

able. In November 1979, judges from the top labor and administrative courts reportedly held talks to see if the divergent decisions in the lowest and appeals courts could be bridged, but they could not agree.¹³ Despite the lack of agreement and the many administrative court verdicts upholding the hiring authorities' decisions, the courts in a number of instances overturned the negative decisions of the administrative agencies and put them on notice to follow guidelines set by the ministers of the interior.

Number of Screenings

The decree became the fulcrum of controversy partly because of the sheer number of automatic screenings. According to the Federal Ministry of the Interior, in the period from January 1, 1973, to June 30, 1975, federal, state, and local agencies screened 454,000 persons. (Other estimates run higher.) Of these, the *Verfassungsschutz* had negative findings on 5,678. After reviewing their files, the agencies rejected 328 (see table 3). Many of those rejected thereupon appealed the decision to the courts.

Most striking is the high number of applicants in West Berlin and Hesse for whom the *Verfassungsschutz* had a negative file. Both Länder had become centers of dissent among a sizable group of university students who upon graduation wanted to enter the teaching or other civil service professions. In West Berlin, the government, controlled by the conservative wing of the SPD, barred about 5 percent of those applicants tainted by a negative

Table 3
Screenings of Applicants to Public Service, 1973-1975

	Screenings ^a	Negative Files	Rejections
Federal Government	32,000	445	8
Baden-Württemberg	70,000	487	50
Bavaria	55,000	342	23
Bremen	20,000	421	15
Hamburg	40,000	103	29
Hesse	50,000	970	26
Lower Saxony	28,000	249	16
North Rhine-Westphalia	84,000	523	30
Rhineland-Palatinate	25,000	131	22
Saar	6,000	34	0
Schleswig-Holstein	20,000	173	16
Berlin	24,000	1,800	93
Total	454,000	5,678	328

Source: Adapted from BMI, *Innere Sicherheit*, no. 33 (Apr. 13, 1976): 5.

Note: Figures for 1972 are not available.

^aFigures rounded off to nearest thousand.

file. On the other hand, the Hesse government, controlled by the left wing of the SPD, rejected only about 2.7 percent. In other Länder, conservative SPD and CDU/CSU governments both rejected a relatively high number of applicants with negative files.

At least 92 percent of the applicants barred were leftists. More than one-third tried to obtain positions as teachers, about 20 percent as university lecturers, and the remainder as social workers, lawyers, and other professionals.¹⁴ Thus most applicants applied for posts under Länder rather than federal jurisdiction. In addition to screening applicants to the public service, government agencies also screened personnel already in the service who were being considered for permanent status, promotion, or transfer to another agency. From 1973 to 1975, the agencies initiated 129 disciplinary proceedings against nonpermanent public servants who were suspected of not upholding the FDGO. In only a few of these cases did the government have enough evidence for dismissal after a lengthy legal procedure, although a number of individuals were denied promotion. The screenings, disciplinary proceedings, and court trials of applicants to the public service and of career servants were costly; they added more than \$4 million yearly to government budgetary outlays.¹⁵

Individual Cases

To mobilize mass support against the decree, the critics publicized its adverse effects on individuals caught in the screening process. Among the first affected were left-leaning university professors whom the CDU/CSU accused of infecting students with Marxist concepts. The *Verfassungsschutz* had been busy collecting materials against them.

One well-publicized case against a university professor occurred even before the passage of the 1972 decree. Horst Holzer, sociologist at Munich University and a DKP member, had received an offer in April 1971 to teach at the newly founded Bremen University. Two months later the SPD-led government of Bremen, afraid that the opposition would capitalize on its hiring a communist, rescinded the offer, despite the backing he had received from the minister of education of Bavaria, Hans Maier, a CSU member who had lauded his academic qualifications and his support of the FDGO. An administrative court in Bremen sustained the government decision. In 1973, the Hesse Ministry of Education also rejected his candidature for a post at Marburg University. One year later, Maier, in a reversal, ousted him from the Munich position, accusing him of Marxist-Leninist indoctrination and linkage of scientific work to DKP goals.¹⁶

- A Study of the Federal Constitutional Court (Beverly Hills, Calif.: Sage Publications, 1976), pp. 81, 125-27, 182, 271; and letter to author, Mar. 6, 1989. For a critical view, see Horst Bethge et al., eds., *Die Zerstörung der Demokratie durch Berufsverbote* (Cologne: Pahl-Rugenstein, 1976), pp. 19-21; Koch and Oltmanns, SOS, pp. 36-37; Heinrich Hannover, "Zeit zum Widerstand," in *Die unheimliche Republik*, by Hannover and Günter Wallraff (Reinbek: Rowohlt, 1984), pp. 12-26, 53-54; 70-73; *Der Spiegel*, Aug. 4, 1975, pp. 32-34. For a list of judges, see Spoo, "Erfahrungen," pp. 181-82.
11. Wolfgang Kaupen and Theo Rasehorn, *Die Justiz zwischen Obrigkeitsstaat und Demokratie: Ein empirischer Beitrag zur Soziologie der deutschen Justizjuristen* (Neuwied: Luchterhand, 1971).
 12. See Dorothy Nelkin and Michael Pollak, *The Atom Besieged: Extraparliamentary Dissent in France and Germany* (Cambridge: MIT Press, 1981), pp. 165-66.
 13. Günter Frankenberg, "Staatstreue: Die aktuelle Spruchpraxis zu den Berufsverboten," *Kritische Justiz* 13, no. 3 (1980): 276-83; Martin Krutscha, *Verfassung und "Streitbare Demokratie"* (Cologne: Pahl-Rugenstein, 1979), p. 170. In the district and Länder labor courts, panels of three judges preside. Ministers of labor appoint two judges who represent management and unions; the third judge, a professional who is appointed after consultation with management and unions, presides over the court (Markovits, *Politics of Trade Unions*, pp. 36-37).
 14. Jesse, *Streitbare Demokratie*, p. 68; *The Economist* (London), Aug. 2, 1975. The weekly based its figures on the decree's critics, who at the time claimed 457 applicants had been rejected. The government totals and the critics' totals usually showed a wide disparity. One explanation is that the total of 457 includes 1972, while the government total of 328, not released until Apr. 1976, excludes 1972.
 15. Jesse, *Streitbare Demokratie*, pp. 67-68; *The Nation* (New York), Sept. 11, 1976.
 16. Dobbstein and Gellert, "Shades of New McCarthyism," pp. 70-72, 81; Horst Bethge and Erich Rossmann, eds., *Der Kampf gegen das Berufsverbot: Dokumentation der Fälle und des Widerstands* (Cologne: Pahl-Rugenstein, 1973), pp. 291-92.
 17. Narr, "Anatomie eines Berufsverbotes: Dokumente und Anmerkungen zur Nichtberufung von Wolf-Dieter Narr an die Juristische Fakultät Hannover" (n.d. [c. 1975], hectographed); Narr, letter to author, Jan. 8, 1988; *Die Zeit*, June 6, 1975; Dobbstein and Gellert, "Shades of New McCarthyism," p. 81.
 18. *Der Spiegel*, July 23, 1973; *Die Zeit*, July 27, 1973; *New York Times*, Sept. 22, 1973; *Frankfurter Allgemeine Zeitung*, Mar. 15, 1980.
 19. *Financial Times*, Dec. 16, 1975.
 20. *Der Spiegel*, Nov. 24, 1975; ILO, Governing Body, 1987 Report, pp. 103-5; *Frankfurter Rundschau*, Mar. 14, 1980; *Frankfurter Allgemeine Zeitung*, Dec. 17, 1980. For other cases, see Hanspeter Knirsch, Bernhard Nagel, and Wolfgang Voegeli, eds., "Radikale" im öffentlichen Dienst: Eine Dokumentation (Frankfurt am Main: Fischer Taschenbuch, 1973).
 21. *Frankfurter Allgemeine Zeitung*, Oct. 19, 1973. Another poll released in February 1976 indicated little change: 55 percent in favor of the decree, 31 percent