THE "ENEMY WITHIN": THE CASE OF BERUFSVERBOT

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The first half of the year 1978 saw two events carefully demarcated from each other, both, however, concerned with the same issue: the practice of "Berufsverbot" (professional ban) in West Germany in the 70's. In early April, the Third International Russell Tribunal on the situation of human rights in the Federal Republic of Germany commenced its proceedings. The sole topic under investigation for the first session—another one will follow at the beginning of next year—was the question: "Is the right to practise their professions denied to citizens of the Federal Republic of Germany?" This central question was dealt with under the following three aspects:

1. Does the practice of Berufsverbot constitute a serious danger to human rights?
2. Is the practice of Berufsverbot against people who hold certain political opinions applied in a discriminatory way?
3. Does the practice of Berufsverbot relate to discriminatory practices of other institutions, particularly trade unions, professional organisations and churches?

A week before the Russell Tribunal met, a group of liberal journalists, authors and a couple of members of the SPD announced the launching of the "Gustav Heinemann initiative" (Gustav Heinemann was the third president of the FRG, highly esteemed for his liberal thought), which had its founding congress at the end of May. Within the last ten years, the founding declaration states, "liberty in the Federal Republic of Germany became increasingly endangered by fear, apathy and resignation. Intimidation and self-censorship constrict the space for free debate and drive young people to the margin of society." It was argued with great emphasis that first and foremost the "Decree on Radicals" needs to be abolished, "because the practice of Berufsverbot lies at the root of the apathy."

The two bodies, distinctly different in political orientation with a careful demarcation line drawn by the latter towards the former, nonetheless find themselves united in their concern over the practice of what is referred to as "Berufsverbot."

The word stands for the refusal to access to or exercise of employment in the public sector, which includes the whole educational system, social services, and most of the infrastructure services (railroads, post office, etc).
Somewhat more than 15% of the working population of the FRG are employed in the civil service. A declaration of war on the "enemy within", considered to be radical democrats and socialists, has become the basis for refusing admission into the civil service. The practice of the Berufsverbot has given birth to its own apparatus and has long since proliferated into the private sector.

The Russell Tribunal concludes in its intermediate report:

"The extent of the violation of human rights by the practice of Berufsverbot and the resulting consequences have to be judged as extraordinarily grave. The responsible authorities pose increasing requirements for the assessment of 'constitutional loyalty' (Verfassungstreue) and for the demanded proof thereof. The difference between loyalty towards the Constitution and loyalty towards the state, and loyalty towards those administering the state, tends to disappear. Special branch (Verfassungsschutz) authorities are continually enlarged and develop an ever increasing dynamic of their own as does any bureaucracy."

When did this dynamic start? Political repression is not altogether new in West Germany. In 1950, the newly founded republic found it appropriate (Adenauer-Erlass) to eliminate communists and so-called fellow-travellers from the civil service, even before the Communist Party was declared to be "hostile to the Constitution" (verfassungsfeindlich) and therefore illegal by a Constitutional Court ruling in 1956. Since that particular court is the only agency authorized legally to pass judgements on questions of constitutionality, it was thus legalizing a hitherto constitutionally highly doubtful practice.

In 1968 at the suggestion and decisive encouragement of the SPD, the Communist Party was refounded with a new abbreviation, DKP instead of KPD (which nowadays is used by a maoist-oriented communist group) and a new programme impeccable in terms of constitutional loyalty. The constitutionality of the DKP as well as that of any other communist organisation has not been challenged by Constitutional Court ruling.

The professed hope and calculation of the SPD, born out of a narrow-minded, organisation-bound notion of politics, proved to be quite out of line with reality. Neither did the DKP remain all that insignificant, nor did it channel sufficiently those located left of the SPD into its organisational framework. When in 1969 the Grand Coalition of CDU/CSU and SPD gave way to a social democratic-liberal government, the boom following the economic and political crisis of 1967/68 was accompanied by a short period of liberalisation, which grew to be associated with the name of Chancellor Willy Brandt. Little more than a year later, however, with the student movement generation applying for jobs, the winds of change blew drastically backwards. With the legality of all communist organisations maintained, in January 1972, in the absence of Federal competence, the Conference of Prime Ministers of the constituent Lander agreed on
"Principles on the question of the forces hostile to the Constitution in the civil service", which came to be known as the "Decree on Radicals." Because this decree is often referred to but hardly ever cited completely it is worthwhile to quote its exact wording.

"According to Federal and Land legislation pertaining to the civil service
— only those persons are eligible for the civil service (Beamtenverhaltnis) who can guarantee that they will at any time actively support the free democratic fundamental order (freiheitlich demokratische Grundordnung) in the sense of the Constitution.
— civil servants are obliged, on duty as well as off duty, actively to strive for the preservation of that fundamental order. These are binding regulations. Each individual case has to be investigated and decided upon its own merits. The following principles have to be applied:

Applicants: an applicant who exhibits activities hostile to the Constitution, will not be employed in the civil service. Membership in an organisation that pursues goals hostile to the Constitution, constitutes doubt, whether the applicant will support the free democratic fundamental order at any time. As a rule this doubt will justify refusal of the application.

Civil servant (Beamter): In the case of a civil servant who through his activities or through membership in an organisation pursuing goals hostile to the Constitution does not meet the requirements of §35 of the general legislation on the civil service (Beamtenrechtsrahmengesetz), on the basis of which he is obliged to identify (sich bekennen) with the free democratic fundamental order in the sense of the Constitution by his total conduct and to support its preservation, the employer (Dienstherr) will have to take necessary consequences based on investigated facts. He in particular has to evaluate whether the removal of the civil servant from the service is to be sought. The same principles apply to workers and employees in the civil service within the framework of the respective wage agreements."

By 1978, on the basis of this "Decree on Radicals", 1.3 million applicants for the civil service have been screened, 15,000 have been called to an interview because of "doubts" that arose out of special branch "findings" (Erkenntnisse), and roughly 1,000 have been refused access to the civil service.

Before filling these apparently meagre figures with a description of the socio-political life they entail, an analysis of the "Decree on Radicals" itself will prove quite revealing about its political implications. Four features are particularly noteworthy.

1. "Civil Service" is given an extraordinarily broad meaning independent of sensitivity of the job and/or status. The notion of "obligation of political allegiance" (politische Treuepflicht), in itself highly doubtful because of its pre-democratic origin, its ample use under fascism and its closeness to an obligation of uncritical allegiance to those in power, was originally valid only for civil servants (Beamte) in the narrower sense of the word. It now proliferates generously into the rank and file of cleaning personnel and locomotive engine drivers.
By now there has been ample jurisdiction on the matter on the part of the higher courts, affirming this extended version of "civil service"—and throwing a most telling light on its intention. In the case of Sibylle Plogstedt, who was refused a one-year assistantship at the Free University of Berlin, the highest court of appeal for citizens of West Berlin in December 1974 gave reason for this proliferation. It was not that the expected results of her research activities might be influenced by her belonging to the Fourth International; but rather that while pursuing her research obligations she could communicate with members of the university and in that way might exert influence. Sibylle Plogstedt's presence in the university was considered to be unacceptable. In addition, the court reasons: "As she can vote and is eligible, she might try, furthermore, to misuse the institutions of the university for her political goals."

The implication that political organisations held to be hostile towards the Constitution by their very nature misuse the rules and institutions a democratic system provides is not even considered worthwhile to elaborate upon. And, equally important, the court establishes what came to be known as the "taboo of association" (Berührungstabu) and even "guilt by association" (Berührungsschuld). In this ruling, it is the court which "protects" the members of the university from the suspected devastating effects of contact and communication with a communist. Subsequently, to an increasing extent, citizens have been held liable for their contacts with left-wing ideas, be it through people or through books. Marriage, flat-sharing, attendance of left-wing electoral campaign meetings, subscription to left-wing papers, etc., are all included under "contact", likely to cast doubts on one's constitutional loyalty.

2. One of the historic achievements of capitalist liberal democracy as opposed to feudalism was the differentiation between public and private. Even though this entails alienation and a rift between private and public speech, creed and morals, it does, when contrasted with the totality of domination in pre-capitalist political systems, constitute an historical achievement, one to be defended at all costs as long as a totality of liberation is not in reach.

The "Decree on Radicals" and subsequent administrative action, legislation and jurisdiction mark a decisive step in the abolition of that difference, so crucial to liberal democracy. No longer are particular qualifications and correct job performance considered to be sufficient, but the whole of the 24-hour conduct of a person is taken as a basis of assessment of constitutional loyalty. To put it in official phrasing, it is the "total conduct" (Gesamtverhalten) and the "total personality" (Gesamtpersonlichkeit) that is under scrutiny.

Ironically, it is the very article of the Constitution that originally was designed and formulated to guarantee that liberal democratic differentiation of private and public life with precisely the experience of a totalitarian
political system still fresh in people's minds, that has come to serve as an instrument for the implementation of exactly the reverse of its original intention. Article 33, §2 reads as follows:

"Every German has equal access to the public sector according to his suitability, competence and professional performance. Nobody should be disadvantaged for his affiliation to a denomination or political conviction."

Up to the early seventies this clause of the Constitution was read and reaffirmed by the courts as a guarantee for free access to the civil service irrespective of private political and religious convictions. The last case to that effect was a 1973 Constitutional Court ruling on a neo-fascist teacher, whose activities were deemed to be private and in no evident way affecting his professional performance. Furthermore, since the NPD has not been declared unconstitutional by the only institution entitled to do so, which is the Constitutional Court itself, the court saw absolutely no basis for depriving the teacher in question of his job.

The issue, however, seems to appear in a completely different light, when the question of the "total personality" of men and women suspected of left-wing "deviation" is at stake. "Inner commitment" is demanded and is to be proved; it is made an inherent part of "suitability."

The by now classic formulation of the central Constitutional Court ruling on the Berufsverbot in February 1975 read as follows:

"The obligation of political allegiance demands more than merely a formally correct but, for the rest, disinterested, cool, internally distanced attitude towards the state and the Constitution; it demands in particular from the civil servant that he distance himself unequivocally from groups and aspirations that attack, tight and denounce this state, its constitutional organs and the valid constitutional order. It is expected from the civil servant that he realize and appreciate this state and its Constitution as a high positive value on whose behalf it is worthwhile to intervene. The obligation of political allegiance is tested in times of crisis and in serious situations of conflict in which the state relies on the civil servant taking its side. The state—and that is more concretely, each constitutional government and the citizens—must be able to rely on the civil servant in his administration to be willing to hold responsibility for this state, for 'his' state, that in this state which he is supposed to serve, he will feel at home—now and at any time and not only after aspired changes have been brought about through respective changes in the Constitution."

In that interpretation the notion of "suitability" extends to the most intimate feelings and inclinations of a person. This is necessary, reasons the court, because a teacher e.g. "would at least unconsciously run the danger of influencing students in a way which might not be compatible with the liberal democratic fundamental order." The existence of that most private conviction and its firm rootedness in the unconscious has to
be convincingly, positively demonstrated.

"Doubts have not been removed whether the plaintiff will at any time support the free democratic fundamental order inasmuch as the plaintiff did not exhibit a sufficiently clearcut attitude towards communist goals. He does indeed maintain that he will not want the governing principles of the free democratic fundamental order to be touched... When, however, on repeated questioning he clearly responded that he considers communists to be democrats, this indicates that he will find it difficult to perceive that communist aspirations which aim at the elimination of the free democratic fundamental order are directed against the Constitution and as a civil servant to react accordingly. It cannot be excluded that the plaintiff might not recognize these aims and might therefore be unable actively to support the free democratic fundamental order when it is in danger. He might then find himself pushed into the situation of a man, who witnesses the course of events perplexed, to be sure, without actively participating in the overthow of the free democratic fundamental order, but also in no condition to oppose that overthrow through his own active behaviour. The plaintiff therefore is not to be labelled an enemy of the Constitution... He is not one of those. The refusal of acceptance to the civil service is not only justified in case of the applicant actively fighting the free democratic fundamental order, but also when his attitude towards it is indifferent." (Regional court in rejecting the claim of a conscientious objector.)

In fact and not surprisingly, in an increasing number of cases, "inner commitment", "positive", "total conduct" have become the dominant and decisive criteria for "suitability". Remuneration was refused an author who had contracted with a governmental institution for a manuscript that was accepted and already in print, when months later the author signed an electoral proclamation in favour of the KPD. The article, argued the court in favour of the institution, was without fault on its own merits, but "has been made useless afterwards by her conduct." The author therefore not only did not get remunerated but was required to pay the institute compensation as it had to find and pay another author.

3. A third feature, nowadays often taken to be an expression of a misconceived understanding of the Decree on Radicals, is actually an integral and decisive part of it: the difference implicit in the phrase "free democratic fundamental order in the sense of the Constitution."

Two frameworks of reference are mentioned: the one, the free democratic fundamental order clearly constituting a narrower version, as the phrase "in the sense of" indicates, of the larger framework—the Constitution. Indeed, as the above cited quotations, taken from the central and decisive ruling of the Constitutional Court indicate, "the prevailing constitutional order as it stands today" is nothing else but the socio-political status quo in the interpretation of the present government. Perfectly legal but not realized policies and possibilities of the Constitution, i.e. everything the "prevailing" state of the nation leaves to be desired, is placed in the realm of radicalism, whose proponents are not suitable for
4. Fourthly and consequently, the notion of what precisely is "hostile to the Constitution" (verfassungsfeindlich) or who is actually an enemy of the Constitution (Verfassungsfeind) remains legally obscure, while its political content becomes frighteningly transparent.

As already indicated, according to the Constitution, it is only for the Constitutional Court to pass judgements on the constitutionality of political parties. This privilege has not been made use of since the prohibition of the Communist Party in 1956. Therefore, any left-wing political party can exist legally, can take part in elections on all levels, can publish, hold meetings, etc., and indeed does so. In order to justify discrimination against left-wing citizens, including those organized in political parties, the construction of "unconstitutional goals" has been introduced. Unconstitutional goals are taken as quite self-evident. Phrases like "as everybody knows", "according to general knowledge" serve as proof—where proof is still held necessary. Even in the highest court rulings it is by now sufficient to charge a person with the fact that he or she joined the DKP "although they knew that the present federal government as well as its predecessors made it clear that the Communist Party pursues unconstitutional goals."

In the routine procedure of Berufsverbot it is just taken as a matter of fact that certain memberships, activities, reading habits, social environments are "hostile to the Constitution." It is for the applicant or the job-holder to give evidence to the contrary, to prove that in his or her particular case the assumption does not hold true. The burden of proof is reversed.

The matter to be proved is something quite intangible: inner commitment, total conduct, total personality. The matter to be affected by the proof is something even more intangible: doubts. Doubts are defined by the Constitutional Court.

"That the one responsible for the hiring at the time of his decision is not convinced that the applicant has given sufficient guarantee that he will support the free democratic fundamental order at any time. This conviction is based on an appraisal that at the time implies a prognosis. . . It is a prognostic judgement of the applicant's personality, not merely the ascertainment of individual elements of appearance."

Subsequently, the court reasons, legal action cannot be taken against doubts. The courts may call for reconsideration of the case, but they may not pass judgements on the material content of the doubts and consequently they cannot enforce the reversal of decisions the public employer has made on the basis of "doubts."

As the right to work in the civil service in most cases is identical with exercising one's profession (e.g. for a teacher) or even having a chance to
work at all, it is absolutely crucial for the future or actual civil servant to disperse doubts once they arise. But how is one to reason against a prognosis on the basis of contemporary evidence? How is one to give proof of the inadequateness of a prognosis? How is one to disperse "doubts" that may not in the least wish to be dispersed?

Indeed, the reasons given for job refusal are quite often as irrational as is the point of reference, constitutional commitment. Answers that leave nothing to be criticized are rejected as "mere pretext", "not convincing", "camouflage." One teacher was charged with unduly stressing those parts of the Constitution "that most Communists tend to stress" while neglecting to list the rest.

Another was refused tenure, "because as he is intelligent and self-confident he is capable of keeping his communist attitude under control and covered for quite some time. This is perfectly in line with communist tactics."

In what way do doubts emerge and how do they articulate themselves? "Doubts" actually is a discrete paraphrase for what more precisely would have to be called "findings" of the Special Branch (Verfassungsschutz) that are passed on to the employer. In fact public employers are obliged to check with the Special Branch before filling vacancies; private ones are urged to, or are "offered" findings. Thus the Special Branch has grown to be an integral part of the hiring and firing system.

On the basis of legislation also passed in 1972, the same year as the Decree on Radicals, under the SPD/FDP administration, the various intelligence services intensified their cooperation, irrespective of their field of activities, coordinated their ways and means of collecting "findings", and particularly expanded enormously in manpower. The latter holds particularly true of the Special Branch which, originally set up for counter-intelligence, expanded into a horrifying apparatus to keep the "enemy within" under control—with exactly the same and much more refined methods that originally were designed to cope with foreign intelligence activities. These methods range from infiltrating particular groups with agents, to illegal methods like tapping phones, bugging, breaking into houses, etc. Terrorism served and serves as a handy pretext, ready to be used at simply any time for large scale raids to fill the files.

The everyday work of the Special Branch, however, is considerably less spectacular—and possibly much more dangerous. Any electoral campaign or other political activity of left-wing groups, community action, women's movement, youth groups, etc. will be carefully documented. Leaflets, petitions, lists of signatures, registration and attendance at meetings, demonstrations, publications are carefully registered, filmed, reported upon. Supported by a wide network of new legislation which obliges citizens to report on their employees, students, teachers, and neighbours, and technically supported by a highly developed computer system that
centrally collects all kinds of data a highly bureaucratized society will ask of its citizens, the Special Branch uses all opportunities to collect information: public libraries reports on reading habits, border crossings are taken as an opportunity to check on friends, destinations, books and journals taken along, etc.

"Detrimental to the state" (staatsabtraglich) serves as a classification and excuse for such large-scale observation which leaves fairly little private space that is not snooped into. Indeed, given the fact that it is not legality or illegality of action that serves as legal criteria but rather qualities of mind, feeling and conviction, it is only logical to broaden the undefined notion of "hostile to the Constitution" into the even more diffuse one of "detrimental to the state" (which incidentally originated with the Gestapo) to safeguard "inner security" (innere Sicherheit)—which is the headline title for repressive activity—in carefully taking cognisance of all non-conforming movements and aspirations that might possibly endanger the "prevailing order." This affects the nature of the Special Branch insofar as it broadens the scope of its activities to collecting "findings" on anything that might serve as an indicator for deviant thought and to produce classifications and judgements on the degree of possible dangerousness of the citizen.

Critics call this "snooping into one's conscience" (Gesinnungsschniiffelei). To refer to Special Branch activities in that way, however, is enough to raise doubts as to constitutional commitment. Doubts, in fact, are quite easily aroused. The following list of causes to doubt is a random sample taken from copies of letters summoning people to interviews in order to elaborate upon their relation to Constitution and state.

Candidature or support for any communist party on any level—in schools, universities, trade union organisations, parliaments—legal registering of an anti-Vietnam War demonstration in 1965, legal registering of a demonstration organized by Amnesty International, activities for a self-organized youth centre, publicly reflecting on the possibility of joining the DKP, distribution of a leaflet amongst whose signatories was a radical party member, living or having lived in the same flat with "members of the new left", activity in a left student group, candidature for a student parliament on a radical list, even one that at the time was the official student organisation of the SPD, parking near the Communist Party office when a meeting was being held, signing a petition against the closing down of a hospital, participation in the movement against nuclear power plants or dumping grounds, working in any organisation like a prisoners aid committee, neighbourhood organisations or community action in which members of radical parties are working, visiting someone who has been arrested for alleged sympathies with anarchists, selling leftist pamphlets, criticism of the practice of Berufsverbot as "snooping into one's conscience", being on the mailing list of a left publishing house, signing a
resolution against Berufsverbot, sticking up posters for a radical party, asking for information and forms for a course run by the DKP, protest against the pro Vietnam War film "The Green Berets", participation in anti-Vietnam War demonstrations, parking one's car near a demonstration, conscientious objection, donating money to any organisation in which there is a communist working, visiting a political prisoner, informing the public in leaflets and meetings of one's own pending Berufsverbot, contributing a painting to an exhibition of political art organised by a group of artists supposedly close to the DKP, being the wife of a lawyer of a person accused of anarchist affiliations, being the wife of a teacher dismissed by Berufsverbot, having passed on in class the address of a lawyer defending an alleged anarchist, inviting a political theatre group to play in school, etc.

These and similar data and information are collected by the Special Branch and passed on to the public employer who gives notice of his doubts in a letter.

"The investigation of your allegiance to the Constitution in connection with your lectureship has given reason for doubts. The Land Office of the special branch branch (Landesamt fur Verfassungsschutz) has given us the following information on you." (Written in March 1978 to a Frankfurt academic active in the DKP student organisation.)

The person thus addressed is then asked to appear for an interview, whose proceedings are handled differently in different constituent Lander, particularly as concerns the right of minutes and of legal assistance. In any case legal assistance is strictly confined to procedural questions. (There is, incidentally, no significant difference in the number of persons screened, interviewed, and struck by Berufsverbot between the various Lander, regardless of whether they are run by CDU or SPD governments).

It is within the discretion of the employing institution whether or not to inform the applicant about the "findings." The questioning is done either by a centralized interview commission, particularly set up for that very purpose, or by the immediate employing institution. In case the findings are communicated, this may be done in writing with the summoned person asked either to answer in writing or to appear for an interview. Alternatively, the institution may choose to confront the applicant with their doubts directly. In either case, the person is obliged to give answers.

"I have to point out to you, that in connection with the examination of your constitutional suitability it will be to your constitutional disadvantage, if you should not answer the questions concerning your membership in the above mentioned organisation." (Same letter as above.)
Usually the interrogation will start with a reference to the findings concerning the particular person under scrutiny and will then be broadened to general questions on the applicant's attitude towards the "free democratic fundamental order." The practice of the interview itself gives ample evidence of the crude identification of the political opinion of the interviewer with "constitutionality" and of how far indeed it is "snooping into one's conscience."

The following questions are taken as random samples from documented interviews:

"Do you often visit the German Democratic Republic?
Do you think the Decree on Radicals is unconstitutional?
Are you prepared to take my view, that the SEW (DKP branch of West Berlin) pursues aims hostile to the Constitution as binding for yourself and to adjust your conduct on and off duty respecting that opinion?
Have you ever referred to the FRG as an imperialist country?
What do you know about concentration camps in the eastern bloc? For instance Brandenburg, GDR?
Have you read Solzhenitsyn? Is the GDR not much worse than the Third Reich?
Do you hold a revolutionary development in the FRG to be desirable?
Have you read leaflets of the Fourth International?
Have they been discussed in your flat?
What in general do you think of flat-sharing?"

It would be quite misleading to take the figures on formally carried out Berufsverbot and on preceding interviews at face value. They are only the tip of the iceberg. Underneath, given a tightening job market and growing unemployment, is an unknown number of persons who will be denied jobs without ever getting to know whether Special Branch intervention was involved. It became known that in West Berlin, school authorities were told not to inform applicants that Special Branch investigation was the reason for job refusal or delay of employment. The very process of investigation can be decisive, where candidates who are beyond the shadow of "doubts" are immediately available to fill vacancies. Furthermore, the employing institution more often than not will prefer to avoid conflicts with the authorities on behalf of a candidate who may be perfectly qualified and acceptable but unfortunately is "in doubt."

Below the level of institutions of any kind, even below the level of the very effective fear created by the knowledge of an ever-sprawling, ever-present repressive state apparatus, the Berufsverbot has a devastating effect on the social psychology of the ordinary citizen and his/her everyday life.

No political opinion that touches on not altogether superficial differences with those in power is safe from being drawn into the proximity of hostility towards the Constitution. The consequences are
fear, intimidation and political apathy. The taboo of contact, in addition to its destructive effect on particular persons, not only isolates the person who is labelled "enemy of the Constitution" or "sympathizer of terrorists", but isolates the citizen from any but officially prescribed thought. Thoughts, feelings, attitudes will not be the result of information, communication and reflection but of sheer fear and conformist acquiescence. Most disconcerting in itself and absolutely detrimental to anything that could possibly deserve the name of free democratic order, the transformation of opinions, thoughts and convictions into legal facts and their subsequent utilisation against individuals actually produces not only apathy but potentially violence, both of them twins in a political system that leaves no room for peaceful change and public discourse.

The political mechanism of Berufsverbot has penetrated into all features and realms of society. Aided by a history of state orientation in social thought and attitude in Germany, Berufsverbot has had the active support of a legislature that provides a broad network of legislation authorizing political repression, of a judiciary that is frighteningly cooperative and pliant, and, most alarming, of a trade union movement, that with only few exceptions collaborates to the point of—admitted and documented—"cooperation" with the Special Branch.

"It is correct that in the above mentioned shop stewards meeting, I quoted information from the Special Branch pertaining to members that have already been expelled from our organisation due to conduct detrimental to the union or pertaining to those against whom procedures of expulsion have been initiated. I did so, because sympathizers of these colleagues repeatedly maintained the assertion that none of the colleagues in question were members of a left wing radical organisation or—mere supporting them and that there was no evidence to that effect.

I declared that the reports of the Special Branch have been asked for in order to gain the greatest possible security in the judgement.

I had already said in the last shop stewards meeting that I have not passed on information to the Special Branch. I would, however, have to think over whether that should be maintained in the future." (Letter dated 4.1.74 from the Berlin Branch to the central headquarters of the Union for chemical, paper and ceramics industries.)

In 1973 the DGB, umbrella organisation of all trade unions, passed the so-called "incompatibility decisions" (Unvereinbarkeitsbeschlüsse) that neither in wording nor in spirit differ considerably from the Decree on Radicals—with the—important—exception that in practice they more or less exempt the DKP. Indeed, alarmingly often, it is trade union expulsion that accompanies, if not introduces, a Berufsverbot.

Following are some random samples of letters sent to trade union members, all of them expelled and subsequently struck by Berufsverbot.
19.10.1976 GEW (teachers trade union)
"At the parliamentary election to the Bundestag on the 3.10.1976 you were a candidate in district 69 (Cologne) for the Communist League of West Germany (KBW). According to the decision of the DGB federal executive of 3.10.1973... this political activity is incompatible with membership of any DGB trade union. Therefore your expulsion has been initiated by the president of our union."

14.4.1975 GEW
"You are active for the KPD and you support this organisation through your support of the 'Initiative against Berufsverbot and incompatibility decisions.' According to the decision of the DGB executive of 3.10.1973... this is incompatible with membership of the DGB. The executive of our union therefore has initiated your expulsion."

24.1.1975 OTV (Civil service, transport and traffic)
"In a letter of January 1975, several colleagues of the firm Hadeler objected to the expulsion of colleague Sandermeier. You have been present as a member of the executive at the procedure of expulsion. Therefore you should know, that S. is a member of the KBW or supports that organisation. According to the decisions of 3.10.1973 and 25126.10.1973 members belonging to a left or right wing extremist organisation or are active for it, have been expelled.

Although you knew this you identified yourself with your signature and as a member of the executive you have disregarded a decision of the OTV.

As a member and particularly as a member of the executive you are expected to support union interests internally and externally and to respect and adhere to union decisions.

In both cases [the other was editorship of a critical shop floor journal] you have acted in ways detrimental to the union (gewerkschaftsschadigend), so that I had to initiate a procedure of expulsion against you."

The whole West Berlin branch of the GEW was expelled for not adopting the incompatibility decisions.

The entire procedure—charges, findings, letters for interviews, etc.—is disconcertingly similar to that of state institutions. In fact, the similarity goes decisively further, as, given the system of united unions (Einheitsgewerkschaft), i.e. one union for one industrial branch, trade union expulsion indeed does imply a Berufsverbot not only in the public but in the private sector. The names of the expelled are passed on to the union branch, which has to agree to hirings. Quite frequently, they are even published in the union papers.

Possibly even more important than the absence of active political support for those struck by Berufsverbot on the part of the trade unions is their voluntary synchronization of thought and speech and public debate, which allow these dubious criteria of civil service recruitment to penetrate into all strata of social and political life. For instance, as happened in June 1978 in a small town in Hesse and as happens all over the country without appearing in the news, a youth group of the society of conscientious objectors was denied entrance to the local youth centre on
the grounds that they pursue aims hostile to the Constitution. It is not only predictable that the social conduct of these youngsters stands a good chance of deteriorating rapidly, but it has absolutely nothing to do with the alleged aim of the Decree on Radicals. It becomes quite clear, that the search for the "enemy within" serves the purpose of a large scale social witch-hunt and class struggle from above rather than the maintenance of pro-constitutional security within the state apparatus.

There has been opposition to the practice of Berufsverbot ever since 1972: local and regional committees (of various political composition) against Berufsverbot, legal advisory groups for those summoned to an interview and the like. In particular instances, unease even reached the major political parties, e.g. when in May 1975 François Mitterand in France announced the founding of a commission to investigate Berufsverbot—or when in CDU-run Lander SPD members were struck. Highly attended congresses have taken place, most recently the one mentioned earlier. So far none of these has had enough impact actually to turn the scales.

In the daily struggle against Berufsverbot the state has ample means of fighting against efforts of this kind. Civil servants or applicants for the civil service are required to observe "due moderation" and not to take—what has been made a legal offence—"refuge in publicity (Flucht in die Öffentlichkeit). This amounts to saying that any publicizing of a case still in process will be sufficient to definitely decide against the candidate on a legal basis. The use of the very word "Berufsverbot" has been forbidden: rather one is to say "means to eliminate enemies of the Constitution from the civil service" or the like. Statements to the contrary may easily be prone to prosecution for "slander of the FRG and its constitutional institutions" (Verunglimpung der BRD und ihrer verfassungsmassigen Organe). In some instances, the flat of an applicant was raided under the pretext that the published minutes of her interview were taken with the aid of a tape-recorder. Her private employer was informed about subsequent legal action taken against her and she was dismissed. Frequently, "breach of confidence" has been claimed in cases of publicising a pending Berufsverbot, again with the consequence of job refusal on that ground, rather than the grounds of the validity of the original "doubts." It is remarkable, however, that no case is known where the authorities have challenged the truth of what has been published.

Needless to say, anybody active in the struggle against Berufsverbot is a safe candidate for Special Branch files.

In recent weeks and months, one hears-and reads of increasing public concern with the practice of Berufsverbot, particularly on the part of SPD and FDP. New regulations for a less extensive use of the Decree on Radicals are being drafted. However, this is due less to the opposition within the FRG than to international concern over Berufsverbot, which threatens to be
particularly embarrassing with the European elections ahead. The SPD in particular is anxious not to represent the right-wing of a European social democratic organisation, which might in the long run harm its dominant role. If this proves to be unavoidable due to its general political positions, it would at least want to be a respectable right-wing.

As a less rigorous handling of the Decree on Radicals becomes a possibility, a problem, which so far has gained little attention becomes more evident. The last years have seen an enormous increase of the repressive state apparatus, particularly in the form of the police and the Special Branch. It is still a totally unsolved question how that expanded apparatus can be kept under control. It has been set up, expanded, every single employee has been recruited with "constitutional suitability" to keep track of the "enemy within." Little would be gained if only the rather formal side of having "doubts", calling for an interview, etc., were to be curtailed, while the smoothly functioning mechanism of collecting information and passing it on could be maintained—with growing unemployment substituting for the more formal and in that respect at least tangible interview. This is a problem the democratic movement in West Germany has as yet hardly dealt with.