph 232. The Federal Disciplinary Prosecutor has appealed against this judgement.

324. Protests concerning the Repp case began in 1976. They were directed against the Ministry's intention not to appoint him official for life, and included the collection of 10,000 signatures with, among them, those of the President of the DGB, H.O. Vetter, and the Chairman of the DPG in Hessen. In August 1978 the committee of the Frankfurt branch of the DPG wrote to the Chairman of the SPD group in the Federal Diet. It said it disapproved of the action taken by the Federal Minister for Posts and Telecommunications and hoped that the SPD group, which supported the Government, would help to keep Repp in his occupation. In October 1984 the conference of the Hessen branch of the DPG protested against the suspension of several postal officials, including Repp; it called for cancellation of these suspensions and abandonment of disciplinary proceedings. In October

1984, the Hessen Diet adopted a motion criticising the Federal Ministry's decision to suspend Repp (as well as Herbert Bastian and Axel Brück) and demanding the withdrawal of the decision.

325. Uwe Scheer. Since 1963 Scheer has been employed in the clerical service of the Federal Financial Administration. In November 1967 he was appointed official for life. In July 1971 he was promoted to the grade of senior customs secretary. He has worked in Hamburg, first in border clearance, then as a clearance official at an inland customs house, and finally in the accounts department. In the latest (1983) official appraisal, Scheer's performance was described as excellent; he was worthy of further promotion.

326. In 1965 Scheer became a workplace representative of the Gewerkschaft Öffentliche Dienste, Transport und Verkehr (ÖTV), and was until 1978 a member of the committee of the ÖTV's department for the Federal Financial Administration. He was elected member of the staff councils at his workplaces and of the district staff council at the Federal Financial Administration, Hamburg.

327. In May 1983 the Federal Financial Administration informed Scheer that investigations had been initiated concerning his candidacies on the DKP list in Hamburg-Wandsbek council elections in 1978 and 1982. He was requested to dissociate himself from the DKP. Disciplinary proceedings were initiated in August 1983. The district staff council, on which the Deutscher Beamtenbund (DBB) has a majority, approved the initiation of these proceedings, on condition that Scheer should not be suspended or have his pay reduced. In February 1985 the Federal Disciplinary Prosecutor initiated proceedings in the Federal Disciplinary Court, charging Scheer with having continuously violated his duty of political faithfulness through his membership and activities for a party hostile to the Constitution, the DKP; the allegations were his candidacies for the DKP and his presumed membership of that party. Scheer has refused to say whether he is a member of the DKP, arguing that such questions are out of order. By April 1986 a date for the hearing of the case before the Court had not yet been set.

328. In May 1985 the Federal Financial Administration suspended Scheer, reduced his pay by 20 per cent, and cancelled his vacation pay, his "thirteenth" month bonus, and his progression to a higher seniority step. According to Scheer, these measures reduced his annual income by DM 7,000 in 1985. The staff council protested against Scheer's suspension; it was, however, upheld by the Federal Disciplinary Court.

329. In a communication submitted to the Commission, Scheer observed that his candidacies for the DKP had been announced in the official gazette. At the time no authority or superior told him that such conduct was inadmissible. Action was taken only five years after the first, and a year after the second and third candidacies. He considered that exercising the right to be elected could not be a breach of duty.

330. The ÖTV is providing Scheer with legal assistance. Among persons and organisations supporting him are the Hamburg branches of the Gewerkschaft Erziehung und Wissenschaft, the Gewerkschaft Druck und Papier, and the Gewerkschaft Handel, Banken und Versicherungen; the SPD group in the Hamburg-Wandsbek council; the Hamburg-Steilshoop branch of the SPD; and the member of the Federal Diet for Hamburg-Wandsbek, and a former mayor of Hamburg, Hans-Ulrich Klose. A group of citizens of Hamburg who were affected while the practice of "occupational bans" was applied in Hamburg, in a declaration supporting Scheer, stated that, as a result of the solidarity they had received, the Government of Hamburg had in 1979 put an end to the practice and rehabilitated those who had been affected by it.

Baden-Württemberg

331. Gerlinde Fronemann. In September 1971 Fronemann was appointed official on probation in the school service of Baden-Württemberg. She teaches at schools for handicapped children; at present at a special school for speech therapy.

332. In September 1977 Fronemann was heard by the education authority (Oberschulamt Karlsruhe), which because of her presumed membership of and activities for the DKP ordered her dismissal without notice in November. The specific allegations against Fronemann were that at least in the years 1975-1977 she had been a member of the DKP; that she had visited the German Democratic Republic in a DKP delegation; that she had participated in various DKP meetings; and that she had been elected to the committee and had been responsible for the newspaper of the DKP group of a district of the city of Karlsruhe. Fronemann refused to reply to these allegations.

333. In a communication submitted to the Commission, Fronemann said that because of the many protests by parents, colleagues, school directors, trade unions, and members of the Baden-Württemberg and Federal Diets, her dismissal was not put into effect.

334. In rejecting her internal appeal, the education authority added as a further allegation that Fronemann had co-signed a pamphlet entitled "Away with the occupational bans!" In January 1980 the Karlsruhe Administrative Court rejected her complaint. The court stated that Fronemann's many declarations that she was committed to the Constitution, which she had repeated in the hearing before the court, did not provide evidence of her faithfulness to the Constitution. In November 1981 the Baden-Württemberg Administrative Court rejected Fronemann's appeal. The court stated that by accepting a party office and being a publisher of a DKP newspaper Fronemann had identified herself with the party's programme. Her other activities - visit to the GDR and participation in DKP meetings - might, separately, not have to be evaluated as a breach of duty; taken as a whole, however, they served to complete the legal evaluation of Fronemann's conduct. The court considered it unnecessary to go into the allegation

that Fronemann had signed the pamphlet against occupational bans. It concluded that since Fronemann had violated her duty of faithfulness to the Constitution, a core duty of an official, there was no cause to consider whether she should nevertheless be kept in the service, even if account were taken of her outstanding technical aptitude and performance and of the fact that her teaching had not given rise to any reservations.

335. The Federal Administrative Court in May 1985 reversed the judgements of the lower courts and annulled Fronemann's dismissal. It based its decision on the failure of the education authority to comply with the requirement of the Staff Representation Act to consult the competent staff council before a dismissal without notice.

336. In May 1985, after the decision of the Federal Administrative Court, FDP, Grunen, and SPD members of the Baden-Württemberg Diet tabled a motion calling on the Land Government to appoint Fronemann an official for life and to refrain from the initiation of new proceedings against her. It was stated in favour of this motion that the decision of the Federal Administrative Court had annulled the dismissal without notice, and that throughout her fourteen years of teaching Fronemann had received only positive appraisals from parents, colleagues, professors and the schools' authority. The Ministry of Education and Sport replied in June 1985 that before it received the grounds for the Federal Administrative Court's decision, it could not decide whether the case should be pursued. It added that in questions concerning a teacher's duty of faithfulness to the Constitution length of service could not be a decisive consideration. Moreover, in recent years repeated court decisions had established that a violation of the duty of faithfulness generally had such a serious legal effect that the esteem in which a teacher was held by parents, colleagues, professors and the schools' authority could, in the final event, not be taken into consideration.

337. In the communication submitted to the Commission, Fronemann stated that the above-mentioned motion was handled in the Diet's standing committee; a final decision was, however, not taken because the representative of the Land Government expressed the desire to have a discussion with her first. The committee was assured that this discussion would not constitute the initiation of new proceedings against her. However, in November 1985 Fronemann was summoned by the Ministry of Education and Sport not to a discussion but to be questioned about information received from the Ministry of the Interior that she had participated in two DKP meetings, in 1984 and 1985. In a letter of 20 March 1986 Fronemann's lawyer claimed that the administration apparently still intended to dismiss her, despite her fifteen years of work in the school service of Baden-Württemberg. It seemed that the new dismissal was to be on the sole grounds that Fronemann was not willing to make a statement to dissociate herself unequivocally from the DKP. The chief of the Legal Department of the Ministry of Education and Sports of Baden-Württemberg stated that he had himself questioned Fronemann, but she had refused to answer,

referring to her good teaching record. A decision would be taken once further information requested from the Ministry of the Interior was received.⁴²

338. Klaus Lipps. Lipps, a secondary school teacher of French, Mathematics and Sport, has been in the school service of Baden-Württemberg since 1969. He was appointed graduate teacher (Studienassessor) as an official on probation in April 1971. The education authority (Oberschulamt Karlsruhe) has considered Lipps' professional conduct to be irreproachable, and his behaviour correct. Lipps has been a member of the DKP since 1971.

339. After being questioned in December 1974 and March 1975, Lipps was dismissed without notice in May 1975. His internal appeal was rejected in August 1975. In October 1975 the Karlsruhe Administrative Court ordered his interim reinstatement. The same court, in November 1976, annulled the dismissal. In May 1977 the Land Government's appeal was rejected by the Baden-Württemberg Administrative Court, which refused leave to appeal. The court considered that, even if the objective condition of a breach of duty was fulfilled, the subjective condition - awareness of committing a breach of duty - was not, since prior to the decision of the Federal Constitutional Court of May 1975 Lipps could have assumed that it was not a culpable breach of duty to belong to a party that had not been declared unconstitutional.

340. At the request of the Land Minister for Education and Sports, the education authority in November 1977 again dismissed Lipps, with notice. In April 1979 it rejected his internal appeal. In September 1982 the Karlsruhe Administrative Court annulled the dismissal. The court noted that the education authority had assumed that the mere fact of becoming and remaining a member of the DKP constituted a violation of the duty of faithfulness to the free democratic basic order; there was no evidence that Lipps had been a DKP official or candidate for any office inside or outside the party. In cases hitherto decided by the courts against officials they had been incomparably more active in the party. The Land Government appealed against this decision to the Baden-Württemberg Administrative Court. In September 1985 the court rejected this appeal and refused leave for a further appeal. The Land Government's complaint against the refusal of leave to appeal was rejected by the Federal Administrative Court in May 1986.

341. As a result of the proceedings, the development of Lipps' career has been halted since 1974; he has not been able to move beyond the position of Studienassessor and official on probation. In a communication of 4 July 1985 he said that for more than ten years he had had to live and work under the constant threat of being excluded from his occupation. In a letter of 12 January 1986 he added that even with five court judgements in his favour the Land Government was not willing to leave him and his family in peace, but wanted at all costs to prevent him from exercising his occupation.

342. A meeting of the Baden-Württemberg branch of the GEW in June 1983 requested the Minister for Education to abandon his appeal against the 1982 judgement of the Karlsruhe Administrative Court. In November 1985 the Land meeting of the technical group for secondary schools of the Baden-Württemberg branch of the GEW called on the Land Government to put an end to the nearly 12-year "persecution of Lipps" and to withdraw the appeal to the Federal Administrative Court; it also demanded his appointment as official for life. A declaration supporting Lipps was signed by over 450 persons and published as an advertisement in the Badisches Tagblatt in September 1985.

343. In his evidence before the Commission, in April 1986, the Chief of the Legal Department of the Ministry of Education and Sport of Baden-Württemberg stated that the Land Government had no intention to "persecute" Lipps, but wished to obtain from the highest administrative court in the Federal Republic a decision on the hitherto undecided question of what level of activity for an organisation hostile to the Constitution, beyond mere membership, had to be reached to constitute a breach of the duty of faithfulness to the Constitution justifying dismissal.⁴³ In August 1986 the Commission was informed that the Ministry of Education and Sport would take a further decision in this case after it had received information requested from the Ministry of the Interior and after hearing Lipps.

Bavaria

344. Gerhard Bitterwolf. Bitterwolf, who in 1977 was elected to the federal committee of the German Peace Union (Deutsche Friedensunion - DFU) and chairman of the DFU's Bavarian branch, completed his training to become a teacher in 1978. During his preparatory service he had taught a variety of subjects in primary and secondary schools. In his evidence before the Commission, Bitterwolf stated that the Bavarian authorities had previously decided to exclude him from access to the preparatory service because of his membership of the Sozialistischer Hochschulbund (SHB); that decision had, however, been annulled by an administrative court.⁴⁴

345. Having applied for admission to the service and appointment as an official on probation, Bitterwolf was questioned by the Mittelfranken district administration in November 1978. The administration rejected his application as well as his internal appeal against that decision. It stated that the DFU was an organisation influenced by the DKP; whoever worked in such a prominent position in an organisation that was influenced by the DKP and co-operated and had objectives in common with the DKP justified doubts as to whether he would at all times act to uphold the free democratic basic order of the Constitutions of the Federal Republic and Bavaria. The administration also observed that Bitterwolf had participated actively in the DFU's campaigns against anti-communism and the so-called occupational bans (Berufsverbote). Whether Bitterwolf had proved his professional worth in the preparatory service and had refrained from political statements in his teaching was irrelevant.

346. In 1983 the Ansbach Administrative Court upheld Bitterwolf's complaint against the administration's refusal of his application. The Bavarian Government appealed against this judgement to the Bavarian Administrative Court. In his evidence before the Commission, Bitterwolf said that there had then been a modification in the apparent allegations made against him. They no longer concerned mainly his activities in the DFU, but rather his attitude towards the "Peter judgement" of the Federal Administrative Court (29 October 1981). He had criticised the judgement, when required by the administration to make a statement on it. He added that the Bavarian Government had applied this method in further cases.⁴⁵

347. In November 1985 the Bavarian Administrative Court reversed the judgement of the Ansbach Administrative Court; it refused Bitterwolf leave to appeal. The court observed that, after again hearing Bitterwolf, the Mittelfranken district administration had, in March 1985, again rejected his application to be appointed official on probation as a teacher at elementary schools. The administration had based its decision on his lack of faithfulness to the Constitution manifested by his replies to the administration's questions on his attitude towards the basic principles of the free democratic basic order and by his refusal to dissociate himself from the objectives of the DKP, and on the unsuitability of his character, as he had been convicted of insulting the Bavarian Minister President. The court stated that a candidate for appointment as official on probation could not claim a right to be appointed; appointments lay within the discretion of the administration, and the administrative courts had only limited powers of review. The court ruled that, although Bitterwolf's court conviction did not suffice to impair his suitability, the doubts about his faithfulness to the Constitution were justified. The district administration had already in 1978 had well-founded reasons to question Bitterwolf about his attitude towards the free democratic basic order, because he had for many years been a member of the DFU and was a prominent official in it. Successive federal governments had regarded the DFU as being influenced by the DKP. However, the court noted also a statement in the 1978 report of the Office for the Protection of the Constitution to the effect that one should avoid associating all the active members of organisations like the DFU with communism. Because of such considerations, the district administration had had to give Bitterwolf an opportunity to express his opinion on the free democratic basic order. The administration had done this by drawing up a series of questions, and its opinion that Bitterwolf's replies did not meet the requirements of a commitment to the free democratic basic order could not be faulted.

348. The court observed that, as the requirements of a commitment to the free democratic basic order included the need to dissociate oneself from contrary endeavours and from organisations pursuing such endeavours, the administration's questions based on the grounds stated in the Federal Administrative Court's Peter judgement could not be criticised. Bitterwolf could have replied to the substance of the questions even if, for other reasons, he had wished to criticise the

Peter judgement. Bitterwolf's application, said the court, had not been refused because of his activity in the DFU, which in itself did not prove a personal affinity to communism.

349. In July 1986 Bitterwolf's complaint against the refusal of leave to appeal was rejected by the Federal Administrative Court, which recalled its case law that courts were not permitted to decide themselves whether applicants were faithful to the Constitution or to replace an administration's assessment by their own.

350. In a statement in response to the Mittelfranken district administration's rejection of his internal appeal, Bitterwolf said that the school management and the parents' council of the school at which he had done his preparatory service had expressed their satisfaction with his work by requesting him to stay on to teach his class until its final examination; all the pupils of that class and their parents had signed a petition requesting the district administration to keep him on; his colleagues had expressed their confidence in him by electing him unanimously as their spokesman. After his internal appeal was rejected in 1979, Bitterwolf received statements of support from numerous persons, mainly academics. The deputy chairman of the SPD group in the Federal Diet, Horst Ehmke, stated that the proceedings were inconsistent with the SPD's attitude towards the duty of faithfulness to the Constitution in the public service. In evidence before the Commission, Bitterwolf said that he had continued to receive broad national and international support, including from the social democratic parties of the Netherlands and Denmark, as well as from 150 members of the European Parliament.⁴⁶

351. In a communication of 11 July 1985, Bitterwolf referred to the effects of the proceedings on his employment. Although the court of first instance had decided in his favour, he had for seven years not been able to work in the occupation for which he had been trained. In evidence before the Commission, he stated that he had been assured that the charges made against him would not have prevented his employment in Hessen and Saarland.⁴⁷ In August 1986 Bitterwolf informed the Commission that he had been appointed a teacher in Hessen.

352. Charlotte Niess-Mache. After nearly four years of preparatory service as a revocable official in the Bavarian Civil Service, Charlotte Niess-Mache in April 1975 made an application to the Bavarian Ministry of Justice to be appointed judge on probation.

353. During her preparatory service she had joined the association of democratic jurists (VDJ). She was a member also of the SPD, and of the Gewerkschaft Öffentliche Dienste, Transport und Verkehr (OTV) and participated in the work of the association of social democratic jurists (ASJ).

354. In May 1975 Niess-Mache was informed that she would receive her certificate of appointment. Then she was told that the requisite information from the Office for the Protection of the Constitution was still awaited.

355. In September 1975 the Ministry of Justice rejected her application: it considered that, because of her identification with the VDJ, she did not offer a guarantee that she would at all times act to uphold the free democratic basic order. The Ministry stated that, according to an assessment of the Federal Minister of the Interior, the VDJ was a communist auxiliary organisation, which had been established and was decisively influenced by left-wing radical groups, especially the DKP; the VDJ did not act on the basis of the free democratic basic order. That was to be concluded from the composition of the VDJ's federal committee, provisions of its statutes, and other evidence, including a report of the International Association of Democratic Lawyers on occupational bans against communists, social democrats, and other democrats in the Federal Republic, as well as a contribution to that report made by the VDJ. As Niess-Mache was a member of the VDJ's federal committee, one had to assume that she identified herself in an exceptional way with the VDJ's objectives and declarations. She had been a co-signatory of the invitation to the inaugural meeting, held in Munich, of the VDJ's regional group. During the hearings she had not dissociated herself from the VDJ, but had defended it.

356. After her internal appeal was rejected, Niess-Mache filed a complaint before the Munich Administrative Court. In the proceedings, Niess-Mache stated that no political party influenced the VDJ; she would definitely dissociate herself from any such influence. She had decided to join the VDJ only when she was certain that the regional inaugural meeting in Munich had clearly accepted the Basic Law as the basis for the regional group's action. The objectives in the declaration adopted by the regional meeting were similar to those in the SPD and DGB programmes. She pointed to the autonomy of the VDJ's regional groups. She participated in the VDJ as a social democrat; the political opinions of other VDJ members could not be held against her. The VDJ's activities were restricted to written and oral expressions of opinion. In their statement to the Munich Administrative Court, Niess-Mache's lawyers stressed that there had been no evaluation of her personality; not one statement made by her that could give rise to doubts about her faithfulness to the Constitution had been produced. Niess-Mache's lawyers also referred to a statement made by the Federal Minister of the Interior to the Federal Council, that one could not infer from the fact that an association like the VDJ or the SHB (Sozialistischer Hochschulbund) had communists among its members that the organisation as a whole pursued aims hostile to the Constitution, or that all the members of the association did not offer a guarantee of faithfulness to the Constitution.

357. In October 1976 Niess-Mache informed the Munich Administrative Court that the Ministry for Food, Agriculture and Forestry of North Rhine-Westphalia had appointed her official on probation, but that she nevertheless wished to continue the proceedings.

358. In October 1976 the Munich Administrative Court annulled the decision of the Ministry of Justice and ordered it to appoint

Niess-Mache as judge on probation. It held that the doubts about her faithfulness to the Constitution were unfounded. The court stated that, from the information available, it could not conclude with the necessary certainty that the VDJ pursued aims hostile to the Constitution. The Ministry of Justice should have examined the VDJ's own aims. Instead it had incorrectly reasoned that the VDJ's aims were hostile to the Constitution because the DKP, which had such aims, controlled the VDJ. Even if the VDJ pursued aims hostile to the Constitution, the Ministry's doubts about Niess would be legally unfounded. If, as required, the circumstances of the individual case were carefully taken into account, her membership of the VDJ did not give rise to serious concern. The Ministry had focused its evaluation not on her personality as a whole, but on one aspect, namely, her active membership of the VDJ. There was no concrete conduct on her part to suggest that she had espoused VDJ objectives that were possibly hostile to the Constitution. She had, for example, said she did not support certain observations made in a speech by the chairman of the VDJ, and that that speech, which had played an important role in the Ministry's charges against her, had prompted wide discussion and controversy in the VDJ.

359. In November 1977 the Bavarian Administrative Court, reversing the judgement of the Munich Administrative Court, upheld the refusal by the Ministry of Justice to appoint Niess-Mache as a judge on probation and the Ministry's reasons for that refusal. The Court stated that judicial review of an administration's rejection of an applicant was restricted to considering whether the administration had based its decision on incorrect facts, had misjudged the applicable norm or the limits of its discretion as determined by civil service law and the Constitution, or had introduced arbitrary considerations. A court could not replace an administration's assessment by its own; as a rule, it could not oblige an administration to engage a complainant in the civil service. In the case of Niess-Mache there was no reason to order the administration to reconsider its decision. The VDJ did not act on the basis of the free democratic basic order. It had been founded on the DKP's initiative, since its foundation had been under considerable DKP influence, and could not take important decisions against the will of the DKP. Given Niess-Mache's critical remarks about some of the VDJ's initiatives and her assurance that she had enough self-confidence to stand up for her opinions and not to become the tool of communists, the Court observed that she should have been all the more willing to consider whether, as a member of a party that formed the Government of the Federal Republic, she should continue to help maintain the VDJ's semblance of non-partisanship. The Court refused Niess-Mache leave to appeal.

360. In evidence before the Commission, Niess-Mache said that she had been unemployed for quite a long time; as she was considered to be "an extremist", lawyers did not want to employ her. She confirmed that the Government of North Rhine-Westphalia had engaged her in 1976 and a few years later had appointed her official for life.⁴⁸

361. After the Bavarian Administrative Court had upheld the Bavarian Government's decision to refuse her application, the CDU group of the North Rhine-Westphalia Diet questioned the minister employing Niess-Mache about her future employment in the public service of North Rhine-Westphalia. The minister noted that the judgement of the Bavarian Administrative Court contained 13 long quotations from statements by VDJ members; there was, however, no quotation from any statement made by Niess-Mache herself.

362. In reply to a question of the Commission, the Chief of the Personnel Department of the Bavarian Ministry of Finance stated that at the time Niess-Mache made her application in Bavaria, she would not have been considered to be suitable for a position such as the one she currently held in North Rhine-Westphalia.⁴⁹

363. While the case was pending in Bavaria, Niess-Mache received the support of the SPD. The SPD group of the Federal Diet described the refusal to appoint her as "legally and politically intolerable". In a letter to the Minister President of Bavaria in November 1975, the Chairman of the SPD in South Bavaria expressed the view that a member of the social democratic party was being prejudiced for participating and promoting social democratic policy in a non-party organisation. He feared that this case might become a precedent for a practice under which members of the social democratic party, without their specific cases being evaluated, suffered discrimination in employment in the public service because they were active and upheld the free democratic basic order in non-party groups in which also DKP members participated. Similar points were made in a letter to the Bavarian Minister of Justice from the South Bavarian committee of the association of social democratic jurists.

364. In a statement to the Federal Council in November 1975, the then Federal Minister of the Interior expressed his concern over cases in which applications for employment from SPD members had been rejected because of their candidatures for the SHB or their membership in the VDJ; there was a danger that the means used to defend a State based on the rule of law might themselves infringe the rule of law.

Lower Saxony

365. Karl-Otto Eckartsberg. Eckartsberg, an English and Sports teacher, has been employed since 1975 at a comprehensive school in Garbsen, Lower Saxony. In 1978 he was appointed official for life. According to a statement referred to in the judgement of the Lower Saxony Disciplinary Court Eckartsberg's performance at the school was favourably appraised; there was no evidence of his having sought to indoctrinate his pupils. In 1980 the Hannover district administration made him the school's director of social studies.

366. From 1969 to 1979 Eckartsberg was a member of the SPD; for a time he was the chairman of the Young Socialists of the Hannover-Land

branch of the SPD. In 1979 Eckartsberg left the SPD and joined the DKP. He has stated that the practice of "occupational bans" had strengthened him in his resolve to make this change.

367. In February 1982 the Lower Saxony Minister of the Interior informed the Minister of Education that Eckartsberg had been a DKP candidate in the September 1981 communal elections. The Hannover district administration initiated investigations, and in June 1982 disciplinary proceedings. In September 1983 the disciplinary chamber of the Hannover Administrative Court found him guilty of a breach of the duty of faithfulness to the free democratic basic order, and ordered his dismissal.

368. In January 1984 Eckartsberg appealed to the Lower Saxony Disciplinary Court. After the judgement of the Hannover Administrative Court he had been suspended, pending a final judicial decision; his pay was reduced by 40 per cent, and he was not allowed to take on any other paid activity. His complaints against the suspension were rejected by the Hannover Administrative Court (December 1983) and the Lower Saxony Disciplinary Court (December 1984).

369. In its judgement (26 June 1985) on the principal appeal, the Lower Saxony Disciplinary Court reversed the judgement of the Hannover Administrative Court. The court held that, although Eckartsberg's conduct constituted an objective breach of duty, it had not been culpable. He had publicly identified himself with the programme of the DKP by being its candidate. Whether or not he himself approved the DKP's programme and objectives as a whole or only in so far as he considered them to be constitutional was irrelevant. It had, however, not been possible to prove that he had realised that his conduct constituted a breach of duty. The court attached considerable weight to Eckartsberg's argument that, in view of the previous attitude of his employer, he could not have assumed that as a result of his DKP candidacy he would be charged with a serious breach of duty; the Land Government had stated in 1976 that its policy was not to initiate disciplinary proceedings against officials who stood as DKP candidates in elections. The Government had obviously changed its practice as a result of the Peter judgement of the Federal Administrative Court.

370. The Lower Saxony Ministry of Education did not appeal against the Lower Saxony disciplinary court's decision; Eckartsberg was reinstated.

371. In November 1985, the Land Government issued a circular regarding the violation by officials of the duty of faithfulness to the Constitution by participating in endeavours hostile to the Constitution and standing as a candidate for a party hostile to the Constitution. The circular drew the attention of all officials to two judgements of the Lower Saxony Disciplinary Court, including that in the Eckartsberg case, to make clear that a candidacy for the DKP in elections violated an official's duty of political faithfulness and that in such cases the employer was under an obligation to initiate disciplinary investigations.

372. In July 1986 the Hannover district administration initiated new disciplinary proceedings against Eckartsberg. It stated that, according to preliminary investigations, he had been elected in January 1986 president of the Hannover-Land branch of the DKP, and in March 1986 to the Lower Saxony council of the DKP, and that he had received the Ernst Thälmann medal of the DKP for his services to the party and his efforts in the struggle against "occupational bans". By being a member of the DKP, and by accepting high party office and a party decoration, he was suspected of identifying himself fully with the aims and programme of a party that was unanimously considered to pursue objectives hostile to the Constitution, placing his status as a Lower Saxony official at the service of that party. In August Eckartsberg was suspended, on the ground that the gravity of the alleged disciplinary offence would probably result in his removal from the service. According to a press report, Eckartsberg has said that neither during the proceedings that ended with his reinstatement nor afterwards had it ever been made a condition that he should not accept functions within his party.

373. Eckartsberg is a member of the GEW. At its 1983 federal congress, the GEW adopted a resolution protesting against "occupational bans" in Lower Saxony in general and against the judgement of the Hannover Administrative Court against Eckartsberg and his suspension in particular. The resolution called on the Land Government to put an end to all politically motivated disciplinary proceedings, to respect the principle that no one was to be dismissed from the public service as a result of exercising a basic right, to rehabilitate and reinstate all those affected, and to put an immediate end to the surveillance of persons exercising their democratic rights. In May 1986 the Lower Saxony branch of the GEW protested against the administration's intention to initiate new proceedings against Eckartsberg; it was intolerable that someone should be threatened with the destruction of his occupational existence on account of his legal activities for a legal party. In discussions with the Commission in August, representatives of the GEW said that the new proceedings against Eckartsberg and a number of other teachers represented an intensification of the practice in Lower Saxony; for the first time purely inner-party activities were being used as evidence of a violation of the duty of faithfulness.

374. Matthias Schachtschneider. Schachtschneider, a teacher, has been in the service of Lower Saxony since 1960. He was appointed official for life in 1964. In 1974 he was appointed principal at a teacher-training college in Oldenburg and director of German studies for state teacher-training colleges.

375. In 1980 he received from the Land Minister for Education of Lower Saxony a certificate of recognition for "twenty-five years of conscientious fulfilment of duty". In a formal appraisal made in 1982 Schachtschneider was described as a committed and successful teacher with an irreproachable attitude to his work, whose political views were apparent neither in his seminar work nor in his teaching.

376. From 1966 to 1980 Schachtschneider was a member of the SPD. He was elected SPD member of the municipal council of Oldenburg in 1969, 1972 and 1976 and from 1972 to 1976 was the chairman of the SPD group in the council. In 1972 he received from the mayor of Oldenburg a special recognition for his services to the town as a member of the municipal council. In 1981 he was elected to the municipal council as an independent candidate on the DKP list; he became the deputy chairman of the DKP council group. He joined the DKP in June 1982. Schachtschneider is a member of the GEW.

377. The Weser-Ems district administration initiated investigations in April 1982. After Schachtschneider had been questioned in April, May and June 1983, the district administration initiated proceedings against him in the Oldenburg administrative court in December 1983. He was alleged to have violated the duty of faithfulness to the free democratic basic order by his candidacy as an independent on the DKP election list, by his activity in the DKP municipal council group and by his application for membership of the DKP. In December 1985 the district administration formulated supplementary charges. It stated that although Schachtschneider had in the course of the disciplinary proceedings been informed fully of the legal views of his employer and of the Lower Saxony Disciplinary Court (Eckartsberg judgement), he had seen no reason to leave the DKP or to give up his role in the DKP group in the municipal council. When questioned again in September 1985, Schachtschneider accused the district administration of constantly hindering, by the disciplinary proceedings against him, his work for the electorate and the legally-protected exercise of his elective mandate.

378. In June 1982 the committee of the Weser-Ems branch of the GEW protested to the district administration against the initiation of investigations against Schachtschneider and other GEW members who had been candidates on DKP election lists. Over the years, the GEW has continued to protest against the disciplinary proceedings and measures taken in Lower Saxony against some 20 teachers. The committee of the Oldenburg branch of the DGB has also protested against the disciplinary proceedings. In June 1985 the Weser-Ems district staff council for teachers expressed to the district administration its deep concern at the proceedings against Schachtschneider and 10 other teachers in the district who had been on DKP election lists; it appealed to the administration to abandon the proceedings and to reinstate those teachers who had been suspended. In 1984 the Lower Saxony state congress of the SPD adopted a resolution protesting against the intention of the Land Government to dismiss teachers because they had stood as candidates for a party which was legal.

Rhineland-Palatinate

379. Wolfgang Jung. Jung, who has been in the school service of Rhineland-Palatinate since 1960, teaches mathematics, German, art,

handicrafts and labour studies. He was appointed official for life in 1965. Since 1966 he has taught at a secondary school in Kaiserslautern. Jung has been an active member of the GEW for many years. From 1974 to 1975 he was a member of the staff council at the Kaiserslautern city school administration. Since 1975 he has been a member of his school's staff council.

380. An inquiry was made after Jung was anonymously denounced to the Rheinhessen-Pfalz district administration on the basis of a fabricated press announcement. In January 1982 the district administration initiated preliminary investigations, alleging that he was a member of and held a position of responsibility in the DKP. In April 1985 the district administration initiated proceedings in the Neustadt/Weinstrasse Administrative Court with a view to Jung's dismissal. He was charged with having violated his duty of faithfulness to the Constitution by engaging in activities in and for the DKP. The complaint observed that Jung had refused to reply to the individual accusations and the complaint as a whole.

381. When these proceedings were initiated, the President of the district administration asked Jung to return a certificate issued to him a few days earlier, by which the district administration had expressed its thanks for 25 years of faithful services to the community. The President said that, as Jung was an active member of the DKP, he could not be thanked for faithful services in the wider sense of the term resulting from his duty of faithfulness to the Constitution, and that the certificate had been issued in error.

382. In its judgement of 21 February 1986, the Neustadt/Weinstrasse Administrative Court, found that by holding office in the DKP Jung had committed a breach of duty. It noted, however, that he had given up such office two years before, and since then had possibly not been guilty of any breach of duty. The court found that during his 25 years of service Jung had at no time misused his position as a teacher or tried to influence his pupils politically, and that neither in his teaching nor in his contacts with pupils, parents, colleagues or superiors, his active membership of the DKP had become apparent. It concluded that there was no danger of any change in his conduct in future, and that he was therefore fit to remain in service. Nevertheless, because of his having held office in the DKP in the past and in order to ensure that he would not resume any similar level of activity in the DKP, the Court ordered a 15 per cent reduction in pay for three years. According to Jung and his union, the GEW, this will entail a loss of DM20,000. The Commission was informed that Jung had decided not to appeal against this judgement in order not to risk a more severe sanction (dismissal), in the event of an appeal also being filed by the administration.

383. In October and November 1982 the Rhineland-Palatinate and Kaiserslautern-Kusel branches of the DGB called on the authorities to abandon the proceedings against Jung. In June 1985 the conference for officials of the Rhineland-Palatinate branch of the DGB called on the

Land Ministry of Education and on district administrations to abandon disciplinary proceedings and to annul the sanctions imposed on seven teachers, including Jung. Among various statements of protest and support by the GEW is a letter sent to the ILO in December 1985 by the chairman of the Rhineland-Palatinate branch of the GEW which describes Jung as an irreproachable democrat, active trade unionist and qualified and respected teacher. In a letter sent to the district administration in March 1983, the teaching staff of the school at which Jung teaches stated that his commitment, knowledge, and willingness to co-operate with others had made him a popular and respected colleague at the school.

384. Maria Lachmann. A teacher for educationally handicapped children, Lachmann has been in the school service of Rhineland-Palatinate since 1964. She was appointed official for life in 1970. In 1981 the Koblenz district administration appointed her tutor for teacher trainees. Since 1984 Lachmann has been a member of the Bad-Kreuznach branch of the GEW.

385. In November 1983 the Land Ministry of Education informed the Koblenz district administration that it had received information about Lachmann from the Land Ministry of the Interior, and requested it to initiate investigations; if the information was confirmed, the district administration should seek, on the basis of the Peter judgement of the Federal Administrative Court, to dismiss Lachmann.

386. In February 1984 the Koblenz district administration informed Lachmann that their investigations had revealed that she had since 1973 continually participated in internal and public DKP meetings. She had also been elected to a position in the Birkenfeld/Nahe branch of the DKP. Disciplinary proceedings were initiated in April 1984. When questioned in May 1984, Lachmann stated that, as her husband was a member of the DKP, she had attended, as his wife, some of the specified meetings, which had all been public. She did not exercise any functions in any political party, either within a party or as candidate in elections.

387. The chairman of the staff council at Lachmann's school testified in the disciplinary proceedings that as far as he knew she was not a member of the DKP. He said that she was a popular and highly-regarded colleague, and was fully accepted by the school's teaching staff. Lachmann had never given him cause to doubt her faithfulness to the Constitution. In 1984 Lachmann was elected to the staff council.

388. In his testimony the school's headmaster called her an enthusiastic and qualified teacher. Having supervised her teaching, he had never had reason to believe that she was introducing DKP ideas into her lessons. The teaching staff has protested against the disciplinary proceedings to the Land Ministry of Education and to the district administration. In May 1984 the committee of the Rhineland-Palatinate branch of the GEW called on the district administration to

abandon the disciplinary proceedings. Similar appeals have been made by the local branches of the DGB and the SPD. The proceedings are still pending.

Schleswig-Holstein

389. Thomas Bürger. Bürger, a teacher at a comprehensive school at Kiel-Friedrichsort, Schleswig-Holstein, has been an official on probation since 1979. He is a member of his school's staff council.

390. In a communication of July 1985, Bürger, who was to have been appointed official for life in 1982, stated that for three years the Government of Schleswig-Holstein had been trying to dismiss him. On the basis of unsubstantiated information from the Schleswig-Holstein Office for the Protection of the Constitution he was suspected of being a member of the DKP. He was asked to state whether he was a member of the DKP and to dissociate himself from that party. He refused, basing himself on his constitutional rights.

391. In August 1982 the Ministry of Education notified Bürger that he would be dismissed as from June 1983. The dismissal was confirmed in May 1983, when the Ministry stated that apart from the information from the Ministry of the Interior there was no further information on his DKP activities. According to the Ministry of Education, the suspicion of insufficient faithfulness to the Constitution was in itself not a sufficient reason to dismiss him; however, when it was related to his refusal to dissociate himself from the DKP and to explain his relation to the DKP, one could conclude that he did not guarantee faithfulness to the Constitution. That the information against him could not be sufficiently proved was of no legal relevance. The Ministry confirmed that Bürger's conduct and performance in service had been good.

392. As a result of his internal complaint Bürger's dismissal was annulled in July 1983 because the staff council had not been consulted. Upon a renewed attempt by the Ministry to proceed to dismissal, the staff council refused to give its approval. Under the Schleswig-Holstein Staff Representation Act, officials who are staff council members cannot be dismissed without the council's approval. In October 1983 the Ministry applied to the Schleswig Administrative Court to substitute a court decision for the refused staff council approval. In September 1984 the court rejected the complaint, stating that such a substitution was not possible. The Land Government then made, but afterwards gave up, an attempt to obtain a retroactive amendment of the Staff Representation Act. It also appealed to the Lüneburg Higher Administrative Court, which in June 1985 reversed the Schleswig Administrative Court's ruling on the ground that a court could substitute its consent and remitted the case to the Schleswig Administrative Court for decision.

393. In a letter to the Minister of Education and the Arts (22 October 1982) the committee of the parents' council of Bürger's school expressed its full confidence in Bürger and stated that, in his teaching and privately, he had at all times supported the free democratic basic order. The committee called for the withdrawal of the dismissal. The pupils, teachers and parents at Bürger's school organised a soliarität fête for Bürger. In June 1983 the chairman of the Schleswig-Holstein branch of the GEW protested against the intended dismissal, and stated that the GEW would help him to use all available judicial remedies. Bürger is a member of the GEW and deputy chairman of the technical group for comprehensive schools of the GEW, Schleswig-Holstein. The chairman of the SPD group in the Schleswig-Holstein Diet observed in May 1983 that the proceedings represented a new development in the application of the decree on extremists; there was now the danger that mere suspicion of DKP membership would suffice to justify a dismissal from the public service.

Notes

References below to statements made during the hearing of witnesses indicate the sitting and page of the Record of Hearings (German version).

¹ ILO Official Bulletin, Vol. LXIII, 1980, Series A, No. 1, pp. 40-53.

² See Chapter 4, paras. 105 and 106.

³ Wolfgang Schlappa: Zur Vereinbarkeit der Entscheidung des Bundesverwaltungsgerichts vom 29.10.1981 - sog. Peter-Entscheidung - mit der europäischen Menschenrechtskonvention (Bremen, Zentrum für europäische Rechtspolitik (ZERP) an der Universität Bremen, Jan. 1983).

⁴ Martin Kutscha: Die aktuelle Rechtsprechung in Berufsverbote-verfahren, Materialien und Dokumente zu den Berufsverboten in der BRD, Heft 32 (Hamburg, Arbeitsausschuss der Initiative "Weg mit den Berufsverboten", June 1985).

⁵ Deutscher Bundestag: Beratung der Grossen Anfrage der Fraktion DIE GRÜNEN: Berufsverbote in der Bundesrepublik Deutschland, 10. Wahlperiode, 194. Sitzung, Bonn, 30 Jan. 1986.

⁶ ILO: Record of Proceedings, International Labour Conference, Geneva: 67th Session, 1981, 31/55; 68th Session, 1982, 31/60-61; 69th Session, 1983, 31/60-61.

⁷ Deutsche Postgewerkschaft, Bezirksverwaltung Hessen: Einschränkung gegen gewerkschaftliche Rechte bei der Deutschen Bundespost in Hessen (Frankfurt, 1985).

⁸ Information provided by the Koordinierungsausschuss der Bürgerinitiativen gegen Berufsverbote in Baden-Württemberg.

⁹ Stellungnahme des Arbeitsausschusses der Initiative "Weg mit den Berufsverboten" zur Antwort der Bundesregierung (BT-Drucksache 10/36 56) auf die Grosse Anfrage der Fraktion "Die Grünen" betr. Berufsverbote in der Bundesrepublik Deutschland (BT-Drucksache 10/22 07), Hamburg, Nov. 1985.

¹⁰ For example, Deutsche Postgewerkschaft, Bezirksverwaltung Hessen: Berufsverbote bei der Bundespost, Dokumentation; Deutsche Postgewerkschaft, Ortsverwaltung Fernmeldeamt Giessen: Kein Berufsverbot für Axel Brück und Egon Momberger, Dokumentation (Giessen, 1983); Deutsche Postgewerkschaft, Ortsverwaltung Frankfurt: Kein Berufsverbot für den Briefträger Wolfgang Repp, Dokumentation (Frankfurt, 1985); GEW im DGB, Landesverband Rheinland-Pfalz: Dokumentation zur Einschränkung von Meinungsfreiheit in Rheinland-Pfalz - Berufsverbote für Lehrer (Mainz, 1985); Koordinierungsausschuss der niedersächsischen Initiativen gegen Berufsverbote: Mit dem Berufsverbot gegen das Wahlrecht in Niedersachsen (Oldenburg); Hamburger Landeskomitee der Initiative "Weg mit den Berufsverboten": Kein Berufsverbot für Uwe Scheer! (Hamburg, 1986); Initiative "Weg mit den Berufsverboten", Arbeitsausschuss, Hamburg: Rundbrief Nr. 66/85 (Hamburg, March 1985).

¹¹ In judgements given in August 1986, the European Court of Human Rights concluded that the issue at the heart of these cases was access to the civil service, a right not secured in the European Convention on Human Rights or in any of its Protocols. The Court therefore ruled that there had been no interference with the exercise of a right protected by the Convention.

¹² Cases of Rüdiger Quaer and Martin Zeiss respectively.

¹³ Cases of four legal trainees in Bavaria.

¹⁴ Case of Charlotte Niess-Mache.

¹⁵ Cases of Gerhard Bitterwolf and Ulrich Foltz.

¹⁶ Cases of Hans Heinrich Häberlein and Manfred Lehner.

¹⁷ Cases of Ulrich Eigenfeld and Rolf Kosiek.

¹⁸ Claussen, X/15.

¹⁹ Claussen, X/13.

²⁰ Ziegler, XIII/9.

²¹ Metz, VIII/11.

²² Frisch, IX/15-16.

²³ Ministerium des Innern und für Sport, Rheinland-Pfalz: Verfassungsschutzbericht, 1985, p. 129.

²⁴ Freundlieb, XI/14.

²⁵ Däubler, V/26-28.

²⁶ Krause, XV/30.

²⁷ Däubler, V/27-28; Ortmann, VII/22.

²⁸ Bitterwolf, III/12; Däubler, V/27.

²⁹ Bastian, III/28.

³⁰ Bastian, III/31.

³¹ Bastian, IV/9.

³² See also Chapter 5, paras. 231 and 232.

³³ Bastian, III/26-27.

³⁴ Bastian, IV/7.

³⁵ Meister, II/9.

³⁶ Meister, II/12, 21.

³⁷ Meister, II/17.

³⁸ Meister, II/12.

³⁹ Meister, II/5.

⁴⁰ Meister, II/20.

⁴¹ Däubler, V/15-16.

⁴² Ziegler, XIII/13 and information given during discussions in Stuttgart in August 1986.

⁴³ Ziegler, XIII/6 and 11-12.

⁴⁴ Bitterwolf, III/2.

⁴⁵ Bitterwolf, III/8.

⁴⁶ Bitterwolf, III/12.

⁴⁷ Bitterwolf, III/9.

⁴⁸ Niess-Mache, IV/15.

⁴⁹ Metz, VIII/23-24.

CHAPTER 7

THE POSITION OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

394. As already indicated in Chapter 2, by letter of 27 March 1986 the Government of the Federal Republic of Germany transmitted a statement of its position in regard to the alleged violation of Convention No. 111, to which was appended a legal opinion by Professor Karl Doebling, Professor of Public Law and International Law at the University of Heidelberg and Director at the Max-Planck Institute for Foreign Public Law and International Law.

395. The text of the Government's statement was as follows:

(Translation)

The Government of the Federal Republic of Germany has already, in its letter of 31 January 1986, made certain observations on the manner in which this inquiry is proceeding. The Chairman of the Commission of Inquiry replied in a letter of 28 February 1986 and dispelled some of the doubts entertained by the Government of the Federal Republic. Without going into detail, it should be emphasised again that, in the opinion of the Federal Government, to give the World Federation of Trade Unions a role similar to that of a complainant would be incompatible with the ILO Constitution and also cannot be based on any standing practice. On this point and on other questions of procedure which have already been raised, the Federal Government reserves the right to make further observations. The Government of the Federal Republic of Germany would like now to submit some comments on the questions of law that have been raised and, where necessary, on the statements and submissions made by the other side, and thus to respond to the request made in the letter of 27 November 1985 from the Chairman of the Commission of Inquiry. At the same time, it wishes once more to express its firm conviction that the obligations to safeguard faithfulness to the Constitution in the public service are fully consistent with the letter and spirit of Convention No. 111 concerning discrimination in respect of employment and occupation.

The Federal Government cannot forbear to point to the political dimension of the representation made by the World Federation of Trade Unions on 13 June 1984 and of other documents submitted in the