

THE  
*VERFASSUNGSSCHUTZ*

MICHAELA W. RICHTER

GERMAN ISSUES ■ 20



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# FOREWORD

Professor Richter has written a thorough and concise study of one of Germany's lesser known but politically important institutions, its domestic security agency, the Office for the Protection of the Constitution. As far as we know, this is the first such examination of the Office in English. It contains information that has not yet been published for a general readership, even in German.

The *Verfassungsschutz* deserves to be considered a key institution because, as Professor Richter explains, it has had a broader impact on the German political system than is generally recognized: by designating certain parties and groups as "extremist," the Office has reinforced that centrist stability which has characterized the system for nearly a half-century. Extremist parties have often altered programs and leadership in an effort to escape the electoral handicap of being so designated. It should be recognized, however, that the Office has in this way also contributed toward narrowing the limits of permissible political dissent in the Federal Republic—a role that deserves more attention than it has so far received.

American readers may be interested to learn that the strongly value-oriented notion of democracy in Germany, which informed the creation of the *Verfassungsschutz* in 1950, owed much to the views of German political scientists who had returned from emigration in the United States with a fresh interpretation of the American constitution. The Office was set up to defend those values irrevocably incorporated into Germany's constitution, its *Grundgesetz* of 1949, many of them derived from American experience.

During most of its existence, the *Verfassungsschutz* has been regarded with suspicion by most intellectuals and many in the media—a not uncommon experience for security agencies in all democratic countries, where individual rights are treasured. A common accusation in Germany, as Professor Richter points out, is that the Agency has been "blind in the right eye," that is has paid little attention to political threats to German democracy coming from the right while focusing its attention almost entirely on leftist dangers.

This criticism should be tempered, however, in light of revelations since Germany's reunification of the extent of activities carried out against western Germany during the Cold War by the German Democratic Republic's Ministry of State Security, the *Stasi*. The *Stasi*'s espionage and subversion efforts were immense and continuous. The American author Tina Rosenberg, in her acclaimed study *The Haunted Land* (1995), writes that ". . . the *Stasi* was the most exhaustive spy organization in world history." It successfully infiltrated leftist organizations in western Germany, gave active support to terrorist groups there, and several times affected outcomes at the highest political levels.

The work of the *Verfassungsschutz* poses several basic operational problems. Its mandate includes first investigating domestic groups to determine whether there is sufficient evidence that they are "extremist," that is hostile to the constitution, and then, if the evidence seems sufficient, conducting continuing surveillance of these very groups. Some predisposition to find such evidence in order to justify the Agency's continuing work certainly exists.

Detecting and monitoring extremism from the left and right was for more than twenty years the sole task of the *Verfassungsschutz*. (It did not take on the job of countering foreign espionage until 1972.) The operational problem here is: how can the Agency gather the information it needs for a credible conclusion that a party or group is extremist and therefore should be surveilled with both overt and covert methods without first, before it reaches that conclusion, monitoring the party's activities more closely than overt methods alone would permit?

Changes in the 1990s have caused the *Verfassungsschutz* to examine its mission, indeed its reason for being. For one thing, the disappearance of the GDR, whence came most of the espionage for forty years, removed the principal threat. Second, neo-Nazi and rightist extremism, phenomena that always worry foreign countries, none more than the United States, about Germany, grew in the first years after unification, causing the Agency to devote much greater attention to them. Third, the large number of foreigners in Germany (nearly nine percent of the population now) has compelled the *Verfassungsschutz* to keep a watchful eye on Arab and Turkish political organizations which are new, strange

and difficult to penetrate. During the 1990s too, the Agency's leadership has occasionally sought, unsuccessfully so far, to extend its mandate to include collecting intelligence on organized crime, a job traditionally handled by the police. It has also become more conscious of protecting individuals' rights and has tried much harder to explain to the public what it is doing and why.

Partly as a consequence of changes in German society, the *Verfassungsschutz* has begun to monitor organizations who claim to be religious rather than political, such as the fundamentalist Islamic group Milli Görüs or the U.S.-based Scientology Church. For Americans, who are used to a wide variety of fundamentalist, even bizarre, Protestant sects who tithe or otherwise raise money from among their followers, the German authorities' treatment of the Scientologists is troubling. This is new, tricky territory for the *Verfassungsschutz*, one about which Americans may have their doubts.

AICGS thanks Professor Richter for her patience with a fact-checking and editorial process that was prolonged, intensive and, the author may occasionally have thought, extraordinarily intrusive. We hope that readers will consider that the study's value has justified this extra effort. The editor was of the opinion that study of an intelligence agency, which by the nature of its secret work is precluded from laying all the facts on the table, requires particular sensitivity, care and verification of all data. Professor Richter's understanding for these requirements is appreciated.

It should be recorded also that the author accepted, although she did not agree with, an editorial decision to depart from standard scholarly practice in a few instances so as to include information that came from sources asking not to be identified. The editor has satisfied himself in each such case that the source was knowledgeable and reliable and that the information provided accordingly could be trusted as accurate.

AICGS is indebted to several German agencies for their helpful cooperation in preparing this study for publication, particularly to the press office of the Federal Office for Protection of the Constitution. Our appreciation is due also to the Federal Press and Information Office for the financial support that made this publication possible. Responsibility

for the analysis, evaluations and publication rests of course not with these agencies but solely with the Institute and with the author.

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## ***A B O U T   T H E   A U T H O R***

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Michaela W. Richter



## I. INTRODUCTION

The Office for the Protection of the Constitution (*Amt für Verfassungsschutz*), is one of the German Federal Republic's three agencies authorized to conduct intelligence operations. Collectively the offices of the federation (*Bund*) and Germany's sixteen individual states (*Länder*) are commonly referred to as the *Verfassungsschutz*.<sup>1</sup> Conceived as an exclusively domestic intelligence agency, its charge is to collect information on organized groups and parties hostile to the Federal Republic's constitutional order. The two other intelligence agencies are the Federal Intelligence Service (*Bundesnachrichtendienst* or *BND*) and the Military Counterespionage Service (*Militärischer Abschirmdienst* or *MAD*). The *BND* is primarily responsible for gathering intelligence outside Germany. Like the Central Intelligence Agency (CIA) in the United States, the *BND* is barred from undertaking domestic operations. The *MAD*'s mission is to protect the security of the armed forces.

The Federal Minister of the Interior has responsibility for the federal *Verfassungsschutz*, while the *MAD* falls under the administrative authority of the Minister of Defense and the *BND* under that of the Federal Chancellery. In the mid-1970s, a National Security Coordinator was established in the Chancellery to coordinate the work of the three services. Since 1989 this position has been held by State Minister (*Staatsminister*) Bernd Schmidbauer, who is also a Christian Democratic (CDU) member of the *Bundestag*.

Insofar as the *Verfassungsschutz* monitors political and terrorist groups that threaten internal security, it resembles the Federal Bureau of Investigation (FBI) in the United States. But the *Verfassungsschutz* differs in key respects. Unlike the FBI, the Office has no jurisdiction over criminal activities. It has none of the FBI's police powers. The *Verfassungsschutz*'s mission is to collect and evaluate information on domestic and foreign extremists and on foreign espionage and to transmit this intelligence to the executive, judicial or police authorities. It is not a law enforcement agency, much less a political police. Criminal activities are handled by the Federal Criminal Office (*Bundeskriminalamt* or *BKA*), which, for its part, is prohibited from engaging in covert

intelligence work. In effect, the FBI combines responsibilities and powers which in the Federal Republic are divided between the *Verfassungsschutz* and the *BKA*. Finally, unlike the FBI, the *Verfassungsschutz* is federal in structure, with each *Land* in control of its own *Verfassungsschutz* office.

It may seem curious to include the *Verfassungsschutz* in a series on Germany's democratic institutions. Domestic security and intelligence agencies are generally not considered embodiments of political democracy. While indispensable to governments, such agencies are problematic in societies priding themselves on public scrutiny of the government's activities, on free interplay of political opinions, and on civil liberties and individual rights.

There are, nonetheless, sound reasons for including the *Verfassungsschutz* in this series. First, the Federal Republic's 1949 Constitution (*Grundgesetz* or Basic Law) calls for a *Verfassungsschutz*. So it has been an integral part of Germany's constitutional order from the start. This provided the basis for extending the Agency into the states of the former German Democratic Republic (GDR) when these states were brought into the Federal Republic under the *Grundgesetz* in 1990.

Also the *Verfassungsschutz* is the prime institutional embodiment of a notion of democracy that is unique to the Federal Republic and is rooted in Germany's experience with the Weimar Republic (1918-1933) and the Third *Reich* (1933-1945). This distinctive concept is "militant democracy" or "democracy on guard"<sup>2</sup>— democracy ready and willing to identify and counter political parties and movements that are threatening to the basic principles of democracy. In the 1950s, the Federal Constitutional Court defined these as constituting the country's "free democratic basic order" (*freiheitliche demokratische Grundordnung*). This concept of defending this constitutional order has legitimated and animated the *Verfassungsschutz* from its beginning right down to the present day.

Finally, the Office's mission and methods of operation have at times presented difficult issues: What are the limits of legitimate political dissent in the Federal Republic's democracy? Is an institution needed to monitor political groups that are on the fringes of the political spectrum but are not necessarily advocates of force and violence against the system

or have not violated the law? How adequate are the democratic oversight controls under which the Agency operates?

Concerns about the power of security agencies are pronounced in Germany, but so is ambivalence. On the one hand, the collapse of the Weimar Republic and the triumph of the Nazis in 1933 have been attributed to the absence of an institution able to defend Weimar's democracy against extremist foes. This legacy has made both German politicians and foreign observers highly sensitive to any evidence of the rebirth of right-wing extremism in the Federal Republic. But the experience of the Third *Reich's* centralized, all-powerful, repressive Secret State Police, the *Gestapo*, has at the same time created strong resistance to giving security agencies too much power. And after the unification of Germany in 1990, revelations about the enormous activity of the GDR's *Stasi* (*Ministerium für Staatssicherheit* or State Security Ministry), its domestic security and foreign intelligence agency, reinforced this caution, especially in the eastern part of the country. This ambivalence is part of the political culture within which the *Verfassungsschutz* operates.

## II. ORIGINS

The idea of a special police to protect the state against political opponents originated in Prussia. In 1878, an internal security agency (Department IA) was created within the Prussian police and combined police and intelligence powers. Responsible for political crimes, it enforced Bismarck's anti-socialist laws of the 1880s. Given the German empire's federal constitution, this organization was restricted to Prussia and had no authority outside it.

Under the Weimar Constitution, police powers remained reserved to the *Länder*. But the 1922 Law for the Protection of the Republic, passed after the assassination by rightists of Foreign Minister Walther Rathenau, was national in scope. It gave the republic what appeared to be a strong legal weapon against its foes. Under this law, it was a crime to participate in political associations seeking to subvert the republican form of government or to attack or ridicule the republic. Political groups and meetings hostile to the republic could be banned and anti-republican

publications restricted. However, the Weimar Republic depended largely on the *Länder* for enforcement.

Prussia and some of the other states had political police forces, which both collected intelligence about subversives and, unlike today's *Verfassungsschutz*, possessed arrest and other police powers. Efforts to create a national political police to enforce the 1922 Law were blocked by the Bavarian government as an attempt to deprive states of their police authority. Despite existence of this Law, the argument has been made by historians that Weimar lacked the political will and commitment to democracy to employ its police forces and courts of law against the enemies of democracy such as the Nazis and communists, who resorted to violence and gained strength with the onset of the Great Depression after 1929.

Hitler's seizure of power in 1933 brought fundamental and far-reaching changes in the administration of security, police and intelligence work. As part of the Nazis' policy of centralizing all power, the *Länder* lost their police jurisdiction to a new national political police commanded by Heinrich Himmler. His power was expanded by Hitler's Decree of June 17, 1936. Himmler's new official title, *Reichsführer der SS* and Chief of the German Police in the *Reich's* Ministry of the Interior, formalized the centralization of the *Reich's* entire police system and its takeover by the *SS* (*Schutz-Staffel*). Himmler's ally, Reinhard Heydrich, chief of the *SS's* security service (*Sicherheitsdienst* or *SD*), was given control over all other security-related agencies, including the criminal police, the census bureau, and the resident registration and passport offices. The powers of the Gestapo and *SD* were almost unlimited. They could order virtually at will the surveillance and interrogation of suspects and witnesses, searches and seizures, imprisonment, torture, or execution.

Germany's capitulation in 1945 put an end to this totalitarian fusion of police, security and intelligence-gathering powers. Like all other Nazi creations, the *SD* and Gestapo disappeared. The Allied Council Order 31 of July 1946 abolished all "German bureaus and agencies operating either within the regular police or as separate offices whose task had been to monitor or control the political activities of individuals."

As early as 1947, however, escalating tensions with the Soviet Union as well as U.S., British and West German fears of communist subversion

forced a reconsideration of existing security arrangements. The U.S. military government recommended that Germans play a role in combating communist infiltration of the police and other institutions. To prevent German authorities from setting up an agency that could be used “. . . as a ‘Gestapo’ under the guise of looking for communists . . .,” the U.S. suggestion was that it be put under the control of the U.S. military government. General Lucius Clay, the American military governor, also rejected requests from some *Land* governments that they be permitted to establish special police units to monitor communist activities, remarking: “I think that I would rather have the communists than the secret police.”

The members of the Parliamentary Council (*Parlamentarischer Rat*), the body which convened in 1948 to draw up a constitution for Germany, generally agreed on two major flaws of the Weimar Republic: the “value-neutrality” of its constitution, any part of which could be changed by a majority of the parliament, and its vulnerability to extremist attacks. From this assessment emerged a general consensus on two principles that underlie the *Verfassungsschutz*. First, the new democratic constitution was to be “value-bound” (thus precluding changes or abandonment of certain core values expressed in it) and, second, the new democracy was to be given instruments to defend its key principles and institutions against anti-democratic opponents from both right and left. By 1949, the communist threat was seen as sufficiently grave to forge a strong consensus between the two major parties, the Christian Democrats and the Social Democrats (SPD), for an institution capable of protecting the new democracy. While the Weimar experience was determinative, the *Verfassungsschutz* was also in many ways a child of the Cold War.

Some members of the Parliamentary Council concluded from experience with the Gestapo and the emerging police state in the Soviet zone of occupation, the eastern part of Germany, that it would be a fatal mistake to recreate a national police with jurisdiction over political crimes that would be armed with both police and intelligence powers. Proponents of federalism feared the excessive power of what a Bavarian deputy called a “Himmler-like federal police office.” For the SPD, however, the failure of certain Weimar *Länder* to move aggressively against the Nazis had demonstrated that some form of federal police

powers were essential. The compromise worked out by leaders of the SPD and CDU envisioned an anti-subversive federal agency that would share powers and cooperate with but not exercise direction over analogous *Länder* offices.

More concrete ideas from the three western occupying powers about the federal government's police powers were presented to the Parliamentary Council in the Police Letter of April 14, 1949. It gave the German authorities permission to "establish an agency to collect and disseminate information concerning subversive activities directed against the federal government." The letter further stipulated that "this agency shall have no police power" and "no powers of command over *Länder* or local police authorities." The military governors recommended that the constitution establish the principle of using federal power to combat subversion. The Basic Law then provided two brief declarations concerning the *Verfassungsschutz*. In the first paragraph of Article 87, the federal government was given the power to establish a central office "for collecting information relevant to protecting the constitution," while Article 73, Section 10b called for cooperation between the federation and the states for this purpose.

On January 12, 1950, the three western allies presented Chancellor Konrad Adenauer with their suggestions for a law governing the new agency. They reiterated that it should have "no powers of arrest" and no "authority to observe or command the activities of *Länder* agencies, nor that of any state police offices." It was to be "strictly limited in numbers" and "subject to the special authority of the Federal Chancellor." Its title should ". . . carefully avoid any suspicion that . . . a political police is being established." The Allies recommended "Federal Information Office" but accepted the German name "Federal Office for the Protection of the Constitution" (*Bundesamt für Verfassungsschutz*). The final version of the federal *Verfassungsschutz* Law of September 28, 1950 incorporated all of the occupying powers' stipulations: no police powers; no authority over the *Länder* offices (*LfVs*); and no attachment to a police organ. It also allowed federal directives to the *Land* agencies only in case of attacks on the Federal Republic's constitutional order. These principles have been reaffirmed in the two most important later laws governing the *Verfassungsschutz*, those of 1972 and 1990.

There then ensued a battle over the presidency of the Federal Office. Formally, the chancellor was to make this appointment. Watchful to bar ex-Nazis or communists from such a sensitive position, however, the Allies reserved the right of final approval. Under a special arrangement, the British took responsibility for the *BfV*, the Americans for the Federal Intelligence Service (*BND*). Over Adenauer's strong opposition, the British insisted on Otto John—a lawyer who had played a minor role in the resistance to the Nazis and then escaped in 1944 to Britain—as head of the *BfV*.

### III. MEANING OF *VERFASSUNGSSCHUTZ*

What remained unresolved and subject to continuing controversy was what the framers of the constitution meant exactly by the term *Verfassungsschutz* and what kind of functions they envisioned that agency to have. Was it to be limited to “protection of the constitution” (*Verfassungsschutz*) against those hostile to its principles? Or was it to have a broader role associated with protection of the state (*Staatsschutz*), that is “state security” in the traditional sense?

In the original version of the two articles pertaining to the *Verfassungsschutz*, the Basic Law seems to come down on the side of the more limited concept. Thus the original version of Article 73 simply referred to “protection of the constitution” as the tenth of eleven powers on which the federation could legislate (in cooperation with the *Länder*). The 1950 federal and *Länder Verfassungsschutz* laws somewhat broadened the purpose of the Office: It was to collect and evaluate information about “efforts” (*Bestrebungen*) seeking the “dissolution, change or disturbance of the constitutional order in the federation or a *Land*” or “illegal influence over members of the federal or *Länder* governments in the performance of their constitutional responsibilities.”

In 1972, following unprecedented political turmoil which included terrorist attacks by the RAF (*Rote-Armee-Fraktion*, Red Army Fraction), a small but well-organized, clandestine organization of urban guerillas, the 1950 *Verfassungsschutz* Law underwent major revisions that markedly strengthened the Agency. This was part of a larger package of security measures through which the government of Social Democratic

Chancellor Willy Brandt sought to demonstrate its readiness to support “militant democracy” by moving against left-wing as well as right-wing extremist challenges.

The 1972 *Verfassungsschutz* Law expanded the Agency’s responsibilities, charging it not only to monitor endeavors “hostile to the existence and the security of the federation and the *Länder*” and “harmful to its external concerns.” It was also to counter the espionage operations of foreign countries and to carry out various security functions, such as security checks, prevention of sabotage, and training of security personnel. The 1972 *Verfassungsschutz* Law, it has been argued by some critics, transformed the Agency from the guardian of the constitution (*Verfassungsschutz*) into the defender of the state (*Staatsschutz*).

Conservatives generally view this distinction between protecting the constitution (*Verfassungsschutz*) and protecting the state (*Staatsschutz*) as hairsplitting. As early as the debate over the 1950 Law, a state secretary (deputy minister) in the Ministry of the Interior interpreted the term *Verfassungsschutz* in the Basic Law to mean *Staatsschutz* (state security) and he pleaded for an “effective state security agency.” In his view, the police and *Verfassungsschutz* shared the same task of protecting the state against its enemies. In 1954, the Federal Minister of the Interior, Gerhard Schröder of the CDU, insisted not only that the *Verfassungsschutz*’s primary responsibility was to protect the state but that, as part of the state machinery, it was an instrument of state policy.

On the other side are those who consider these two conceptions of security as polar opposites. This interpretation would limit the role of *Verfassungsschutz* to preventing abuses of democratic principles by anti-democratic groups through means in strict conformity with basic constitutional principles and norms. From this perspective, an exaggerated emphasis on the security of the state would ultimately erode civil liberties meant to protect citizens from the state.

A third position views the two conceptions as distinct but not necessarily incompatible. Clearly, an assault on the state also threatens its prevailing constitutional order. Similarly, an attack on the central values of the constitution has to affect the operation of the state. Yet *Verfassungsschutz* and *Staatsschutz* are not the same and may at times conflict. Thus *Verfassungsschutz* protects a distinctive form of

government and the core constitutional principles on which it rests. *Staatsschutz*, on the other hand, entails protecting “the legal as well as physical existence of the state in its traditional forms of territoriality, population and sovereignty.” For *Staatsschutz* the type of regime is not necessarily relevant.

When the federal government asked the Federal Constitutional Court in the 1950s to prohibit two political parties which it considered extremist, the Court was presented with an opportunity to clarify the role of the *Verfassungsschutz*. In its 1952 decision prohibiting the right-wing extremist Socialist *Reich* Party (SRP) and its 1956 ban of the Communist Party of Germany (KPD), the Court for the first time specified what is meant by the “free democratic basic order” that is to be protected. According to the Court, this constitutional order embodied: respect for the human rights as laid down in the constitution (above all the right of the individual to life, dignity and the free unfolding of one’s personality); popular sovereignty; division of powers; governmental responsibility; administrative legality; judicial independence; a multi-party political system; and equal opportunity for all parties, including the right to exercise opposition within the constitutional framework. The Federal Constitutional Court in this way provided the *Verfassungsschutz* with standards for classifying political ideas or endeavors as “hostile to the Constitution” and therefore “extremist.” By the same token, however, this decision seemed to restrict the *Verfassungsschutz* to protecting the basic constitutional order, thus implicitly rejecting the broader definition of state security.

## IV. ORGANIZATION

### A. Organizational Features

The Federal Office for the Protection of the Constitution (*BfV*) began to function after the adoption of the *Verfassungsschutz* Law of 1950. It is a federal executive agency under the authority of the Federal Minister of the Interior. The head of the *Verfassungsschutz* reports directly to him/her, to whom all intelligence information and assessments must be submitted. The ministry controls the *BfV*’s budget, personnel, operative rules, and administrative regulations. Since its inception, the *BfV*’s

headquarters have been in Cologne. In 1990, the federal *Verfassungsschutz* moved into new headquarters in the city's suburb of Chorweiler and occupies there what has been called one of the most modern secret service centers in the western world.

Original plans for the new agency were modest. In January 1950, the Allies and West Germans agreed on an initial strength of 50 to 70 positions. By the end of 1950, 90 positions had been created. By 1955, the *BfV* and *Land* agencies together employed 900 people. During the 1970s, when both espionage from the East and terrorist attacks were at their height, the *Verfassungsschutz* grew rapidly. By 1977, the *BfV* reportedly employed 1,600 to 1,800 people. By 1989, the federal and *Land* offices together had an estimated 5,100 career employees. This was considerably fewer than the *BND* (estimates: 6,000-8,500) but more than the military counterintelligence, *MAD* (official data: 1,300). According to official figures of early 1998, the *BfV* had 2,173 employees. Experts on German intelligence services have estimated that the federal and *Land* agencies together also count on about 5,000 undercover informants (*Vertrauensleute* or *V-Leute*).

The collapse of the GDR and the Soviet empire in 1990 brought demands for reductions in funds and personnel at both the *Land* and federal level. A sudden explosion of right-wing violence in 1991/1992 ended plans for such economies, but only temporarily. Personnel cuts were halted until 1995. In 1997 the *BfV*'s budget was about 220 million Deutschmark (about 124 million dollars). It accounts for a bit more than 2 percent of the budget of the Federal Ministry of the Interior. Federal budgetary problems are forcing new cutbacks, however. In May 1996 the chancellor's national security coordinator announced a 20 percent reduction for all three security agencies.

The *BfV*'s employees include not only senior and middle rank civil servants (at the *BfV*, these comprise 12 and 30 percent of total personnel respectively), but also intelligence analysts and operatives, those acting as controls for undercover agents, as well as secretaries and guards. The federal *Verfassungsschutz* is considered among the best staffed and financed domestic security services in Western Europe. On the other hand, its resources were dwarfed by the former GDR's *Stasi*, which had 91,000 full-time employees (plus 180,000 secret informants). During the

closing years of the Cold War, the *Stasi* had about 500 salaried employees for every 100,000 people, whereas the Federal Republic's *Verfassungsschutz* had only about six per 100,000.

In 1990 and the years thereafter, the federal and *Land* offices were reduced from eight to six departments. These include: reports, privacy protection issues, surveillance, and technical services (Department I); right-wing extremism and terrorism (Department II); left-wing extremism and terrorism (III); counterespionage, security checks, sabotage prevention, and protection of government secrecy (IV); and extremist activities by foreigners (V). A special department handles budgetary, legal and personnel issues. The largest department, the *BfV* president revealed in 1997, is counterespionage.

## **B. Federal Structure**

Among western intelligence services, only the *Verfassungsschutz* has a federal organization. After the passage of the 1950 federal *Verfassungsschutz* Law, all eleven West German *Länder* set up their own *Verfassungsschutz* offices (*LfVs*). The Unification Treaty of 1990 between the German Democratic Republic (GDR) and the Federal Republic of Germany (West Germany), obliged each of the five new eastern *Länder* to do the same.

The Basic Law is vague on the place of the *Verfassungsschutz* within the federal system. Its provisions concerning the *Verfassungsschutz* merely mention “cooperation of the federal and state governments.” Details of federal-state cooperation and operation of the *LfVs*, first specified in the 1950 federal and state *Verfassungsschutz* laws, have been revised periodically. In line with the federal principle, the *LfVs* are equal with rather than subordinate to the *BfV*. The federal office is authorized to give orders to the *LfVs* only in an emergency situation, something that has not yet occurred in the Federal Republic. Structure, organization, personnel, operational rules, and controls over the *LfVs* are established through state *Verfassungsschutz* laws.

Each *LfV* has exclusive responsibility for surveillance of domestic and foreign extremists operating within its state (and may also handle counterespionage work there). Once extremist groups operate across several *Länder*, the *BfV* not only can stipulate interstate cooperation but

can carry on its own intelligence operations independent of the *LfVs*. In the area of counterespionage, moreover, the *BfV* has principal jurisdiction and may take over control over such cases from state *LfVs*. *Länder* offices are obliged to provide the *BfV* with all information which they collect. *Land* ministries of the interior are politically responsible for evaluating intelligence collected by the *Verfassungsschutz* and for taking eventual action against groups determined by the Agency to be “extremist.” Evaluation may differ from state to state, which helps explain the differential treatment accorded today to the Party of Democratic Socialism (*Partei des Demokratischen Sozialismus*, or PDS), the successor to the communist party of the former GDR. (page 31)

In contrast to the *BfV*, which is subordinate to the Federal Interior Ministry, most *LfVs* function independently of their *Land*’s ministry of the interior, while four (Mecklenburg-Western Pomerania, Northrhine-Westphalia, Rhineland-Palatinate, and Schleswig-Holstein) function within it. Because of Berlin’s special status, until 1990 its *Verfassungsschutz* operated under the authority of the three western allies (Britain, France and the U.S.) as well as that of the Berlin state government. After unification, the Berlin office came under authority of the Berlin senator (minister) responsible for interior affairs. Since the fall of 1994, following several controversies involving the then-senator of the interior, the Berlin *Verfassungsschutz* came under the direct authority of Berlin’s governing mayor. However, the Berlin *LfV* was subsequently returned to the jurisdiction of the senator of the interior. An argument for an autonomous *LfV* is that it is more likely to be non-political, since it is not subordinate to a political appointee, the interior minister. But some *Länder* governments, fearing that separate agencies develop a life and agendas of their own, seek to ensure political control and accountability by subordinating the *LfV* to that minister.

The revised 1990 *Verfassungsschutz* Law emphasized harmonization of federal and *Land* legislation and closer cooperation between the *BfV* and the sixteen *LfVs*. The law made the protection of the constitution a joint federal-state task and mandated that the responsibilities and powers of *LfVs* be the same as those of the *BfV*. It also stipulated more extensive federal-*Land* cooperation in gathering, recording and

transmitting information than previously. The *Land* offices are now obliged to maintain common computer files and integrate them into the federal office's main computerized data base of names, NADIS, which has existed since 1960. As is customary in Germany's federal administration, regular meetings of *Land* and federal ministers of the interior and heads of the *Verfassungsschutz*, in which the chancellor's national security coordinator sometimes participates, are designed to ensure better coordination of policy and operations.

The 1990 Law also tried to provide common guidelines for identifying extremist groups to be monitored and for selecting methods of observation. This was an effort to prevent some *Länder* from monitoring groups as extremist that other *Länder* do not consider such.

There continue to be significant differences between the *Länder* and federal offices and among the *Länder* agencies. Strong *LfVs*, such as those in Bavaria, Hamburg and Berlin, retain considerable autonomy. While formally obligated to follow the federal *Verfassungsschutz* law, *Länder* retain some leeway in the details of such legislation. Some have more restrictions on the use of covert methods than does the *BfV*, more rigorous data protection laws, and closer supervision of the office by *Land* parliamentary control committees. Despite the 1990 legislation the federal and *Land* offices differ among themselves on several issues. The state of Schleswig-Holstein refused, for example, to go along with the decision of the federation and the other *Länder* to monitor the activities of the Scientologists. (page 36)

Among the *LfVs*, two lines of division stand out: between east and west German *LfVs*; and between "conservative" and "liberal" agencies. The recently established eastern German offices confront problems that are different from those faced by their counterparts in the west, including particularly a greater threat of right-wing extremist violence among young men. Given the economic plight of the new *Länder* after unification, the federal government and the *BfV* had to assume most of the costs for the new *LfVs*. Furthermore, since the new *LfVs* neither wanted nor were permitted to take on any former employees of the *Stasi*,<sup>3</sup> the former GDR's security service, they became heavily dependent on west German personnel. East German *LfVs* must also deal with the distinctive legacies of the GDR past. The "*Stasi* legacy" initially created

popular resistance in the eastern states to any security agency engaged in political surveillance. A minimal consensus for the establishment of *LfVs* was created only after a massive publicity campaign by the *BfV*.

Since unification eight years ago, conditions in the eastern part of Germany have continued to pose worrisome security problems. Functionaries of the former communist party and onetime *Stasi* officers and their informants still live in an area that was once the GDR and constitute the core of the PDS's support there. Loyalty to the Federal Republic's democracy on the part of these ex-communists has been a major concern for the *Verfassungsschutz*. A further problem is PDS parliamentarians in the new *Länder* whose membership on parliamentary committees may give them access to sensitive information about *Verfassungsschutz* operations.

The other worry comes from the right. Here again, the main concern is in the east. Psychological, societal and economic strains of unification and the unsettled life that has followed it as well as very high unemployment rates have provided fertile ground for neo-Nazism and aggressive right-wing extremist groups among some disoriented young men. Without much prior exposure to rightist agitation, the new *Länder* found the sudden and dramatic surge in right-wing violence in 1991-1992 especially difficult to cope with. Even today, eight years after unification, 45 percent of acts of criminal violence by rightist extremists occur in the eastern *Länder*, which have only 17 percent of Germany's population.

The second line of division, cutting across the east-west divide, is that between liberal and conservative conceptions of the *Verfassungsschutz*. The conservative view, held by both the *BfV* leadership and generally by *LfVs* in CDU/CSU-governed *Länder*, favors a strong, effective security apparatus with broad powers and minimal restrictions on their exercise. By contrast, *Länder* under SPD or SPD-Green governments generally prefer a smaller and more transparent *Verfassungsschutz*. Since unification, these states have reduced budgets for their *LfVs*, increased controls over them, and shifted the priorities of these agencies from covert work to political analysis and education of the public.

### C. Personnel

As with every intelligence service, selecting and screening persons working for the *Verfassungsschutz* has been a major issue since its inception. In the *Bundestag* debate over the 1950 *Verfassungsschutz* Law, one fear expressed was that security expertise would be given a higher priority than respect for individual rights. Of special concern in the early years of the *Verfassungsschutz* was the hiring of those who had served in the Nazis' security and intelligence services or police. While younger officials worried that such a step might discredit the new agency, "technocrats" such as Richard Gerken, head of the *BfV*'s counterintelligence department and himself formerly an officer in the *Abwehr* (the counterintelligence organization of the pre-1945 armed forces), insisted that expertise and experience should outweigh scruples about affiliation with at least some Third *Reich* organizations.

Just how many experts with a Third *Reich* record were taken on by the *BfV* has never been firmly established. According to a former *BfV* chief, Günther Nollau, at most ten such people were actually hired by his Agency and only after careful checks of their records and approval by the western Allies. Critics of the *Verfassungsschutz* assert that a number of Nazi intelligence operatives worked under contract for the Agency during its early years but were not carried on its payroll. In 1972, the *BfV*'s third president himself, Hubert Schrübbbers, was forced to resign after seventeen years of service when his record as a Nazi prosecutor of political crimes came to light. The collapse of the GDR and dissolution of the once powerful *Stasi* initially raised similar fears that its staff and agents might find their way into the *Verfassungsschutz*. To allay suspicions by east German citizen groups, both the *BfV* and the *Verfassungsschutz* offices in the five new *Länder* made public commitments not to hire anyone who had worked in any capacity for the *Stasi*.

In 1955, the *BfV* established its own staff training school, now located in Heimerzheim (between Bonn and Cologne), which is attended by personnel from both federal and *Land* agencies. The school provides training in intelligence and counter-intelligence (including the use of covert methods), as well as in social scientific analyses of extremist ideologies and politics, evaluation of information from public and covert sources, data management and protection. It also offers civil,

administrative and criminal law for those who want to pursue a civil service career within the *Verfassungsschutz*. Since 1979, it has been financed and managed jointly by the federal and the *Länder* offices and provides another way to promote cooperation between them.

Employees of the state and federal *Verfassungsschutz*, who belong to the national union of employees in the public sector (the *ÖTV*), are by no means politically homogenous. In 1988, some five hundred employees, in Berlin and Bremen, organized themselves as a special group within the *ÖTV* with the express purpose of demythologizing and reforming the *Verfassungsschutz*. Many of their recommendations have been adopted by SPD-governed *Länder*.

#### **D. Office of the President**

The *BfV* is headed by a president and vice-president, both nominated by the government upon the proposal of the federal minister of the interior and formally appointed by Germany's president. Appointees have tended to be senior level civil servants with a strong legal training and/or long experience within the intelligence services, the police or an interior ministry. There has never been a *BfV* president with the public prestige, political unassailability, and prolonged tenure of the FBI's J. Edgar Hoover. (See Appendix for a listing of *BfV* presidents.)

In the Federal Republic's "party state," careful attention is paid to the party affiliations or orientation of top *Verfassungsschutz* appointees. The practice has been to maintain "party proportion" in senior appointments between the *BND* and *BfV* and between the *BfV* president and vice president. By tacit agreement, if the *BfV* president is affiliated with or close to the CDU/CSU, the *BfV*'s vice president and/or the head of the *BND* should have some connection to the SPD. Such a delicate balance can sometimes be achieved by appointing someone to head either agency who has no party affiliation (*parteilos*) and thus is considered nonpartisan. Thus in the spring of 1995, the *BfV*'s President Eckart Werthebach, formally nonpartisan but considered close to the CDU, became a state secretary in the Federal Ministry of the Interior. When the SPD member Porzner was forced out as head of the *BND* in 1996, his successor was Hansjörg Geiger, a highly respected and nonpartisan civil servant, previously the *BfV* chief. Thereupon the *BfV*'s vice president,

Peter Frisch, became its president, and since he is an SPD member, his appointment met the informal criterion of party proportionality.

Since 1950, the *BfV* has had ten presidents, and bad luck with four of them, although in only one case was there a real security threat. This involved the Agency's very first president, Otto John. In 1954 he suddenly turned up in communist East Berlin. There he spent more than a year, denouncing Chancellor Adenauer and asserting that Nazism and militarism were reviving in the west. When he returned to West Germany in 1955, he claimed he had been drugged and kidnaped to the east but was nevertheless convicted of treasonable "misrepresentation" and sentenced to four years in prison.

As mentioned earlier, the long-serving Schrübbers had to resign in 1972, once his Nazi past was revealed. Nollau had his tenure cut short by the Guillaume affair (page 43) two years later. Richard Meier was forced out in 1983 by a federal minister of the interior whose disfavor he had incurred, after a drunken driving incident in which he had been involved. Heribert Hellenbroich, who had moved from the *BfV* presidency to that of the *BND*, was pressured out of the latter post because on his Agency watch a high-level *BfV* official had defected to East Germany. Though not classifiable as security cases, such misconduct or poor judgment, played up by the media, reflected badly on the *Verfassungsschutz* and diminished public and official trust in its competence.

The current *BfV* president, Peter Frisch, was appointed in May 1996, having served nine years as vice president under presidents Boeden and Werthebach. He had previously headed the department in Lower Saxony's Interior Ministry responsible for the *LfV* there. Although an SPD member, he inclines to the conservative view of the *Verfassungsschutz* role.

## **V. THE VERFASSUNGSSCHUTZ IN OPERATION: POWERS, RESPONSIBILITIES AND ACTIVITIES**

### **A. Powers**

Proponents of a strong, "positive" *Verfassungsschutz* maintain that its constitutional duties (*Aufgaben*) implicitly authorize whatever powers (*Befugnisse*) are necessary to execute them. Such powers, they

hold, should remain undefined or delineated only in very general terms. From this perspective, the Agency should operate with maximum powers and minimum political interference or definition of its operating methods.

To others, this line of reasoning can justify security powers too sweeping to be compatible with the principles of a constitutional democracy. They deny that in a society bound by constitutional rules and norms, the powers of an agency can be determined by listing its responsibilities. Thus, the fact that the police has the duty to maintain public security and order does not give it the power to enter a private residence without a search warrant. Similarly, the responsibility of the *Verfassungsschutz* to protect the constitutional order against extremists does not give it power to infiltrate every political group or to collect information on every citizen.

The federal and state *Verfassungsschutz* laws have from the beginning sought to balance the needs of a domestic security agency for secrecy and efficiency with democratic concerns for openness, constitutional controls, and respect for individual rights. Neither school of thought has been altogether happy with the outcome: one side worries about a loss of efficiency, the other about inadequate concern for individual rights.

From the start, the single greatest limit placed on the *Verfassungsschutz* has been the strict separation of police power from intelligence. It is worthwhile to note again here that the FBI in the U.S. as well as internal security agencies in countries like France and Switzerland do combine intelligence functions with police power. This is not the case in Germany. Dealing with actual crimes committed in the fields where the *Verfassungsschutz* has **intelligence** responsibilities—counterespionage and political extremism—is the job of police agencies, such as the Federal Criminal Office (*BKA*), which has a state security department for this purpose.

The *Verfassungsschutz* is not permitted to stop, question, search, detain, arrest, or interrogate suspects, nor to search private residences, nor to seize personal materials. Neither can it ask the police nor another government agency to use these powers on its behalf. This principle, known as the *Trennungsgebot* (separation requirement or doctrine), was

imposed on the *Verfassungsschutz* and police agencies at the insistence of the western allies and important elements of the Parliamentary Council to prevent the reemergence of a Gestapo-like security agency. The *Trennungsgebot* has been reaffirmed in both the 1972 and 1990 revisions of the *Verfassungsschutz* law.

The separation doctrine applies also to the police, which is barred from undertaking “preventive intelligence work” prior to a crime. The police can resort to covert methods only to solve one that has already been committed. By contrast, the *Verfassungsschutz* may gather information upon **suspicion** of a potential threat to the constitutional order or state security. Thus the *Verfassungsschutz* functions as an “early warning system” to try to detect threats in advance. It operates, it says, in the “*Vorfeld*,” a military term meaning “approaches” to a fortified position. It is not permitted, however, to take direct action to ward off threats it may uncover.

Another and equally important difference between the police and the *Verfassungsschutz* is the “opportunity principle” (*Opportunitätsprinzip*). This gives the Agency the right to withhold from courts, state prosecutors and police agencies information with potentially adverse effects for its operations, even if these operations produce information that indicates that certain crimes have been or may be committed. The police, by contrast, is bound by the “legality principle” (*Legalitätsprinzip*). It must not withhold any information about a crime to be or already committed. Under the opportunity principle, the *Verfassungsschutz* may withhold evidence if this might reveal its sources of information or working methods.

Beyond general principles that delineate the Agency’s powers, federal and state *Verfassungsschutz* legislation provides fairly detailed regulations that govern its operating methods, including covert ones. The 1950 law granted the offices formal authority to acquire information through covert methods but did not regulate their use, since the three western occupying powers retained powers in this field until 1968. Under legislation passed by the *Bundestag* in that year, the German government assumed these powers (except in Berlin). But it was not until the 1972 *Verfassungsschutz* Law that the Agency was authorized to use “intelligence-gathering methods” (*nachrichtendienstliche Mittel*) for

surveillance. This deliberately ambiguous phrase was intended to embrace clearly at least mail interception and telephone wire tapping. It has subsequently been interpreted by the Agency to include also use of undercover informants, clandestine observation, electronic listening devices, hidden video cameras, false documentation, and automobile registration.

Wiretapping and mail intercepts raised basic constitutional issues since Article 10 of the Basic Law guaranteed secrecy of the post and telecommunications. The 1972 law necessitated a change in Article 10 so as to permit the *BfV* and the state *LfVs* to use privacy-infringing methods when needed to protect the constitutional order or the security of federal or *Land* governments.

The 1990 *Verfassungsschutz* Law provided highly restrictive guidelines for using technological methods of covert surveillance such as interception of phone calls or letters or electronic or video camera surveillance. These covert methods may be employed only if there is concrete evidence, rather than suspicion, of impending illegal or violent actions by individuals or groups. Phone and mail intercepts require prior authorization from federal or *Land* ministers of the interior, and the G-10 Commission (page 38). The choice of method must be guided by the principle of proportionality, i.e., the method selected must, under the circumstances, be the least damaging to civil liberties of the individual and be proportionate to the threat. Covert methods of surveillance may be used only after every overt method of acquiring information has been exhausted.

## **B. Responsibilities**

As previously mentioned, the Federal Constitutional Court in the 1950s provided a precise definition of that “free democratic basic order” which the *Verfassungsschutz* was created to defend. The Court’s decisions of that era, particularly its decision of 1956 banning the KPD, continue to provide the legal foundation for the Office’s chief responsibility, which is to monitor efforts to subvert the principles of that order and thus, as its name proclaims, to serve as a “protection of the constitution.”

The *Verfassungsschutz* may recommend a party or group be designated “extremist” when it determines that “real indications” exist that its activities are purposefully directed toward a political goal, that its “efforts” (*Bestrebungen*), to use the term found in the constitution, are “hostile to the constitution.” Such efforts need not necessarily be judged likely to be in violation of the criminal code. “Extremist” (*extremistisch*) and “hostile to the constitution” (*verfassungseindlich*), that is hostile to the free democratic basic order, are in a practical sense synonymous, although, strictly speaking, the former is a political evaluation by the Agency, the latter a legal term.

The *Verfassungsschutz* is most likely the only security service in a democratic state that treats political extremism *per se* as a security threat. The Agency has no power, however, to prohibit a party or group. Political parties found to be “anti-constitutional” (*verfassungswidrig*) may be banned only by the Federal Constitutional Court; while anti-constitutional groups which are not political parties may be prohibited by the Federal Minister of the Interior or his/her counterparts in the *Länder*.

The Agency is careful nowadays to distinguish between “extremism” and “radicalism,” although that was not always so clearly the case during the height of the Cold War or during the 1970s and 1980s, a period when West Germany was subject to bomb attacks, murders and kidnappings by leftist terrorists. The view of the *Verfassungsschutz*, as expressed by its current president, is that radicalism is not identical with “hostility to the constitution,” although it may be a “preliminary state” to it.

Fundamentalist critics of capitalism and the Federal Republic’s social and economic order or political institutions are not considered extremists as long as such criticisms remain verbal or oral and change is sought through non-violent democratic means. By contrast, extremism is distinguished as taking actions which involve illegal or extra-constitutional methods against the Federal Republic’s constitutional order, existence, security, or external interests. Such methods range from deliberate provocations of constitutional authorities to incitements, preparations for and use of violence, as well as terrorism. Only those individuals and groups formally designated, upon *Verfassungsschutz* recommendation, by the federal or *Land* ministers of the interior as “extremist” can be targeted for continuous and covert surveillance. A

party so designated can contest the designation before the courts, but none has been successful in bringing a case so far.

The *Verfassungsschutz* holds that classification of left-wing and right-wing extremism is based on objective criteria. A broad variety of sources (publications, speeches, videos, rock lyrics, banners, handbills, meetings, demonstrations, ceremonies, etc.) are analyzed to identify the ideas, expressions, symbols, or forms of actions which define the political visions and objectives of left-wing and right-wing extremists. Agency criteria are set out in the federal and state *Verfassungsschutz* reports in the sections dealing with these political groupings. The Agency's defenders maintain that it carefully weighs all evidence before concluding that there are indications that a party or group is "extremist." The *Verfassungsschutz* relies on two central characteristics: ideological themes and commitment to violence.

According to *Verfassungsschutz* criteria, indicators of left-wing extremism include a firm commitment to the basic ideas of Marxism-Leninism or anarchism, notably a radical critique of capitalism in all its forms, and a fundamental opposition to liberal democracy. Left-wing extremism, the Office asserts, is committed to socialist revolution and seeks to overthrow the Federal Republic's democratic state and social order and to replace it with a communist dictatorship or with a society without any political authority (anarchism). In pursuit of these goals it condones various methods including political agitation, public activities, such as participation in elections, clandestine incitement to criminal acts, and the use of violence. Groups officially classified as being in the left-wing extremist camp range from organized parties that participate in elections, such as the Communist Party (DKP) and the PDS; to groups espousing radical ideas but not violence, such as Trotskyists, nonviolent anarchists, and the so-called non-dogmatic New Left; and finally to violence-prone anarchists and outright terrorists.

As described in the *BfV*'s most recent annual report, right-wing extremism in Germany today is based on a nationalistic and racist ideology. It asserts that ethnicity constitutes the decisive determinant of an individual's value, subordinates human rights to ethnicity, rejects the idea that all humans are created equal, and propagates an authoritarian political system that would fuse people and state into a unity determined

by the natural order of things. Right extremist ideology is, according to the Agency, divided between neo-Nazis, who want to create a racially pure state based on the *Führer* principle, and right extremist parties, who emphasize nationalism and subordinate human and civil rights to national unity. Within the right-wing extremist camp organizationally, the *Verfassungsschutz* distinguishes among several groups, including political parties that participate in elections such as the Republicans (*Republikaner*) and the German People's Union (*Deutsche Volksunion*, DVU); unorganized groups such as neo-Nazi skinheads and racist rock groups; militant neo-Nazis ready to engage in violence; right-wing terrorists; and spontaneous formations of individuals who attack foreigners or such other targets as the handicapped, Jews and Jewish cemeteries.

Agency reports also call attention to rightist intellectual currents, including a "New Right," which traces its roots back to conservative intellectuals of the Weimar Republic who opposed the democratic, parliamentary system. Such "New Right" intellectuals, who favor a strong state, are an insignificant influence in today's Federal Republic. "New Right" ideology can, however, serve to legitimize intellectually neo-Nazi and nationalistic activity.

Since 1972, the *Verfassungsschutz* has been mandated to monitor also foreign residents whose activities endanger or harm the Federal Republic's **external** interests or security. The Agency labels them "foreign extremists" because, while targeting primarily installations, officials and other residents of their countries of origin that are located in Germany, they engage in activities incompatible with the Federal Republic's constitutional principles. Foreign extremists include such groups as the left-wing Kurdistan Workers Party (PKK), right-wing extremist Turkish groups, and supporters of radical Islamic movements, such as the 30,000-member Milli Görüs. Some abduct or murder opponents or extort protection money from their countrymen living in Germany.

The *Verfassungsschutz*'s top priority from its beginning was to combat communist political subversion. Counterintelligence became its formal responsibility only under the 1972 *Verfassungsschutz* Law, which centered all counterintelligence in the Agency, except that relating to the

armed forces. During the Cold War, the GDR's extensive espionage was far and away the primary concern of the *Verfassungsschutz*. While that came to an end in 1990, the Federal Republic continues to be a target for foreign spies.

The 1972 *Verfassungsschutz* laws also gave the *BfV* and *LfVs* "secondary" responsibility for individual security checks. This vetting function was made necessary in part by the anti-radical legislation of the time, which prohibited employment in the government, public sector or private enterprises engaged in sensitive work for the government to persons belonging to or associating with groups hostile to the constitution. The *Verfassungsschutz* cannot initiate security checks on its own but only respond to requests by government offices or private industry. The most comprehensive investigation, which reviews an applicant's entire adult life, private relationships and professional associates, requires the consent of the applicant, who must also be informed of the results. To counter public concerns about undue invasions of privacy and abuses, a 1994 security check law specifies when and how security checks are conducted and how information from them is to be handled.

Forty percent of *Verfassungsschutz* security checks are for civil service jobs, 60 percent for employment in businesses that are carrying out classified work. Finally, since 1972, the Agency has also been charged with assisting in the creation and installation of sophisticated technical security devices to prevent sabotage, in the training of security personnel for public and private enterprises, and in protecting government secrecy.

An issue which has attracted much public attention is the transmission of information stored in the *Verfassungsschutz*'s central computerized data bank, NADIS (*Nachrichtendienstliches Informationssystem*). According to the 1997 *Verfassungsschutz* report, NADIS stores information on 891,400 people, about half of them on the basis of security checks. To reduce public fears about potential abuses, several laws regulate the collection, storage, transmission, or elimination of personal data on individuals, including the 1990 *Verfassungsschutz* Law, the 1978 Data Protection Law (revised in 1990) and the 1994 Security Check Law.

The federal and *Land* offices are also charged with informing citizens about threats to the constitutional order. This is done mainly by the *Verfassungsschutz* reports, which are presented annually by the *BfV* and most of the *LfVs*. The reports, which are well publicized and receive broad attention from the domestic and foreign press, provide surveys of domestic and foreign extremist groups, their activities, memberships, and publications, as well as of foreign intelligence carried out against the Federal Republic. By informing the public about the nature and activities of extremist groups and parties, the *Verfassungsschutz* reports are intended both to educate citizens and to deter them from joining or supporting extremist associations. The federal and state agencies also distribute other publications, sponsor exhibitions and colloquia, and provide interviews to the media. In these ways, the Agency meets its mandated responsibility of “protecting the constitution through political education” (*Verfassungsschutz durch Aufklärung*). Under the presidency of Peter Frisch, the Agency has given much greater emphasis to this responsibility.

With the fall of the Iron Curtain in 1989 and with eased travel throughout Europe generally, new threats have emerged. Many emanate from organized crime syndicates and Mafia-like gangs based in Russia, Ukraine, Turkey, Romania, and southern Italy that traffic in narcotics, prostitutes, weapons, enriched uranium, and stolen automobiles, that launder their money through sham firms, and that run extortionist schemes across newly permeable European frontiers. In 1993 and 1994, Chancellor Helmut Kohl made a point of calling attention to the dangers from internationally organized crime, which continued in the late 1990s to be an important common concern of the seven leading industrial countries, the G-7, at their annual summit meetings.

When after 1990 the *BfV* had to face the possibility of sizable staff cuts, Agency presidents, Gerhard Boeden and Eckart Werthebach, sought an expansion of *Verfassungsschutz* responsibilities to deal with the new dangers coming from organized crime. During 1992, 1993 and 1994, Werthebach made the case publicly, vigorously and insistently. He argued that organized crime constituted a great danger to Germany’s democratic system, since it threatened to corrupt the Federal Republic’s administration, political institutions, rule of law, and even the process of

“forming the political will,” as set down in the constitution. The Agency, he contended, would be better able than the police to collect advance intelligence in this field, because it had the equipment, expertise and experience in intelligence work and, unlike the police, was not bound by the legality principle (page 19).

Werthebach’s campaign failed. His proposal was stoutly resisted by the Federal Criminal Office (*BKA*) and by *Land* interior ministers, particularly in states governed by Social Democrats. Except in Bavaria there has so far been no formal extension of *Verfassungsschutz* responsibility into a field traditionally seen as exclusively work for state police forces and the *BKA*. Nevertheless political leaders, particularly in the CDU/CSU, who stress law-and-order issues keep calling for *Verfassungsschutz* intelligence collection against organized crime. Foreign countries like the United States, which is concerned about Columbian drug traffickers and Russian crime syndicates, press Germany to improve its capabilities for combating transnational criminal activity.

### **C. Activities**

The *Verfassungsschutz* operates mainly in secret. In public, therefore, “that which is most important” as a *BfV* president once told a *Spiegel* interviewer, “must remain unsaid.” Still it is quite possible to derive a fairly complete picture of its activities from the Agency’s annual reports, media coverage and several studies. (Suggested Further Readings, page 58.) The *BfV* estimates that roughly 2 percent of its time is spent on surveillance of extremism, 31 percent on counterespionage, and 7 percent on security vetting. These figures derive from its response to a question posed to the *BfV* in connection with this study.

While the Office employs both overt and covert methods in collecting intelligence, it points out that about 60 percent of its information is obtained in conventional, open ways—reading publications and press reports, observing public meetings, and talking with experts. Another 20 percent, the Office says, comes to it from other government agencies, the police and court cases. On the covert side, it makes use of contractual undercover informants, called in the trade *V-Leute* (*Vertrauensleute*; literally: “persons of confidence”), who provide

confidential reports, observe targeted groups and parties, and sometimes try to infiltrate them. Occasionally the *Verfassungsschutz* conducts mail intercepts or wiretaps, projects which must be approved on a case-by-case basis, first by a minister of interior and then by the G-10 Commission (page 38). More infrequently it resorts to other covert methods, such as emplacement of electronic listening devices, hidden video cameras or distance microphones, which are projects usually approved by a minister of interior and perhaps sometimes by state *LfV* chiefs on their own responsibility. Such methods are supposed to be permitted only in extremely exceptional cases, when there is a discernibly immediate danger to public safety or individual life.

### 1. Counterespionage

From 1972 until German unification in 1990, the chief focus of *Verfassungsschutz* activities was detecting espionage against the Federal Republic carried on by the communist countries of the east, principally the German Democratic Republic. Today, years after the Cold War has ended, it is difficult to imagine how real the communist threat, especially from the Soviet Union and from its most loyal satellite, the GDR, appeared at times during the preceding four decades. The *BfV* and Federal Attorney's Office estimate that 80 percent of all espionage efforts conducted by communist countries against West Germany during those years were directed by East Germany's Ministry for State Security, which in recent years has come to be commonly known as the *Stasi*. Its espionage section, the *HVA* (*Hauptabteilung Aufklärung* [Main Directorate for Intelligence]), was headed, until 1985, by one of history's great spymasters, the notorious Markus Wolf.

East Germany enjoyed many advantages in conducting espionage in the Federal Republic. The firm policy of all West German governments was to keep the Federal Republic's frontiers to the east open. This was to underscore its dedication to unity of the Germans and to validate the West German constitutional and political principle that East Germany was not a foreign country but part of a larger German political whole. West German governments also sought to place the onus upon the GDR for preventing free movement between the two German states and to shine the spotlight of adverse international opinion on East Germany's

communist regime for restricting its people's travel, most dramatically by the erection of the Berlin Wall. Throughout those four decades the Federal Republic welcomed, gave citizenship to, and took in any eastern German who managed to get to the Federal Republic.

These West German practices made it only too easy for East German espionage agents to operate in the Federal Republic. Disguised as refugees before the Wall was built or as released prisoners, escapees or Germans returning home from abroad after it went up in 1961, such agents, once they had settled down in the Federal Republic, began to function as operatives, communicating or meeting clandestinely with their East German handlers, and recruiting West Germans as spies for the GDR. Proximity, familial connections between the two Germanies, and the common language greatly facilitated East German spying. An additional instrument for the GDR was the [West] German Communist Party (*Deutsche Kommunistische Partei* or DKP), a successor after 1969 to the KPD, which had been banned in the 1950s. It was funded and largely directed by the GDR's ruling communist party, the SED, and, while quite small in size, was very active.

During the Cold War, West Germany was inundated with intelligence agents working for the GDR. Of primary concern for the *Verfassungsschutz* were the professional spies of Wolf's *HVA*. During four decades, the *HVA* recruited huge numbers of agents in Bonn, the West German capital, at NATO headquarters in Brussels and elsewhere. In his memoirs, Wolf claims that at any given point in time during the last decades of the GDR his *HVA* was running about a thousand agents in West Germany, of which “. . . little more than one tenth . . . were important sources.”

West German experts on the *Verfassungsschutz* think that Wolf's figure may be fairly accurate, but it is hard to document. *HVA* professional operatives did not by any means account for all the GDR's agents and informants in West Germany. Responding to an inquiry in connection with this study, the Federal Attorney's Office estimated that at any given time *HVA* professionals made up about half of the GDR agents active in the Federal Republic. That estimate would suggest a total of about 2,000 active at any given time. In the mid-1970s, when agent

activity was perhaps at its height, a *BfV* president characterized a reporter's estimate of 3,000 to 4,000 as "a realistic range."

A report prepared recently for the office concerned with evaluating *Stasi* files, the Gauck Authority, suggests that over the four-decade period between 1950 and 1990 as many as 20,000 and possibly as many as 40,000 West Germans spied for the GDR at one time or another in one capacity or another. More than half were recruited by *Stasi* departments other than Wolf's *HVA*. While most were low-level contractual informants, this figure includes some fairly prominent politicians, journalists, academics, and clerics. A few were close to the top ranks of German political parties and its intelligence agencies, including the *Verfassungsschutz* (page 45).

During the late 1960s and early 1970s, the *HVA* systematically infiltrated leftist student organizations at West German universities to recruit spies; and many of these recruits eventually rose to positions in politics and government where they could provide useful information. In a singularly successful effort to affect the course of West German politics, Wolf's directorate supplied the cash to bribe a CDU *Bundestag* member to cast his ballot for SPD Chancellor Willy Brandt in a close parliamentary no-confidence vote in April 1972, thereby helping to save the SPD-led government from falling.

After unification, the *BfV*, *BKA*, and other agencies and prosecutors were able to identify many, but certainly not all, West Germans who had acted as spies.<sup>4</sup> In early 1998, the Federal Attorney informed the public that in the seven years after January 1, 1991, 2,797 West Germans had been investigated on suspicion of spying for the GDR, 261 convicted, and three found innocent. Seven hundred and sixty cases had been settled, many against payment of fines, 1,614 had been closed, often because the statute of limitations had expired, and 134 remained open. These figures demonstrate the sheer immensity of East German agent activity during the Cold War with which the *Verfassungsschutz* was called upon to cope.

To combat this gigantic GDR espionage effort on more equal terms, the Agency would probably have needed an apparatus so large as to be incompatible with West Germany's democratic system. Its job was rendered more difficult, in any case, by the policy of the federal

government to exchange captured GDR spies readily for political prisoners or captured western agents in the GDR. Knowledge that they would soon be exchanged diminished incentives for captured spies to disclose their sources in West Germany.

Another major area of the Agency's activities resulted from the social upheaval in the Federal Republic in the late 1960s and early 1970s. This period gave birth to an "extra-parliamentary opposition" and, in the 1970s, to several terrorist organizations, the best known of which was the RAF (*Rote-Armee-Fraktion*). The RAF employed bombings, kidnaping and assassination in the hope of touching off a revolution that would destroy the capitalist system. In the 1970s, West Germany suffered more terrorist attacks than did any other European country. The RAF's murder victims numbered about forty, including prominent judges, the chief federal attorney, the chairman of Germany's second biggest bank, a leading diplomat, and as late as 1991 the head of the Trusteeship Agency responsible for privatizing east German state-owned properties.

Along with conducting counterintelligence against the East German spies, trying to unearth terrorists of the RAF and several similar organizations placed the greatest burden on *Verfassungsschutz* personnel and resources for two decades following 1970. After unification, it was revealed that the GDR had given sanctuary for years to RAF operatives and had otherwise lent the RAF support of various kinds—a project which evidently escaped Agency detection for many years.

With the disappearance of the GDR and Markus Wolf's directorate as well as the waning of RAF terrorism (the RAF announced its dissolution in April 1998), the *Verfassungsschutz* has come to devote its main attention to monitoring "political extremism" of the left and right, chiefly domestic but also of foreign origin. It has also continued its counterespionage work against old adversaries in the east, such as Russia and some eastern European countries, notably Poland and Romania. In late 1997, it sought to convince Chancellor Kohl to add to his agenda for informal talks with Russia's President Yeltsin the increasing activity of Russian spies operating in Germany.

Recent *BfV* reports stress also the need for increased vigilance against foreign intelligence services from the Near East, such as those of

Iran, Iraq, Syria, and Libya. These services both engage in “classical” forms of espionage and use their agents to track and even kill opponents of their governments living in the Federal Republic. They also seek access to German technology and equipment with which their countries aim to build nuclear, chemical and biological weapons.

## 2. Left-wing Extremism

In 1997, the Agency classified about 150 groups as “left extremist” and therefore subject to surveillance. Most of them are quite small, and their combined membership comes to only 34,800. A more serious threat from the left, in at least the *BfV*'s view, is posed by the PDS.

The PDS counts about 99,000 members in the eastern states, making it the largest party there by number of adherents, if not of votes. (It has a mere 2,500 members in the western states.) The party has scored significant electoral successes in the five new *Länder* and the eastern part of Berlin. Garnering between 10 and 20 percent of the vote, the PDS is represented in many communal, city and state parliaments in the east, and since the 1994 national elections with thirty deputies in the *Bundestag*.

The PDS presents a distinctive problem. On the one hand, there has been pressure by the *BfV* and certain *LfVs* to classify it as extremist. On the other hand, it enjoys considerable popular support in the new eastern states, where much of the population regards it not as a radical but as a normal party that is fully capable of participating in local or even *Land* governments. West German pressures to place it under *Verfassungsschutz* surveillance are seen by most politicians in the five new *Länder* as counterproductive, strengthening rather than weakening the party's electoral support.

Treatment of this party varies among the seventeen federal and state offices: the *BfV* and six state offices, all of them in the west (Baden-Württemberg, Bavaria, Bremen, Hesse, Northrhine-Westphalia, and Rhineland-Palatinate) have concluded that the PDS displays “real evidence” of efforts directed against the Federal Republic's free democratic basic order and so the party as a whole deserves to be designated as extremist and placed under observation; six state offices, all but one of them in the east (Berlin, Mecklenburg-Western Pomerania, Lower Saxony, Saxony, Saxony-Anhalt, and Thuringia) have found that

only certain groups within the PDS deserve to be so designated; two *Länder*, both in the west (Saarland and Schleswig-Holstein), are still actively considering how to classify the party (*Prüffall*); and two, one in the east and the other in the west (Brandenburg and Hamburg), have decided against classifying it at all.<sup>5</sup>

The *BfV* for its part has concluded that indications still exist that the PDS seeks to supersede the democratic order and replace it with a different societal and political system. It cites six pieces of evidence in its annual report: first, the PDS has not divorced itself from a communist past, as shown by the fact that over 80 percent of its members once belonged to the GDR's communist party, the SED; second, its point of departure is the primacy of socialism over democracy; third, it has an ambivalent relationship to the use of force in politics; fourth, it tolerates and promotes within its ranks left-extremist organizations, such as the "Communist Platform" (which has about 2,500 members); fifth, it cooperates with other left-extremist organizations; and finally, it maintains contact with communist parties in foreign countries.

Loosely or hardly organized anarchistic groupings, notably the so-called *Autonomen*, constitute the main danger of violence on the left. Clad in black leather and masked, the *Autonomen* resort to street demonstrations and occasional attacks that target institutions of state authority and particularly right-wing political groupings. The *Verfassungsschutz* estimates there are more than 6,000 such anarchists active in Germany. Among their recent efforts have been blockades of railroads and highways in an effort to stop shipments of nuclear waste to underground repositories in Lower Saxony and elsewhere. The remaining leftist groupings watched by the *Verfassungsschutz*, a motley and insignificant bunch of Maoists, Trotzkyites and antifascists, include some who subscribe to terrorist violence.

Various criminal acts of violence by left-wing extremists rose to 833 in 1997 from 716 a year earlier. More than a quarter of these acts were connected with efforts to blockade the rail and road transport of nuclear waste material. A large number resulted from clashes with right-wing extremist groups.

### 3. Right-wing Extremism

Soon after unification in 1990, Germany experienced an unexpectedly rapid growth of right-wing violence against foreigners. This growth was unusually marked in (but was not confined to), the new eastern *Länder*, where right-wing violence, particularly in states like Brandenburg, Mecklenburg-Western Pomerania and Saxony-Anhalt, has proved to be a continuing public safety problem.

Isolated from abroad for forty years, east Germans had had little experience with foreigners before 1990. Even today the number of foreigners living in the former GDR is relatively small. The post-unification wave of violence peaked in 1993, declined through 1995, and then took a new upturn in 1997, when politically related criminal offenses committed by neo-Nazis, skinheads and others on the far right jumped by a third. Among those offenses 790 criminal acts of violence were recorded (1996: 624). In 462 cases, the *BfV*'s 1997 report states, hostility toward foreigners was suspected or proven. Perpetrators are most likely to be resentful young males. The report estimates that there are 7,600 violence-prone right extremists in the country, 85 percent of them between sixteen and twenty-four years old. Right-wing violence continues to be relatively higher in the eastern states, where 2.7 criminal acts of violence per 100,000 population were registered in 1997, compared with 0.7 in the western ones. Its 1997 estimate of membership in 109 such groupings was 48,400, up from 45,300 in 1996. About 35,000 of these belong to three right-wing parties that contest elections.

The remainder is composed of various neo-Nazi and skinhead groups that are prone to violence. The *Verfassungsschutz* calculates that there are about 2,400 neo-Nazis and skinheads, in about forty flexibly organized and fluctuating groups, now active in Germany. Such groups make extensive use of the Internet to keep in touch with each other, a new development to which the Agency has been devoting much attention. Brutality against foreigners, desecration of Jewish cemeteries, and attacks against meetings of leftists are their principal criminal activities. The Agency sees a potential for growth among the skinheads, who are strongest in the big cities of Hamburg and Berlin and disproportionately strong in the eastern states.

Firebombings of hostels occupied by foreigners and other right-wing violence in 1991 and 1992 resulted in a torrent of criticism from abroad and allegations of German government lethargy and indifference. Media in the United States and Germany charged that German police and security agencies had been lax and indifferent in the face of such right-wing violence and hate crimes. They implied that Nazism might be on the rise again.

Caught initially by surprise, both by the outbreak and by the criticism, the *Verfassungsschutz* subsequently started devoting much more attention to right-wing extremism and made sure that the public knew it was doing so. Thirteen neo-Nazi groups, all of them quite small, have been banned by state ministers of the interior since 1992. The Agency's 1997 report lists nearly 12,000 criminal offenses of all kinds with proven or likely right-wing extremist motivation. (As opposed to about 3,000 left-wing criminal offenses of all kinds recorded in 1997.) Besides the criminal acts of violence mentioned above, these rightist criminal acts included damage to property, scrawling of graffiti, and a very large percentage (67 percent) display of prohibited badges, flags and emblems of Nazi and neo-Nazi groups. No rightist terrorist groups, however, have been detected in Germany.

As on the left with the PDS, the *BfV* also classifies as right-wing extremist political parties that participate in elections. These include the *Republikaner* (REP) with 15,000 members, the National Democratic Party (NPD) with 4,300, a third of them in the eastern states, and the *Deutsche Volksunion* (DVU) with 15,000. The strongest of the three is the *Republikaner*. As with the PDS, the *Verfassungsschutz* has detected in the REP "indications of efforts against the constitutional order," although "not all individual members are to be considered right extremists." The *Republikaner* contest elections on the state and local level and with 9 percent of the vote in 1996 won seats in the Baden-Württemberg state parliament. Unlike the PDS, which is regarded differently by different *Verfassungsschutz* offices, the *Republikaner* are classified as extremist by all of them, federal as well as state. *Republikaner* strongholds are in Bavaria, Baden-Württemberg, and Northrhine-Westphalia.

The DVU is strongest in the same states, but in the early 1990s won a small number of seats in the *Land* parliaments of Schleswig-Holstein and Bremen. With 13 percent of the vote in 1998 it gained sixteen seats in the parliament of the eastern state of Saxony-Anhalt. This was a surprise to most political observers. It was the first real success of a right-wing party in the new *Länder* and the biggest in any state since 1949.

#### 4. Foreign Extremists

From the early 1960s until the mid-1970s foreign workers and their families entered Germany in large numbers. During the late 1980s and early 1990s, the Federal Republic also took in many political asylum-seekers and refugees from the war in Bosnia. With foreigners now comprising nearly 9 percent of its population, Germany has more, relatively, than any other European Union country or the United States. There are now about seven and half million foreign residents in the country, just over two million of them Turks. Some groups brought with them political rivalries from home. The *Verfassungsschutz* conducts surveillance of several that practice violence on German soil against their opponents, with assaults, firebombings and extortion of protection money. Turkish, Kurdish, Iranian, and various Arab and militant Islamic groups are among them. The Agency estimates that there are 58,000 foreign extremists in Germany.

Most active and most dangerous in the view of the Agency has been the Kurdistan Workers Party (PKK), which at home has been battling Turkish troops for fourteen years in an effort to establish an independent Kurdistan in the Turkish-Iraqi border area. Many of the 500,000 expatriate Kurds living in western Europe reside in Germany. In 1993 the PKK unleashed a wave of attacks against Turkish installations in the Federal Republic, which PKK propaganda at the time branded “enemy number two” after Turkey for its delivery of military equipment to Ankara. It also blocked German highways to air the Kurdish cause. The federal minister of interior banned the PKK in November 1993. Once the PKK leader Abdullah Ocalan promised to respect German law, and the PKK desisted from violence, the terrorist classification was removed in January 1998. The party is still banned, however, and subject to Agency surveillance.

## 5. Scientologists

On June 6, 1997, the federal and state ministers of the interior directed the *Verfassungsschutz* to place the Los Angeles-based Church of Scientology under observation. The ministers are to meet in November 1998 to determine whether surveillance should continue. This tasking was a new departure for the Agency, which had hitherto been almost exclusively concerned with organizations that were indisputably political.

The Scientology Church claimed 30,000 adherents in Germany as of 1997, but Agency estimates put the number much lower, probably fewer than 10,000. The interior ministers' action followed more than a decade of heated controversy and court cases between the Scientologists and German authorities in several *Länder* over whether Scientology was a church and entitled to tax exemption. The ministers acted on the basis of an expert opinion prepared for them by an Agency working group made up of representatives from the *BfV* and six *LfVs*. The working group had discovered—on the basis of Scientology publications and statements and particularly of testimony from Scientology defectors—“real indications” that Scientology's programs were primarily political and directed against Germany's free democratic basic order. The Agency concluded that Scientology's religious teachings served as a pretext for the pursuit of business and political aims.

The *BfV*'s president subsequently contended that Scientology sought political power and a system of rule that was incompatible with Germany's constitution. His Agency's 1997 report asserts that Scientology doctrine is absolutist, leaving no room for political parties or a parliamentary opposition. The working group report makes repeated allegations about Scientology's claims to political power, its aim to change society and create a new civilization, its “totalitarian” practices, and the priority it assigns to profit-making.

The Church has forcefully and loudly denied these allegations, arguing that it respects Germany's democratic order, the rule of law, and human rights. It claims that, being a religious community, it is entitled to that protection of free exercise of religious belief accorded by the German constitution. It has defended itself vigorously and insisted that it is completely unpolitical. It also unleashed a campaign against the

German authorities, accusing them of intolerance and persecution of a religious minority. A United Nations special investigator reported in the spring of 1998 that the debate had become overly emotional, with “too much passion and exaggeration by all sides.”

Steps taken by the German authorities against the Scientologists became an issue in German-American relations. As early as 1993, State Department human rights reports had criticized the authorities on their treatment of the church. There was an outcry among Scientologists in the United States, whose numbers include movie stars such as John Travolta and Tom Cruise and the popular musicians Chick Corea and Isaac Hayes. They publicly and repeatedly denounced official attitudes and treatment of the Scientologists, comparing them with the Nazi regime’s persecution of the Jews. In November 1997, they testified before the House of Representatives Foreign Affairs Committee on behalf of a resolution that would have called upon the president to express his concern to the Federal Republic. Although it passed the Committee, the resolution failed in the full House.

## VI. OVERSIGHT

The three most important oversight mechanisms under which the *Verfassungsschutz* must operate are the 1978 Law for Parliamentary Control over the Intelligence Services (or PKK Law); the 1968 Law to the limit of secrecy of mail and telecommunications, which is guaranteed by Article 10 of the Constitution (hence known as the G-10 Law); and finally, the data protection law passed first in 1977 and revised in 1990 (the BDSG Law). Each of these established authorities is independent of the executive, with members selected by the *Bundestag* and responsible to it. This legislation was adopted as well by all the *Länder*. Together with administrative supervision and other checks on *Verfassungsschutz* activity, this oversight provides ample assurance, its president contends, that the Agency cannot become “a state within the state.”

### A. The Parliamentary Control Commission (PKK)

Prior to the 1978 PKK Law, parliamentary control over the three intelligence agencies, including the *Verfassungsschutz*, was exercised by

an informal parliamentary committee. By contrast, the authority of the Parliamentary Control Commission (PKK) is determined by the 1978 law and is exercised independently of the executive. Its nine parliamentary members (four from the CDU/CSU, three from the SPD, one each from the FDP and the Greens) are elected by and responsible to the *Bundestag*. The government must give the PKK a full report on all its covert operations but does not need to seek its prior approval for them. The PKK cannot launch investigations on its own. In the wake of scandals relative to the *Verfassungsschutz* (page 44), it can only seek a report from the government and eventually recommend reforms or tighter supervision of the Agency.

## **B. G-10 Commission**

The second and a stronger control mechanism derives from the G-10 Law of 1968. This law regulates when and how constitutionally protected mail and telecommunications secrecy may be infringed by the *Verfassungsschutz* and the other two intelligence services. Before the *Bundestag* passed the law in 1968, the American, French and British authorities in western Germany handled monitoring of mail and telecommunications there. (The three continued to monitor on their own in Berlin right down to the day before German unification, in October 1990.) The German government had no powers. But, as a *Verfassungsschutz* president admitted after he left office, the Agency had conducted postal and telephone surveillance ever since its founding in 1950. Sources familiar with its work explain that Agency officials of that era asked the Allied authorities to arrange such intercepts and wiretaps, since the German postal system officials would act only on orders from the Americans, British and French.

Since 1968 there have been two G-10 bodies on the federal and state levels. The first, the G-10 Commission, today consists of four members on the federal level (one each from the parties represented in the *Bundestag*, excepting the PDS) who are chosen by the G-10 Executive Body of the Parliament (see below) but do not need to be members of the *Bundestag*. The Commission functions not as a parliamentary body but as an independent, quasi-judicial one, and the chairperson must be

qualified as a judge. Meeting in secrecy, it is a *sui generis* institution in Germany.

The Commission's **prior** approval must be obtained by the government for measures which may violate an individual's mail and telecommunications privacy rights that are protected by Article 10 of the constitution. (Hence the Commission's name.) These measures embrace mail intercepts and telephone (fax and telex) wiretaps. Its responsibility does not, however, extend to *Verfassungsschutz* use of remote listening devices implanted in rooms or of long-distance video cameras or microphones.

Requests to the Commission must originate with the president of the *Verfassungsschutz* and be approved by the federal or *Land* minister of the interior. If a minister determines that he or she has no time to consult the Commission, its retroactive approval must be sought forthwith. Any operation not approved must be halted at once and any intercepts destroyed. In its early years, the G-10 Commission rejected a significant number of intercept requests. Such rejections are today rare, as the Agency has learned through experience which of its requests are likely to survive Commission scrutiny.

The Commission may also investigate complaints by a citizen of unwarranted or illegal violations of privacy rights. It then informs the citizen whether or not one's "G-10 rights" have been violated. The G-10 Law requires as well that a person whose communications have been monitored be similarly informed of the action after the fact, provided the purpose of the surveillance is not compromised thereby, thus opening the way for eventual legal action against the *Verfassungsschutz* by an injured party. An expert familiar with the work of the G-10 Commission states that since 1968 about 2,500 Germans have been formally notified of such surveillance.

A source close to the *Verfassungsschutz* has estimated that in about 70 percent of surveillance cases relating to Germans notification takes place. If this is accurate, then a total of about 3,600 surveillance requests relating to Germans have been made of the G-10 Commission since its establishment, an average of 120 per year. If requests relating to foreigners, who are not usually notified, were included, this figure would

rise considerably—perhaps to as many as 200 in some years. That figure is still relatively lower than in comparable European countries.

The 1968 law also established a second body, the G-10 Executive Body (*Gremium*), which on the federal level consists of nine members from the *Bundestag* (four from the CDU/CSU, three from the SPD, and one each from the Greens and the FDP). It receives semiannual reports from the Federal Interior Ministry that deal in general terms with mail interception, wiretapping and other electronic surveillance that have been carried out. The Executive Body selects the four-member Commission, who serve terms of four years and up to three additional months. Most states have copied the federal model, although their commissions and executive bodies exercise control over only a single intelligence service, the *LfV* of their state.

### **C. Data Protection Commissioner**

The Federal Commissioner for Protection of Personal Data (*BfD*) is the most powerful of the supervisory agencies. It has full and continuous access to the *Verfassungsschutz*, including the right to on site inspections and periodic spot checks on data stored electronically in NADIS. (Its jurisdiction does not, however, extend to G-10 Commission matters.) It can investigate citizen complaints and to this end can examine all relevant files and information. The federal and *Länder* data protection commissioners prepare annual reports about their activities and inspections that list specifically and in detail official violations of personal data privacy. They may issue formal complaints about procedures and recommend which types of data ought to be corrected or deleted in agency files as well as methods for improving data protection. However, their recommendations are not binding.

### **D. Administrative and Other Controls**

Beyond this formal oversight, the *Verfassungsschutz* is subject as well to a variety of administrative constraints. The first are executive controls, chiefly in the form of overall supervision of *Verfassungsschutz* activities by federal and state ministries of the interior. Additional parliamentary control at both the federal and *Land* level is also exercised through parliamentary debates, question hours, and requests for

information by parliamentary deputies. The Agency's budgetary expenditures are subject to checks by the Federal Auditing Office (*Bundesrechnungshof*). Of the federal parliamentary committees, the most important for the *BfV* is the Committee of the Interior, which receives the Agency's annual reports. The courts provide for further constraint. Individuals and groups who suspect legal violations by the *Verfassungsschutz* may seek legal recourse there. Officials and agents of the *Verfassungsschutz* must obey criminal laws. Agents who commit crimes, participate in criminal acts or encourage others to do so are subject to legal prosecution, even if they were acting in the line of duty.

## **VII. ACHIEVEMENTS, PROBLEMS AND EFFECTIVENESS**

For much of its existence, the *Verfassungsschutz* has had to struggle for recognition. It has not had the public approval that Americans accorded to the FBI and CIA, at least in their early years. In part this results from the nature of its work. The Agency's job is to collect information that can be used preventively. Here success is hard to prove. Certainly the Agency's achievements, perhaps even its most significant, include warding off danger by providing timely advance information that nipped espionage operations or extremist threats in the bud. The *Verfassungsschutz* can seldom disclose acts of espionage, terrorism or political extremism that it may have deterred, since to do so might reveal Agency sources of information or operational methods that continue to be used. Nevertheless in the course of its nearly fifty-year history, the *Verfassungsschutz* has often been able to point to significant accomplishments.

### **A. Achievements**

There can be little doubt that the early warning system provided by the *Verfassungsschutz* was vital in maintaining and protecting the Federal Republic's democratic order during the first decades of its existence. More than any other government agency, it embodied the spirit and constituted the institutional arm of that "democracy on guard" which characterized the country's view of itself during those years.

The *Verfassungsschutz* has also had a broad impact on the political system by reinforcing centrism, a marked feature of West German political stability for nearly the entire life of the old, pre-unification Federal Republic. Since the 1950s until today, it has been work by the *Verfassungsschutz* which has led to the banning of parties and political groups defined as extremist. Fears of being branded extremist have prompted parties on the far left and far right alike to remove leaders or revise parts of their programs that might be determined to be hostile to the constitution. Such attempts to excise extremist stigmata, thus to make a party both constitutionally acceptable to the *Verfassungsschutz* and eventually electorally acceptable as well, have done much to strengthen moderation in German politics and to define the permissible limits of political dissent.

Quite a number of the Agency's specific operational successes have become a matter of record. In the 1950s, its work helped accumulate evidence that led to the banning of the rightist Socialist *Reich* Party (SRP) and a few years later the leftist Communist Party of Germany (KPD). Another early success was the penetration and uncovering in 1957 of a large scale effort by the East German trade union organization to infiltrate West German unions. Also in 1957 the Agency detected a large illegal KPD publishing group in the Federal Republic, whose members were arrested by the police and successfully prosecuted. In the late 1960s, a new right-wing party, the National Party of Germany (NPD) emerged. Headquartered in Hannover, the party quickly came under monitoring by the Lower Saxony *Verfassungsschutz*. The NPD soon faltered as a result of quarrels in its leadership, divisions which, some observers believe, the Agency secretly encouraged.

In the area of counterintelligence, the Agency has also scored impressive successes, uncovering important agents of the GDR in all three of the leading West German political parties. As early as 1954, it began observing a CDU *Bundestag* deputy from Hamburg and a member of key parliamentary committees, Karlheinz Schmidt-Wittmark, who, alerted by Markus Wolf's *HVA*, escaped to East Berlin. A few years later the Agency's work helped lead to the apprehension of Alfred Frenzel, an SPD member of the *Bundestag* defense committee, who had been passing committee secrets to Czechoslovakia. Convicted and sentenced to fifteen

years in 1960, he was later exchanged for western spies captured in the communist east.

Agency counterintelligence efforts paid off also in 1969, when the Nürnberg businessman Hanns-Heinz Porst, who moved in the top ranks of the Free Democratic Party, was convicted of “treasonous connections” to the *HVA*. He had been recruited by the East German service as early as 1953, as it turned out. The Social Democrats’ *Bundestag* floor leader, Karl Wienand, came under *Verfassungsschutz* suspicion when he met with *Stasi* agents over 90 times between 1976 and 1990. Finally brought to trial in 1996, he was convicted and received a two and a half year sentence. *HVA* files obtained directly or through the American CIA contributed to this particular success. Another prominent East German agent, whose espionage was also not proven until after unification, was William Borm, a member of the FDP’s Executive Committee, the party’s top policymaking body, from 1970 to 1982.

As Markus Wolf vividly describes in his memoirs, a favorite and effective technique of his effective *HVA* was using its “Romeos” to recruit female secretaries well placed in the Bonn bureaucracy to provide secret information. But in 1976, the Office’s counterespionage work led to the arrest of one such agent, an executive secretary high in the foreign office. Soon thereafter and on into the mid-1980s, the *Verfassungsschutz* uncovered more than twenty GDR agents such as she. How many others escaped detection by the Office remains a matter for conjecture.

The Agency’s most spectacular counterespionage success during the Cold War was the detection in 1974 of Günter Guillaume, one of Wolf’s prize agents. He had been working since 1970 as a personal assistant to Chancellor Brandt and with his wife, Christel, carrying on espionage ever since the mid-1950s. The long delay in identifying the two and the negligence with which the West German political leadership handled the case when suspicion arose, however, hardly covered either the Agency or particularly its political superiors with glory. Drawing investigative conclusions about East German infiltration techniques from these and other cases, the *Verfassungsschutz* between 1970 and 1978 conducted a massive review (using computer-generated profiles) of the registration records of West Germans resident abroad who were returning home that

resulted in the arrest and prosecution of more than 100 East German agents who had “borrowed” the identities of such citizens.

The Agency’s battle against the RAF continued on into the 1990s, and its work was instrumental as well in providing information that led to the banning of neo-Nazi groups in several states after 1992.

West Germany was the chief terrain for Cold War espionage. Far more spies from the communist bloc were apprehended and convicted there than in any other western country, the United States included. In a country where strong evidentiary proof is required in the courts to secure a conviction, this record is a solid one for the *Verfassungsschutz*.

## **B. Problems**

Like the Federal Bureau of Investigation and Central Intelligence Agency in recent years, the *Verfassungsschutz* has had an unfriendly press and, as a result, a tarnished public image, which it has been making efforts to repair. As a *BfV* president ruefully commented in the mid-1970s, “we have the bad luck that our slip-ups, unlike those of other government authorities, . . . are exposed to the glaring light of publicity.”

With the end of the Cold War and the disappearance of the German Democratic Republic and its many spies, politicians of all parties challenged the continuing need for a counterintelligence organization, and some even called for its dissolution. In its forty-eight years, it has been subject to scandals resulting from defections, penetration by eastern agents, and botched operations. Its interpretation of political “extremism” has been questioned; it has been criticized as susceptible to influence by the major political parties, inadequately overseen by government and parliament, and disregardful of its founding principles. A gap remains between the Agency’s achievements and its sometimes negative public image. While this study cannot pretend to offer conclusive judgments on these issues, it needs to address them.

### 1. Scandals

These fall into three categories. First are organizational failures, the most damaging of which occurred in the Agency’s earliest years, when its first president, Otto John, disappeared in 1954 and turned up in communist East Berlin. As embarrassing and probably a more damaging

defection to the GDR was that in 1985 of Hansjoachim Tiedge, who had been in charge of protecting the *Verfassungsschutz* against infiltration from the East. Markus Wolf's star agent within the *Verfassungsschutz* during the 1980s was Klaus Kuron, a brilliant operative for many years, one who was never caught and confessed only after German unification in 1990. The *LfV* in West Berlin in particular suffered much from penetration by *Stasi* agents.

A second category involves allegations that the *Verfassungsschutz* has violated the law or constitutional rights of citizens. Among the documented abuses are the so-called Telephone Affair in 1963, in which the *BfV* was alleged to have received materials from covert surveillance carried out by the western Allies in violation of Article 10 of the constitution. In the Traube Affair in 1976, Agency operatives violated Article 13, which guarantees the privacy of a residence, by illegally entering a home to emplace a listening device. In this case, which was played up in the press, the Federal Minister of the Interior took responsibility for the break-in. In 1988 the Agency was accused of failing to observe the requirement to inform innocent employees of a private firm, Mannesmann, that it had been conducting security checks about them. The *Verfassungsschutz* was also accused of illegally violating postal secrecy by intercepting mail from the GDR without appropriate prior approval, and of conducting unauthorized surveillance of airline pilots.

Third, the Agency has had its share of botched operations which attract press attention. Notable among them was the escape in 1980 of two long-sought RAF terrorists as a result of Agency mistakes. Some bungled operations seem to have verged on criminal behavior. Perhaps the best known of these was the Lower Saxony *LfV*'s staged bombing in 1978 of a prison near Celle, an effort to establish the credibility of one of its informants with an RAF terrorist jailed there. Far more serious charges of criminal activity have been brought from time to time. Most recent is a 1993 case, in which a former informant of the North Rhine-Westphalia *LfV* was accused of knowing and not having given timely notice of a planned arson attack against a home in Solingen that resulted in the deaths of five Turkish women. Such serious charges, however have generally not held up under investigation.

## 2. The Concept of “Extremism”

Federal and *Land* ministers of the interior, not the *Verfassungsschutz*, make the final decision on whether to classify a group or political as actively hostile to Germany’s constitutional order and hence extremist. The ministers arrive at their decision, however, mainly on the basis of information developed by the Agency.

Legal critics and academic students of the Agency have expressed doubts about the validity of the *Verfassungsschutz*’s operational definitions of left-wing and right-wing extremism. They question the distinction made by the Agency between radicalism, which is permissible, and extremism, which is characterized as dangerous. They contend that the *Verfassungsschutz* itself seems to undermine that distinction by lumping together non-violent groups and parties, including some who actively and openly contest elections, such as the PDS or *Republikaner*, with violence-prone and sometimes clandestine groups in Agency listings of left-wing and right-wing extremists.

Since the 1940s, social scientists concerned with such problems have tried unsuccessfully to identify definitively a set of extremist political dispositions distinct from those customarily found among participants in conventional forms of democratic politics. Scholars have been unable to agree on how to construct a single scale measuring extremism on the left and right. The Agency’s recent inclusion within its purview of the Scientologists (page 36) and certain radical Islamic sects like the Milli Görüs, which claim to be non-political, has complicated further the difficulty of drawing distinctions based on presumed hostility to Germany’s constitutional order.

Doubts about the objectivity of criteria employed to classify left- and right-wing extremism are reinforced by disagreements among the *Verfassungsschutz* agencies over how the PDS should be so classified (page 31). Ironically, it is only in some western states, in which it has but a few hundred members at best and plays no role electorally at all, that the PDS is designated extremist. Even when an *LfV* classifies such a party as extremist, it may expend little energy or funds in investigating the party’s activity. If *Verfassungsschutz* officials and analysts cannot agree, the definitiveness of the criteria for classifying extremism may be viewed with some skepticism.

### 3. Political Influence

“It is part of the *Verfassungsschutz*’s job,” a former *BfV* president once said, “to swim like a fish in the waters of politics.” This closeness to political events, he admitted, “involves the danger of politicization.”

It should come as no surprise therefore that the Office has often been accused of serving partisan political purposes, of promoting the agendas of political parties in power on both the federal and state levels, and, in the worst case, of permitting itself to be used by a party in power against democratic political opponents. As indicated earlier, party considerations play an important, if formally unacknowledged, role in the selection of *Verfassungsschutz* presidents. Criticism of undue political influence is fed to a greater degree by disclosures of investigations launched against the opposition, such as that initiated in the 1980s by Berlin’s then-senator of the interior, the CDU politician Heinrich Lummer, against the SPD, Greens and Alternative List or that, also in the 1980s, by the CSU Federal Minister of the Interior Friedrich Zimmermann against members of the Greens who had formerly belonged to pro-communist groups.

Leaks of *Verfassungsschutz* information to discredit opposition political leaders also end up by reflecting adversely on the Office. Even though the *Verfassungsschutz* may not itself be the leaker, such reports lend credence to allegations that in carrying out politicians’ orders it is serving their partisan political purposes as well. A particularly egregious case occurred in 1993, when a state secretary in the Federal Ministry of the Interior admitted passing to a Bonn journalist secret *BfV* reports about an alleged Polish spy in the entourage of Björn Engholm, the Minister-President of Schleswig-Holstein, whom the SPD was grooming as its candidate to run against Chancellor Kohl in the 1994 national elections.

Investigative journalism by the news magazines *Der Spiegel* and *Focus* and by television reporters benefits from Agency reports leaked by politicians of all stripes for self- and party-serving purposes. Sometimes *Verfassungsschutz* information may, on the other hand, be suppressed for partisan reasons. Just before the East German elections of March 1990, at which non-communist parties won a majority, the CDU-led government in Bonn allegedly ordered the *BfV* to keep to itself information indicating that three leading members of the East German

Democratic Alliance, a grouping of political parties in which the East German CDU was the major partner, had previously been informants for the *Stasi*.

A familiar line of attack against the *Verfassungsschutz* has been the accusation that it is “blind in the right eye,” that is that it watches dangers to the Federal Republic from the left but overlooks those coming from the right. During the Cold War, it naturally concentrated upon dealing with GDR espionage and communist subversion. Revelations since 1990 about the extent of *HVA* activity and of GDR financial support for communist groups in West Germany support the Agency’s assertion that in this regard the *Verfassungsschutz* was appropriately vigilant. Critics contend that it was less concerned about the extreme right. The *Republikaner* did not appear in any Agency report until after their first stunning success in the German municipal and European elections of 1988-1989. Since 1992, however, the Agency has been devoting much more attention to all forms of nationalistic and neo-Nazi activity.

Differentiated *BfV* and *LfV* treatments of left-wing and right-wing extremism often reflect the political coloration of the governments they serve. Under CDU/CSU administrations until recently, state *Verfassungsschutz* reports began with left-wing extremism, under SPD governments with right-wing extremism, the impression being given that the one or the other constituted the more formidable threat. Federal reports on the extreme left long pointed to “sympathizers” (*Sympathisanten*) and to a terrorist “milieu” (*Umfeld*), but such categories have yet to find their way into its analyses of right-wing extremism. To skeptics, particularly those on the left, such disproportionate treatment reflects political bias rather than objective analysis of the German political scene.

#### 4. Founding Principles

When the *Verfassungsschutz* was set up in 1950, two principles informed its founders’ intent to render impossible the reemergence of a Gestapo-like internal security police: a federal structure and separation of intelligence work and police powers, the *Trennungsgebot*. The Agency insists that both principles continue in full force today.

Critics contend that efforts since the early 1970s—and in particular the 1990 revision of the *Verfassungsschutz* Law—toward greater harmonization and coordination between the *BfV* and the state *LfVs* have brought about greater centralization of authority and approach. Movement toward a politically united Europe may be expected to strengthen the central Office, the *BfV*, since security agencies from other countries prefer to deal with a single authority. It remains questionable, however, just how effective the efforts to bring about closer federal-state cooperation have actually been so far. Most experts on the *Verfassungsschutz* consulted for this study are convinced that in a united Germany of sixteen states, the autonomy of the individual *LfVs* has grown greater than it was in a West Germany of only eleven.

Critics also maintain that the *Trennungsgebot* has grown weaker over the years. During police and intelligence operations in the struggle against the terrorist RAF in the 1970s, the separation doctrine was sometimes blurred. Since 1972, all government agencies—including most importantly the *Verfassungsschutz* and *Länder* police forces (Germany has no federal police)—have been required by law to exchange information relating to extremism, terrorism and espionage. Two “cooperation laws” (*ZAG 1* and *ZAG 2*) require cooperation between the police and *Verfassungsschutz*. This legislation has served critics as an argument that the *Trennungsgebot* has been weakened. A former head of the Federal Criminal Office (*BKA*) asserted in 1992 that the 1990 revision of legislation governing the *Verfassungsschutz* had reduced the separation requirement to an issue of largely historical significance.

When, in the early 1990s, the *BfV*'s then-president, Werthebach, was campaigning to extend his Agency's responsibilities into the field of organized crime, he argued that the *Trennungsgebot* did not have the status of a constitutional provision but only a legal rule which, if it wished, the parliament might overturn. His opinion was shared by the head of the *BKA* and most experts at the time. It remains the view of the *Verfassungsschutz* today. Werthebach's proposals stirred much public debate and controversy about the proper role of the Agency. Some commentators regarded them as primarily an effort to extend *Verfassungsschutz* bureaucratic turf at a time when its counterespionage

responsibility was shrinking; but others expressed fears that the *Trennungsgebot*, that hallowed separation of intelligence and police powers, would be undermined if his proposals were put into effect. Such critics pointed out that dealing with crime had always been a job for the police exclusively, not for intelligence organizations.

Ending the separation requirement might enhance security effectiveness. Any serious effort to put an end to it would provoke an outcry, however, since this separation doctrine enjoys strong political and public support. The warning examples of the Gestapo, and more recently the *Stasi*, continue to weigh heavily on collective memory and on contemporary political decisionmaking. It is unlikely that the Agency will soon, if ever, be entrusted with the fused police-intelligence collection power which the American FBI possesses. Certainly investigative media and rival bureaucracies, however, will not stop accusing agencies that try to expand their powers of seeking to violate the *Trennungsgebot*.

### 5. Adequacy of Oversight

Since unification, official publications have stressed that the democratic controls under which the *Verfassungsschutz* operates constitute an all-important difference between it and the *Stasi*, which combined intelligence and police powers but was subject to no oversight other than that of the Communist Party, the SED. Like their counterparts in other democratic countries, officials of the Office, nevertheless, sometimes chafe under the restraints. A 1998 *Verfassungsschutz* report denies that it wants “transparent citizens” to carry out its investigative mission but warns too against a “transparent” *Verfassungsschutz*, that is an agency so open to public scrutiny as to be unable to function.

In comparison to the United States, the Agency is not subject to onerous oversight. The American congressional Select Committee on Intelligence, for instance, has far more staff members, resources, investigative powers, and access to materials and officials of the intelligence services than does the *Bundestag*'s analogous committee, the PKK. But, as German parliamentarians have stressed in debate over the powers of the PKK, other comparable European countries, such as

France or Great Britain, practice far less parliamentary supervision of their intelligence services than does Germany.

No doubt, though, the PKK has weaknesses. It cannot initiate inquiries. Its members are burdened with other parliamentary duties and, in the view of experts on the *Verfassungsschutz*, cannot devote much time to the PKK's work. The PKK meets behind closed doors. It has few resources. While it may meet more than the required twice yearly, it cannot inform the parliament in open session about what it has learned about intelligence service activities. None of the problems of the *Verfassungsschutz* (pages 44-52) has come to light as a result of PKK initiatives.

In 1992, new legislation was passed to strengthen PKK oversight, after *Bundestag* members complained on the floor about the government's dilatoriness in keeping it informed. Investigative journalists, they argued, were doing a better job of oversight by exposing bungled intelligence operations. The government promised to improve, and for a while it apparently did. However, there has been slippage since 1992. For example, the government waited seven years before informing the PKK fully about a Foreign Office employee who, in 1990, had carried out damaging espionage for Iraq during the Gulf War, been caught, and sentenced in a secret trial in 1992. The executive branch claims it alone should determine when to fulfill its legislated obligation to inform the PKK of such cases—a viewpoint which is obviously not shared by most parliamentarians but which may best explain its recent laxity in reporting.

Other oversight institutions too have their inadequacies. The G-10 Commission has effective powers but they are limited to a small part of *Verfassungsschutz* activity. The Commission has a staff of only ten. The Federal Commission for Data Protection too is hampered by personnel and funding limitations. However, it does enjoy strong public and political support in a country which attaches much greater importance than the United States does to privacy issues. Moreover its reports make public its findings about violations of citizens' privacy rights by intelligence and police agencies.

While oversight in general is imperfect and parliamentary supervision in particular lags well behind that in the United States, they

are probably more effective than in the other major European countries. Also the *Verfassungsschutz* has a good deal less authority and power than its counterparts in other democracies such as France, Sweden, Spain, Italy, or Israel. (Useful comparisons of the efficiency of oversight or the extent of a secret agencies' powers are admittedly elusive among different counterintelligence services that face different kinds of threats to national security.) None of the scandals and few instances of *Verfassungsschutz* misconduct over the years can be directly ascribed to inadequate oversight.

### C. Effectiveness

How effective has the Office been over the years? It is difficult and beyond the scope of this study to attempt valid conclusions on this point. One observer, a CIA station chief in Bonn in the late 1970s, has written that the Office carried out its counterespionage mission below the level that could be expected from an institution with a large staff, generous resources, and advanced technical equipment. Some of his predecessors and successors differ with that assessment. While the *Verfassungsschutz* suffered defections and penetrations during the Cold War that badly damaged its image and effectiveness, the CIA and FBI too have suffered grievously from such treason. As suggested earlier, the unique conditions of a divided German nation facilitated Wolf's *HVA*'s success in inserting so many spies into the Federal Republic. Both paramilitary training of DKP activists and sanctuary and support given RAF terrorists in the GDR went undetected for many years. On the other hand, the Agency compiled an impressive record in unearthing *HVA* agents and informants during the 1970s and 1980s.

Assailed for its failure to foresee the scale and rapid spread of right-wing violence and extremism after unification, the *Verfassungsschutz* blamed the distinctive features of this form of extremism. A constantly changing, fragmented, even amorphous organizational structure made penetration by Agency agents and informants difficult, particularly in the new states in the east. That made advance information about violence against foreigners or other incidents hard to come by. Moreover, the Agency argued, perpetrators of right-wing violence were mainly

youngsters whose violence was usually spontaneous, not planned, and often carried out on drunken sprees.

Critics in the press and police have maintained that specific *Verfassungsschutz* intelligence was of very little use in capturing left-wing terrorists in the 1970s and 1980s or right-wing criminals in the 1990s. Whatever the accuracy of these claims or the relative importance of the role played by the Agency in bringing about arrests of extremists as compared with that played by other police and intelligence organizations or by state prosecutors, the fact remains the Agency effectively handled both the serious RAF threat in the 1970s and 1980s and a worrisome wave of rightist and neo-Nazi violence in the 1990s without violating constitutional norms or damaging German democracy.

Its problems notwithstanding, the Agency came to be broadly accepted by West Germany's public and political class during the Cold War. That remains true in the united Germany of today. Nearly three quarters of all Germans, the *BfV* proudly announced in a 1998 report, consider the *Verfassungsschutz* a necessary institution. It has enjoyed support from the mainline political parties and recently the Greens too have come to accept its legitimacy.

With the collapse of the communist East, once the obvious threat, the Agency has felt the need to step up efforts to justify anew its purposes to the public. It recognized that in that regard it would have a particularly difficult task among east Germans, who had just rid themselves of a massively intrusive *Stasi*. In addition to the campaign of "protecting the constitution through public education" (*Verfassungsschutz durch Aufklärung*), the Office's president has been making himself increasingly available for interviews in the press and television. Popularity can, of course, never be an adequate standard for judging the performance of a police or security agency. Yet, as the FBI too has been forced to learn, public doubts about performance can weaken popularity, then legitimacy, and eventually effectiveness.

Nearly a half-century after its creation, controversy continues as to what kind of an internal security agency the Federal Republic really needs. Defenders of the *Verfassungsschutz* as it has evolved believe that Germany still requires an effective Agency that can protect the country against espionage and political extremism of all kinds. A contrasting

view holds that the original concept behind establishment of the *Verfassungsschutz* has been perverted, that security and protecting the state's basic order have been elevated to a "super right" transcending other constitutional rights, particularly those of the individual **against** the state. Those holding this view would limit the Agency's role to developing information on groups that are clearly violence-prone and parties that indisputably pose an immediate and specific threat to the Federal Republic. Other functions performed by the *Verfassungsschutz* they would prefer to shift to the police. The police is bound by the more restrictive legality principle while the Agency can operate under the looser "opportunity principle." (page 19)

### VIII. THE VERFASSUNGSSCHUTZ AND GERMAN DEMOCRACY

Ongoing debate about the proper balance between rights of the individual and security of the state are endemic, natural, and healthy in a democracy. In the case of Germany this debate is rooted in differing opinions about the relevance in the 1990s of the concept of "militant democracy" that underlay establishment of the *Verfassungsschutz* nearly five decades ago. To defenders of strong governmental security powers, German democracy must continue to guard against constantly changing threats; and that requires vigilance and good intelligence. Critics concede that militant democracy was an understandable and even necessary operational principle in the early Federal Republic, when its democratic culture was still weak. But they hold that nearly fifty years experience with democracy has fostered a strong democratic political culture in Germany, one that has already withstood major challenges and no longer requires powerful security agencies to protect it.

Liberal political leaders in Germany have expressed doubts in particular about the wisdom of subjecting to *Verfassungsschutz* surveillance political parties that have been voted into local and state parliaments and even the national legislature, most prominently in recent years the *Republikaner* and PDS. Some years ago Kurt Biedenkopf, the CDU Minister-President of Saxony asserted, "One cannot fight a right-wing populist movement such as the *Republikaner* . . . with the

*Verfassungsschutz*.” Former federal president von Weizsäcker argued in 1995 along similar lines with respect to the PDS: “ If someone is of the opinion that a party allowed to compete in our elections is not democratic, then the case should be brought before the Constitutional Court. Not to do so, while continuing to attack this party as undemocratic is not the proper path, either morally, intellectually or politically.”

Such views are not widely shared within the mainline political parties. Yet political leaders today are reluctant to try to ban either the *Republikaner* or PDS. Partly they realize that evidence is insufficient to ask the Federal Constitutional Court to take this step. Also, over the years sentiment has grown in all liberal democracies that it is unwise to prohibit political parties—even those advocating establishment of a nondemocratic system—as long as they behave lawfully. Finally the mainline parties fear that requesting a ban, particularly of parties that have done well electorally, will be perceived by voters as an attempt to eliminate potential rivals. Thus most politicians in Germany prefer to let the *Verfassungsschutz* take on the job of branding such parties as “extremist” and monitoring them. This helps the mainline parties by raising doubts in voters’ minds about the constitutionality of such parties and by casting them into a grey zone of semi-illegality—which in turn can be useful to the established parties in election campaigns but need not be tested before the Constitutional Court.

Debate in Germany on how to deal with parties of the far left and far right continues to be colored by two historical experiences. The first is the fate of the Weimar Republic, whose democratic institutions the Nazi party exploited to destroy them once it had attained power constitutionally. The second is the abuse of authority by security agencies with police powers—the Gestapo in the Third *Reich* and the *Stasi* in the GDR. In carrying out its mission, the *Verfassungsschutz* must weigh security considerations against the need to protect and advance the rights of citizens. Achieving the proper balance under changing conditions is an ancient but ever new challenge, not only in Germany but in all democratic societies.



**APPENDIX**  
**PRESIDENTS OF THE *BUNDESVERFASSUNGSSCHUTZ***  
**1950-1998**

Otto John	December 1950 - July 1954 (Until October 1951, Acting)	No party affiliation
Dr. Hanns Jess	July 1954 - July 1955 (Acting; simultaneously President of the Federal Criminal Office [ <i>BKA</i> ])	No party affiliation
Hubert Schrübbers	August 1955 - April 1972	No party affiliation
Dr. Günther Nollau	May 1972 - September 1975	No party affiliation
Dr. Richard Meier	September 1975 - April 1983	No party affiliation
Heribert Hellenbroich	May 1983 - July 1985	CDU
Ludwig Pfahls	August 1985 - March 1987	No party affiliation
Gerhard Boeden	April 1987 - February 1991	No party affiliation
Dr. Eckart Werthebach	February 1991 - April 1995	No party affiliation
Dr. Hansjörg Geiger	July 1995 - May 1996	No party affiliation
Dr. Peter Frisch	May 1996 - present	SPD



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## ENDNOTES

<sup>1</sup> Throughout this study the term *Verfassungsschutz* or the English terms “Office” and “Agency” will be used interchangeably when referring to the federal and state offices collectively, *BfV* (*Bundesamt für Verfassungsschutz*) for the federal agency and *LfV* for the *Land* (state) agencies.

<sup>2</sup> Literature about and from the *Verfassungsschutz* employs two German terms for this notion: *streitbare* and *wehrhafte Demokratie*. Somewhat inadequately, the former may be translated as “militant,” the latter as “fit to fight” or “democracy on guard.” The concept is that of a democracy that is capable of defending itself against “extremist” threats, even before these have violated any laws. Both terms, particularly the former, were much in use during the Cold War, especially in the 1950s and 1960s, and during the period of RAF terrorism in Germany in the 1970s. They are less used nowadays but may still be found in material which the Agency puts out to explain its role to the public.

<sup>3</sup> Although not openly acknowledged for several years, the Berlin *LfV* and presumably others in the eastern states as well did recruit some informants (*V-Leute*) with *Stasi* backgrounds. When this became public in Berlin in the summer of 1998, the Berlin parliament, in pursuit of its oversight function, took a strong interest.

<sup>4</sup> According to experts on the German intelligence services, in the waning months of the GDR, in 1989 and 1990, the *HVA* destroyed most of its files with information about its agents in West Germany. These sources claim to know that the *Verfassungsschutz* later obtained copies of some files of other *Stasi* departments and of the former Soviet *KGB* which provided leads to onetime *HVA* and other *Stasi* agents in West Germany. Some of these are said to have come to the Agency from the non-communist government that held power in the GDR from March to October 1990 and some from the CIA, which evidently did not turn over to the Office all the files which it had obtained in East Berlin in early 1990 and retains some that have gone unread by the *Verfassungsschutz*.

Data supplied by the Federal Attorney’s Office in connection with this study show that judicial investigations of suspected *Stasi* spies climbed sharply from 1990 (480 cases) on, to 980 cases in 1991, 1,521 in 1992, and 1,466 in 1993. This compares with about 590 in 1977 or about 310 in 1987. Presumably the sharp rise after 1990 can be largely accounted for by leads coming from *Stasi* files provided to the *Verfassungsschutz* and Federal Attorney’s Office by the last (non-communist) GDR government and by the CIA.

<sup>5</sup> In response to an inquiry in connection with this study, two state offices (Rhineland-Palatinate and Saxony-Anhalt) stated in July 1998 that they do not employ “intelligence-gathering methods” (*nachrichtendienstliche Mittel*) against the PDS, confining themselves to overt methods such as reading PDS literature and attending the party’s public meetings.



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