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## The Salzgitter Archives: West Germany's Answer to East Germany's Human Rights Violations

### Keywords

Civil Rights, Human Rights Law, Abortion, Comparative Law, Crimes, European Court of Human Rights

# NOTE

## The Salzgitter Archives: West Germany's Answer to East Germany's Human Rights Violations

ELIZABETH A. LIPPITT\*

### INTRODUCTION

Since the end of World War II, ties and conflicts between the two Germanies, the German Democratic Republic (GDR) and the Federal Republic of Germany (FRG), have served as an important barometer of the larger relationship between the Soviet Union and the United States.<sup>1</sup> While a clearly discernible improvement in the political, economic and cultural climates can be observed in recent years, three major points of contention remain as a basis of conflict between the two countries:<sup>2</sup> 1) the insistence on the part of the GDR that the West Germans recognize East German citizenship and nationhood;<sup>3</sup> 2) the demand by the GDR that the 100 kilometer Elbe River border (between the cities of Lauenburg and Schnakenburg) be relocated to the middle of the river, instead of being entirely within the Federal Republic of Germany;<sup>4</sup> and 3) the GDR request for the dissolution of the Zentrale Erfassungsstelle der Landesjustizverwaltungen in Salzgitter<sup>5</sup> (Salzgitter Archives), a West German

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1. See, G. GAUS, *WO DEUTSCHLAND LIEGT* 234 (1980), W. HEAPS, *THE WALL OF SHAME* 1 (1964), W. HUBATSCH, *THE GERMAN QUESTION* 321 (1967), J. MANDER, *BERLIN: HOSTAGE FOR THE WEST* 13 (1962).

2. *Elbegrenze: Keine Einwände der Alliierten?* *Die Welt*, Apr. 4, 1984, at 53, col. 1.

3. *Die DDR Dringt auf Mehr Respekt*, *Frankfurter Allgemeine Zeitung*, Apr. 20, 1981, at 4, col. 1. See also, *SPD Will Aktivere Ostpolitik*, *Frankfurter Allgemeine Zeitung*, Feb. 27, 1985, at 1, col. 1. See also, D. CHILDS, *THE GDR: MOSCOW'S GERMAN ALLY, FOREIGN RELATIONS: THE SEARCH FOR RECOGNITION AND BEYOND* (1983); H. KIRSCH, *THE GERMAN DEMOCRATIC REPUBLIC: THE SEARCH FOR IDENTITY* (1985); J. MANDER, *BERLIN: HOSTAGE FOR THE WEST* 100-09 (1962).

4. *Rechtmässige Förderungen der DDR zur Kenntnis Nehmen*, *Süddeutsche Zeitung*, May 6, 1984, at 3, col. 1. See also, *DDR Aussenminister Beharrt auf Geraer Förderungen*, *Horizont*, Oct. 6, 1984, at 21; *Strauss Verlangt Standfestigkeit*, *Frankfurter Allgemeine Zeitung*, Mar. 11, 1981, at 11, col. 1.

5. Central Registration Office of the Federal Judicial System in Salzgitter. This federal

agency established in 1961 to record and document all human rights violations occurring in East Germany.<sup>6</sup> The questions of citizenship and the border disputes are relatively well known owing to frequent media coverage.<sup>7</sup> The Salzgitter matter is quite unknown outside either Germany.<sup>8</sup>

The subject of Salzgitter is a controversial one for both Germanies, but is particularly embarrassing and politically sensitive to the East German government. Since the fall of Hitler's Germany, the Allied occupation, and the building of the Berlin Wall, the East Germans have been struggling to achieve a degree of political independence and a measure of respect not only from its West German brothers, but also from the rest of the world.<sup>9</sup> This article examines the East German legal system, the inequities of the present system in the eyes of many Western observers, and the West German answer to an East German problem: Salzgitter.

### I. GDR: SIGNATORY TO INTERNATIONAL AGREEMENTS

Although the GDR is a socialist state, many of which are notorious for human rights violations,<sup>10</sup> according to many Western governments and independent investigations by such organizations as Amnesty International, it is nonetheless a signatory to both the Final Act of the Confer-

agency records and documents civil rights violations occurring in the GDR.

6. *Presse des Ministeriums für Auswärtige Angelegenheiten der Deutschen Demokratischen Republik, Aussenpolitische Korrespondenz*, 16 (1975).

7. The preamble to the Constitution of the Federal Republic of Germany provides:

The German People in the Lander of Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden and Württemberg-Hohenzollern,

Conscious of their responsibility before God and men,

Animated by the resolve to preserve their national and political unity and to serve the peace of the world as an equal partner in a united Europe,

Desiring to give a new order to political life for a transitional period,

Have enacted, by virtue of their constituent power, this Basic Law for the Federal Republic of Germany.

They have also acted on behalf of those Germans to whom participation was denied. The entire German people are called upon to achieve in free self-determination the unity and freedom of Germany.

GRUNDGESETZ, preamble.

The FRG Constitution speaks of one German nation, thus preventing recognition of GDR citizenship and nationhood; this accepts the temporary situation of German states, but only one German nation. The Elbe river border remains unresolved due to imprecise documents drawn up by the Allies at the end of WWII. The West German Government's stand is that the entire river is West German territory, with the GDR beginning at the Eastern shore; however, there is already de facto acceptance of GDR claims by sharing the river without confrontation with East German patrol boats to the middle of the river.

8. The relations between the two Germanies are volatile and sensitive, and any adverse publicity only threatens an already delicate balance.

9. See, K. FRICKE, *POLITIK UND JUSTIZ IN DER DDR* (1979); K. FRICKE, *DDR STAAT-SICHERHEIT* (1982).

10. For a more complete thesis on the human rights violations in the GDR, see, *Menschenrechtsverletzungen in der DDR*, 18 *DEUTSCHLAND ARCHIV* (1985).

ence on Security and Cooperation in the Europe Agreement<sup>11</sup> (commonly known as the Helsinki Agreement of 1975), and the International Covenant on Civil and Political Rights.<sup>12</sup> The International Covenant on Civil and Political Rights provides in part that:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.<sup>13</sup>

The International Covenant on Civil and Political Rights also provides for the freedom of thought and religion<sup>14</sup>, freedom of speech<sup>15</sup>, the freedom of association<sup>16</sup>, the right of peaceful assembly<sup>17</sup>, as well as the right to leave one's country.<sup>18</sup>

Not only has the GDR agreed on an international scale<sup>19</sup> to observe and guarantee human rights as outlined in the Helsinki Agreement, but it has also guaranteed these rights in the Constitution of the German Democratic Republic. Among the fundamental rights provided by the East German Constitution are: freedom of religion<sup>20</sup>, right to democratically

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11. The complete text of the Final Act is found at 14 I.L.M. 1293 (1975); and 73 DEP'T STATE BULL. 323 (1975).

The Conference on Security and Cooperation in Europe opened at Helsinki on July 3, 1973, continued in Geneva from September 18, 1973 to July 21, 1975, and was concluded in Helsinki on August 1, 1975 by the representatives of the 35 participating states: Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics (USSR), the United Kingdom, the United States, and Yugoslavia. The only European country not represented at the Conference was Albania.

12. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1967), *preprinted in* 16 I.L.M. 168 (1977), (*entered into force* March 23, 1976).

13. *Id.* at art. 19(2).

14. *Id.* at art. 18.

15. *Id.* at art. 19.

16. *Id.* at art. 22.

17. *Id.* at art. 21.

18. *Id.* at art. 6.

19. J. JOYCE, HUMAN RIGHTS: INTERNATIONAL DOCUMENTS (1978). Among international instruments signed by the GDR are: International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Political Rights of Women; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; Slavery Convention of September 25, 1926; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and the International Convention on the Suppression and Punishment of the Crime of Apartheid.

20. W. SIMONS, THE CONSTITUTIONS OF THE COMMUNIST WORLD (1980), The Constitution of the German Democratic Republic, art. 39.

elect<sup>21</sup> and vote in 'democratically formed elections'<sup>22</sup>, freedom of the press and expression in general<sup>23</sup>, right of peaceful assembly<sup>24</sup>, freedom of association<sup>25</sup>, freedom of movement within the German Democratic Republic.<sup>26</sup>

Unfortunately, the provisions are often not followed by the GDR. All the guaranteed rights are subordinated to the interest of the State as a result of so-called "rubber paragraphs" which allow the State wide latitude in interpreting the rights outlined in the Constitution. The East German legal system, as is typical of socialist countries, revolves around the state and its maintenance of Marxism-Leninism, rather than to serve its people.<sup>27</sup> The GDR utilizes its "legal system" to commit egregious human rights violations. Without allowing its citizens recourse in courts, rights to protest or criticize, or criticism by independent, international organizations, whose charges are labelled "interference in the internal affairs of a sovereign state." This is clearly the one major difference between judicial systems in the East and West which has been at the center of many contentious debates from Helsinki to the follow-up conferences in Belgrade and Madrid.

## II. DOCUMENTATION OF CIVIL RIGHTS VIOLATIONS IN THE GERMAN DEMOCRATIC REPUBLIC

As the GDR neared its 30th anniversary in 1979,<sup>28</sup> a number of international human rights groups<sup>29</sup> focused their attention on various cases of imprisonment for political reasons in an attempt to point out the abuses of the East German legal system. In particular, these groups sought to draw attention to the imprisonment of Rudolf Bahro, a dissenting Marxist sentenced to eight years imprisonment in connection with his writing of *Die Alternative*,<sup>30</sup> a book critical of socialism as practiced in the GDR.<sup>31</sup> Bahro was punished because the book had been published in the West and had received broad Western press attention.<sup>32</sup> These groups also sought to bring attention to the case of Nico Hübner, a young man who refused induction into the armed forces of the National People's Army based on his reference to the Allied Military Status of Berlin, a

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21. *Id.* at art. 21.

22. *Id.* at art. 22.

23. *Id.* at art. 27.

24. *Id.* at art. 28.

25. *Id.* at art. 29.

26. *Id.* at art. 32.

27. *Positive, Loyal, Schwankend, Negativ.* Der Spiegel, Feb. 20, 1985, at 117, col. 1. See, *infra* note 40 [hereinafter referred to as Der Spiegel].

28. Address by Professor Armin Wishard Ph.D., Lüneburg, West Germany (Oct. 1982) (unpublished manuscript) [hereinafter cited as Wishard].

29. Amnesty International and the International League for Human Rights.

30. R. BAHRO, *THE ALTERNATIVE IN EASTERN EUROPE* (D. Fernbach trans.) (1978).

31. *Id.*

32. Wishard, *supra* note 28, at 1.

convention signed by the Allies at Potsdam<sup>33</sup> which prevents the inhabitants of both East and West Berlin from being drafted into the armed forces.<sup>34</sup> The East Germans, who chose simply to ignore this Convention, jailed Hübner for his insistence on asserting his rights and rejection of the state's arbitrary circumvention of established treaties.<sup>35</sup> A third case involved the continued harassment by the East German Government of a prominent philosopher, Robert Havemann, for his political views.<sup>36</sup> Although these particular cases were all widely publicized, the result merely masked the critical condition of East Germany's overflowing jails filled with prisoners who were convicted for alleged crimes against the socialist state. Exact numbers of presently-held political prisoners are difficult to ascertain,<sup>37</sup> since all information regarding East German violations is obtained from escapees or prisoners now released<sup>38</sup> and in the FRG,<sup>39</sup> or visitors to the FRG.<sup>40</sup>

### *The Rubber Paragraph*

The "rubber paragraph" is frequently used to justify actions by the GDR that the Salzgitter organization questions. The East German penal code ("Strafgesetzbuch"), Article 214, provides in part:

Whoever impedes the activity of state bodies with violence or threats, or shows disrespect for the laws in a way endangering public order, or urges disrespect of the laws, shall be punished by imprisonment of up to three years or by a suspended sentence, short-term detention, a fine or public rebuke.<sup>41</sup>

This is known by the people of both Germanies as the "rubber para-

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33. Potsdam Protocol of 1945. *See also*, Four Power Declaration of 1945.

34. Wishard, *supra* note 28, at 1. The Convention was signed at the Potsdam Protocol of 1945.

35. When Jehovah's Witnesses object to military service, the GDR will sometimes make a concession allowing them not to carry weapons. However, those who refuse to oblige to this small concession have been sent to prison for outright pacifism. *See*, J. STEELE, *INSIDE EAST GERMANY: THE STATE THAT CAME IN FROM THE COLD* 158 (1977).

36. Wishard, *supra* note 28, at 1. These cases typify those documented by the press and the Salzgitter Archives.

37. Since 1970, the GDR has stopped publishing criminal statistics on a regular basis. *See*, J. STEELE, *INSIDE EAST GERMANY: THE STATE THAT CAME IN FROM THE COLD* 156 (1977).

38. A particularly insidious practice in the GDR is the incarceration of prisoners of conscience with (and as) ordinary criminals so as to avoid the charge of having imprisoned political prisoners. Furthermore, the GDR derives annually, millions of monies in hard currency by "selling" prisoners to West Germany, whose government quietly agrees to this trade in a humanitarian gesture. The GDR bases its demands on the education and training of each individual; that is, a physician may command up to \$U.S. 50,000 or more to be released, a worker somewhat less. Precise figures are not published by West Germany so as to not draw attention to the arrangements which could endanger future deals.

39. Wishard, *supra* note 28, at 1.

40. *Buchhaltung des Verbrechens*, *Weltbild*, June 8, 1984, at 21, col. 2 [hereinafter cited as *Weltbild*].

41. StGB.DDR art. 214, § 1.

graph".<sup>42</sup> This provision, in spite of its apparent application only to "violence or threats", allows the authorities to jail people almost at will. According to Amnesty International, no officials are aware of its application to anyone who has used or advocated violence.<sup>43</sup> The purpose of Article 214 seems to be to protect the activity of the public bodies rather than citizens.<sup>44</sup>

The elements constituting a crime "impeding state or social activity" are unclear. For example, in September 1979, Mr. and Mrs. Januszewski were arrested and sentenced to about three years imprisonment for submitting applications for a period of one year to government authorities for permission to emigrate.<sup>45</sup> The couple called attention to the Helsinki Agreement permitting freedom of emigration, and all written laws of the GDR, wishing to emigrate to West Germany. After several applications had been rejected, Mr. Januszewski sent a letter to Willi Stoph, Chairman of the East German Council of Ministers, in which he wrote, "A life in the GDR for my family and me does not seem to be worth living under conditions where human rights are violated."<sup>46</sup> The authorities construed this letter as an attempt to blackmail, practically equivalent to a suicide threat in East Germany, and it formed the primary basis of the charge against the Januszewskis brought under the "rubber paragraph" (Article 214). The couple was finally released in July of 1981.<sup>47</sup>

Because political prisoners (Amnesty International estimates between 4000 and 6000 in the GDR)<sup>48</sup> are not prosecuted as a separate category in East Germany,<sup>49</sup> and consequently are not distinguished from the ordinary criminals, it makes it difficult not only to estimate the number of political prisoners populating the penitentiaries of the GDR,<sup>50</sup> but also to ascertain the number of prisoners who have been sentenced to long prison terms purely for insisting on rights which are ostensibly guaranteed in the GDR's Constitution or by international conventions signed by the representatives of East Germany.<sup>51</sup> Others have committed minor political crimes in hopes of being ransomed out to the West.<sup>52</sup>

### *The "Slave Trade" Between the Germanies*

Not only are these prisoners punished for asserting their basic

42. Wishard, *supra* note 28, at 1.

43. Amnesty International, *Restrictions on the Right to Freedom of Expression in the German Democratic Republic* 23 (1980).

44. *Id.*

45. *Id.* at 24.

46. *Id.*

47. *Id.*

48. Wishard, *supra* note 28, at 4.

49. *Id.* at 6.

50. *See, supra* note 43.

51. *Id.* at 1.

52. Palenberg, *Disquiet on the Western Front: Observations on the Twentieth Anniversary of the Berlin Wall*, 5 FLETCHER F. 352, 359 (1981).



human rights, they are exploited for economic gain. In order to obtain badly needed western hard currency<sup>53</sup> the East German government offers political prisoners to the West in what is known as the "Buy-Free" program.<sup>54</sup> Under this program, Western countries can "purchase" these prisoners' freedom at an exorbitant price.<sup>55</sup> Depending on the profession of the bought prisoner, prices vary, and can be as much as \$50,000 for a doctor.<sup>56</sup> East Germany attempts to rationalize this program by asserting that the loss of these individuals results in a drain on the human resources of their society, and thus should be compensated. Although this may be viewed as a humane endeavor, its obvious purpose is to alleviate an already overburdened penal system on the verge of collapse.<sup>57</sup> Out of a total population of 15 million in 1950, now close to 17 million, an estimated 20,000 political prisoners were released; in 1960 — 16,000; in 1964 — 10,000; in 1972 — 25,351, plus 6344 from preventive detention; in 1979, a total of 21,928 were given amnesty.<sup>58</sup> This practice should not be construed as a humane gesture; it also allows the East German authorities to continue to apply pressure on its citizens and dissidents, provides badly needed western currency, and alleviates the GDR of having to cope with "embarrassing" individuals by "selling" them to the West.<sup>59</sup>

#### *The Advocate Practicing in the GDR*

In West Germany, with a population of approximately 61.5 million people, there are approximately 47,000 attorneys.<sup>60</sup> With a population of 17 million, a mere 600 is all the Minister of Justice has provided.<sup>61</sup>

A recent article in *Der Spiegel*, a major West German magazine, recounted an interview with a "retired" East German advocate.<sup>62</sup> Dieter Graf, 41, practiced from 1970 to 1982 as an attorney in the GDR. After numerous conflicts with the State justice system, he now works with a church organization in Magdeburg, East Germany.<sup>63</sup> Graf describes the justice system of East Germany in which most lawyers fully acquiesce to state demands, as "through and through political; where only Party members are good advocates, and the truth that they investigate must always avail itself to socialism."<sup>64</sup> What do the rest of the advocates do? A few play along; some, like Graf, resign, and the rest battle against their

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53. *Id.* at 357, 359.

54. *Id.*

55. *Id.*

56. *Id.* at 5.

57. *Id.*

58. *Id.* at 6.

59. *Id.*

60. *Der Spiegel*, *supra* note 27, at 117.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

helplessness.<sup>65</sup>

*Frustration of the Legal Practice in the German Democratic Republic*

The East German legal system is fraught with injustice against the accused. Violations begin in pre-trial confinement, where psychologically destructive methods of interrogation and conditions of imprisonment are employed.<sup>66</sup> Pre-trial confinement is prolonged for long periods, the accused is denied the right to a defense lawyer of his own choice, and a copy of the charges is frequently refused to the accused, and the public is excluded from the proceedings.<sup>67</sup> According to the Criminal Procedure Code paragraph 64, section 2,<sup>68</sup> every defense attorney is allowed to take a look at a copy of the client's charges.<sup>69</sup> What is actually permitted in practice is an entirely different matter. This system is strengthened by the fact that a lawyer first of all serves the state, and only secondarily his client.<sup>70</sup>

In the typical scenario involving an East German attorney, the advocate should always attempt to speak quietly to his client. This is done to avoid eavesdropping devices present in every conference room. The attorney strives to have his client acquitted, and prevent the authorities from establishing proof against his client. Days before the trial, authorities thrust documents at the defense attorney informing him that the sentence has been decided, written down and sealed, in anticipation of a final result. A responsible advocate protests to the judge. But the judge typically evades the issue, explaining that an intern with the tribunal, designed the "prejudgment" merely on an experimental basis. The judge insists the entire episode has nothing to do with the actual criminal matter. On the day of the hearing, the attorney pleads for acquittal, but must do so without any proposals or motions. Naturally, the accused is sentenced and later gets a statement of the decision. The defense attorney is not particularly surprised that the only difference between the "designed judgment" and the actual judgment is that the latter carries the judge's signature.<sup>71</sup>

The processes of the East German legal system seem to be designed to thwart an attorney's effective representation of his client.<sup>72</sup> Allegedly, each defense attorney is permitted to examine a description of his client's

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65. *Id.*

66. Wishard, *supra* note 28, at 2.

67. *Id.*

68. SrPO.DDR para. 64, § 2.

69. Der Spiegel, *supra* note 27, at 117.

70. *Id.*

71. *Id.*

72. The Marxist-Leninist principle of law is politically and socially functional. See, 1 K. ZWIEGERT, AN INTRODUCTION TO COMPARATIVE LAW (1977). For a more complete explanation of the origins of Marxist-Leninist law in the Soviet Union, and the basis for GDR legal system, see, R. DAVID, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY (1974). See *infra* note 74.

criminal offense, and make an investigation of the charges.<sup>73</sup> However, if the attorney chooses to do so, his actions are strictly controlled. When the attorney receives the indictment, employees of the Justice Department watch him closely. Since no photocopies or other recordings of any proceedings are allowed, these employees scrutinize the attorney's actions closely, noting all excerpts the attorney writes down. The attorney's associates are also forbidden to peruse these excerpts. These attorneys must struggle through restriction after restriction in the preparation of their client's defense. In short, although the GDR would like to show itself to the rest of the world as a state observing the rule of law, in fact the judicial system of this socialist state is designed to achieve the opposite effect.<sup>74</sup>

In addition to the practice of criminal defense, attorneys are available in the GDR for civil, family and other legal matters. These channels of the legal system are even more inefficient than those of the criminal justice system. Even though there are specific laws reserved for these special situations, secret sentences, breaches of the law and repression characterize the daily routine of the justice system.<sup>75</sup> The law embodied in the civil statutes emerges from the "cocoon of the practice of law" as a tool for the suppression of the citizens, which promotes the strength of the State Party.<sup>76</sup>

*Overriding Concern with the State's Dominance in Private Affairs of its Citizens*

Assume a couple comes before the judicial tribunal for a simple di-

73. STPO.DDR para. 64 § 2.

74. Der Spiegel, *supra* note 27, at 117. In K. SONTHEIMER & W. BLEEK, *THE GOVERNMENT AND POLITICS OF EAST GERMANY* 88-102 (1975), the authors explain that there is no distinction between law and politics:

[T]he law is not so much a means for safeguarding order and existing conditions but rather a means of further developing the socialist society . . . it [the legal system] is principally a tool of politics . . . a specific form of state and social activity serving to safeguard, protect and advance those rights of the people and that observance of modes of behavior declared to be obligatory in the common interest and embodied in the Constitution and the laws.

[T]here are no independent judicial bodies, which can keep a check on the legality of acts of the state, moreover the relative constancy and reliability of legal authorities which are well known in bourgeois constitutional states do not exist.

In the legal system of the GDR, the juridical protection of the individual is of subordinate importance, for both constitutional and legal theory proceeds from the fact that the political, economic and ideological condition for human development have already been created in the GDR and do not first have to be effectively safeguarded by the verdict of a court of law.

See also Childs, *supra* note 3, at 135-39. But see Buchholz, *The Social Courts in the German Democratic Republic: Bodies of Criminal Justice*, 4 INT'L. J. COMP. & APP. CRIM. JUST. 37-42 (1980) (written by an East German law professor).

75. *Id.* at 124.

76. *Id.*

voice. Before the judge can grant the divorce, he must complete a checklist concerning the couple and their "attitudes". The checklist provides for determination of the following:

- (1) Attitude to the socialist society-state — positive, loyal, vacillating, or negative?
- (2) Upbringing of the children as socialist personalities — satisfactory, or not?
- (3) Influence and effects of ideological diversions (i.e., through West German radio and television, and West German printed material)?
- (4) Motive of the divorce — affections, an expected child, or economic considerations?<sup>77</sup>

The judge must also respond to possible "countercultural, decadent, immoral, and antisocial behavior and absenteeism" of the couple, and should decide whether the couple is involved in the proper educational, cultural, political and social organizations, as well as the children, and whether more information is required from local authorities before the divorce may be granted.<sup>78</sup>

In summary, as Graf contends, the GDR justice system, the bureaucracy of the government, and the socialist state itself make the life of an attorney very frustrating. As Graf complains, "the Party has everything to do with everything."<sup>79</sup>

### III. THE FEDERAL REPUBLIC OF GERMANY RESPONDS TO EAST GERMAN HUMAN RIGHTS VIOLATIONS: SALZGITTER.

The "Zentrale Erfassungsstelle der Landesjustizverwaltungen in Salzgitter" (commonly referred to as the "Erfassungsstelle") or "Central Archives of the Federal Justice Department in Salzgitter," is a documentation center for offenses committed in the GDR for which many in the FRG believe the East Germans should be held accountable.<sup>80</sup> The Erfassungsstelle was instituted in October 1961<sup>81</sup> in reaction to the building of the Berlin Wall in August of that same year.<sup>82</sup> The agency is staffed with about a half-dozen employees, headed part-time by District Attorney Carl-Hermann Retemeyer. Retemeyer is the representative of the Attorney General's office from the District of Braunschweig.

77. *Id.*

78. *Id.*

79. *Id.* at 118.

80. Holtfort, *Ein Relikt des Kalten Krieges*, Sozialdemokratischer Pressedienst, Dec. 18, 1984, at 1.

81. Fromme, *Sechs Untermieter der Polizei in Salzgitter sind den DDR-Oberen seit Jahren ein Dorn im Auge*, Frankfurter Allgemeine, Oct. 15, 1984, at 17, col. 1. See also Schmidt, *Ein riesiger Aktenberg unter DDR — Beschluss*, Stuttgarter Nachrichten, Jan. 20, 1975, at 7, col. 2.

82. Winters, *Salzgitter ist nur eine Dokumentationsstelle*, Frankfurter Allgemeine, Apr. 3, 1984, at 5, col. 1.

The purpose of the agency in Salzgitter is to assemble material documenting human rights violations committed by the government of the GDR, as well as to secure evidence reporting such crimes.<sup>83</sup> Contrary to what many Europeans believe, the Archives in Salzgitter are not comprised of a collection of evidence of Nazi war crimes, but rather it is concerned with the maltreatment, arbitrary arrests, convictions, and penalties in the GDR that appear too severe by West German legal standards.<sup>84</sup> For example, out of a total of 1,132 crimes that were registered by the Salzgitter staff in 1983, 940 were judgments of a suspicious nature.<sup>85</sup>

#### *Procedure of the Salzgitter Archives*

The task of assembling the political and violent offenses committed in the recent past in East Berlin and the GDR is done by utilizing an elaborate alphabetized color-card system.<sup>86</sup> Presently, this system contains the names of over 80,000 GDR and East Berlin citizens.<sup>87</sup> The Salzgitter staff distinguishes the East German offenses by using four major categories, each with its own color. Registered on yellow cards are approximately 50,000 names of persons responsible for illegal conduct against the citizens, primarily consisting of judges and attorneys. On blue cards are listed the perpetrators of physical mistreatment of prisoners in the penal system. The red cards combine the names of "denouncers" (Denunzianten) of the GDR with spies and informers for East Germany. Finally, at least 31,487 "sacrifices and victims" (those individuals whose whereabouts are unaccounted for) are registered on white cards.<sup>88</sup> The West German attack on these abuses by the small staff in the Central Archives was so extensive that after fourteen years of existence, the Erfassungsstelle had to be significantly expanded. One can begin to appreciate the enormous task that Salzgitter was designed to undertake.

The information gathered by the Salzgitter staff is separately organized by types of atrocities committed:

1. Incidents of homicide of every manner, including kidnappings, committed by the regime with the purpose to restrict freedom of movement in order to achieve loss of human dignity and the humiliation of the citizen. Also included is a category for "terror convictions", which is a catch-all for acts committed by the East German State not readily categorized by Salzgitter, but are nonetheless excessive.
2. Maltreatment and acts of cruelty.
3. Actions grounded on a suspicion of criminal offenses under Section 220(a), genocide (Völkermord), Section 234(a), abductions

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83. Fromme, *supra* note 81, at 17, col. 1.

84. Holtfort, *supra* note 80, at 2.

85. *Id.* For examples of political suspicion, see *infra* note 95.

86. Naumann, *Ein Staatsanwalt und fünf Mitarbeiter bringen Honeckers SED um den Schlaf*, *Berliner Morgenpost*, Apr. 15, 1984, at 2, col. 1.

87. *Id.* col. 4.

88. *Id.*

(Verschleppung), and Section 214(a), political suspicions (politische Verdächtigung) of the criminal code.<sup>89</sup>

As soon as sufficient grounds for a violation are identified, they are registered at the Salzgitter Archives.<sup>90</sup>

In the first category, homicide, the data is comprehensively assembled and investigated. In particular, the witnesses are questioned and all evidence is heard. A judge then decides whether to accept the evidence or if further investigation is needed. The records of the cases are submitted to a court according to the West German Criminal Procedure Code section 13,<sup>91</sup> and are then delivered to the district attorney. This process is necessary because the Salzgitter Archives do not have jurisdiction to charge and initiate criminal proceedings. For example, the Salzgitter Archives cannot question a witness without permission from the court.<sup>92</sup>

In the second category, maltreatment, the cases are "expressions of political oppression of the GDR."<sup>93</sup> Escapees report their stories of intentional maltreatment. The incident is registered at the Salzgitter Erfassungsstelle, the wrongdoer's name is recorded in the card file system.<sup>94</sup>

In the last category of political suspicion, including genocide and other criminal offenses, the cases are predominantly ones which involve informers who have disclosed information about escape plans to the GDR authorities.<sup>95</sup> These cases are usually limited to a hearing with the victim, and the facts are turned over to the district attorney. The names of the informers are registered at the Erfassungsstelle in the event that they travel into the Federal Republic of Germany. If they are apprehended in the FRG, they are tried in the new jurisdiction of the victim.<sup>96</sup>

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89. *Id.* col. 1, 2.

90. Salzgitter Institute Publication, at 3.

91. StPO.DDR, § 13.

92. Salzgitter Publication, *supra* note 90, at 3.

93. *Id.*

94. *Id.* at 4.

95. Spoo, *Auch SPD — Länder rütteln nicht an der Erfassungsstelle*, Frankfurter Rundschau, Dec. 29, 1984, at 1, col. 3. As an example of "political suspicion", a case concerning a separating couple made its way to the Erfassungsstelle. The wife had abandoned the husband with the intention of divorcing him. While at a marriage counseling agency, the husband fabricated a fear that his wife might leave the GDR with his son. With the intention of saving the marriage, the husband emphasized that his wife had actually prepared the illegal trip to the outside. The wife was convicted of illegal emigration, and incarcerated for over a year. Thereafter, she was allowed to leave the GDR. Later, the husband followed her to the FRG. On August 21, 1984, the husband was sentenced to a year and three months for causing the incarceration of his wife.

In a second case, a former soldier of the East German People's Army during his duty as a border soldier in East Germany, upon orders shot a 20-year-old escapee in Harz. The reports, according to West German sources, indicated that the shooting was most likely fatal. Although the incident was ignored in East Germany, upon arrival from escaping the GDR, a subsequent jury trial in Stuttgart sentenced the former GDR soldier to 15 months imprisonment.

96. *Id.*

Salzgitter occupies itself primarily with actions and judgments concerned with political subversion. Witnesses or victims are questioned about their fate and report about the nature of their charges and types of penalties regarding fellow inmates. The Erfassungsstelle proceeds by questioning possible witnesses and gathering the facts of an illegal conviction, then registering the conviction. The sentences in the GDR for attempted escape average a minimum of one year. The official who abused his power in such a judgment is recorded in the card system and cross-referenced with other similar judgments.<sup>97</sup>

Since 1961, the Central Archives in Salzgitter have counted 4,306 government-sanctioned homicides.<sup>98</sup> Under the category of "maltreatment", the Salzgitter staff has recorded 603 incidents of egregious human rights violations, 2,343 incidents of political harassment, and a total of 22,290 convictions on political grounds, with over 30,000 arrests and sentences.<sup>99</sup> The Erfassungsstelle has registered over 50,000 names of persons responsible for human rights violations.<sup>100</sup>

West German authorities have instituted the Archives and these legal proceedings under the belief that the civil and criminal laws of the FRG are valid not only domestically, but also for GDR citizens.<sup>101</sup> According to the Penal Code paragraph 7, section 2, subparagraph 1,<sup>102</sup> the Code of the FRG applies to criminal acts committed or suffered by persons who at the time were West German citizens or after the act became West German citizens.<sup>103</sup> According to the FRG, the decision as expressed by the Federal Constitutional Court concerning the constitutionality of the basic treaty<sup>104</sup> between the the Germanies on July 31, 1973, the GDR is not a foreign jurisdiction in relation to the FRG.<sup>105</sup> Therefore, according to the West Germans, and since East Germany has not been officially recognized as a separate sovereignty by the FRG, the West German penal code applies not only to West Germans, but to East Germans as well.<sup>106</sup>

It should be noted that the West Germans have more in mind than the pursuit of human rights in East Germany. It is the stated position of the West German Government that some day Germany will be re-

97. *Id.*

98. Sudmeyer, *Dorn im Auge Ostberlins*, *Stuttgarter Nachrichten*, Aug. 21, 1984, at 19, col. 2.

99. *Id.*

100. *Berliner Morgenpost*, *supra* note 86, col. 4.

101. Holtfort, *supra* note 80, at 2.

102. StGB.DDR para. 7, § 2, subpara. 1.

103. Salzgitter Publication, *supra* note 90, at 5.

104. The Basic Treaty Between the FRG and the GDR, Nov. 14, 1972, provides a basis for relations between the two Germanies, to facilitate trade, travel and relations. For an English translation and commentaries on its constitutionality *see*, F. HESS, *GERMAN UNITY: DOCUMENTATION AND COMMENTARIES ON THE BASIC TREATY* (1974).

105. Salzgitter Publication, *supra* note 90, at 5.

106. *Id.*

united.<sup>107</sup> Although this may seem unrealistic to the rest of the world, the West German goal dominates East/West German politics. The Salzgitter Archives may be used as a tool to effectuate this goal. For their part, East German authorities have no intention of joining the West. Yet, the East German authorities are sincerely threatened by the Erfassungsstelle in Salzgitter: it undermines GDR sovereignty claims as an independent state, interferes in internal affairs, and is a possible threat that GDR leaders may in some uncertain future face a Nuremberg-type tribunal, and thousands of GDR state functionaries, judges, soldiers, police and party members would be charged and possibly convicted.<sup>108</sup> As long as Salzgitter is in existence, it is a "thorn in the eye" of the authorities in East Berlin.<sup>109</sup>

#### IV. THE GDR: SALZGITTER IS AN ACT OF REVENGE

The East Germans maintain that the Salzgitter Archives were established as a method of revenge after Germany's division and can only be viewed as such.<sup>110</sup> The GDR claims that the Salzgitter office is staffed with pensioned Nazis, carrying on their evil work from years ago.<sup>111</sup> The East German officials accuse the Archive employees of document falsification, and with attempting to undermine a legitimate state of law and order.<sup>112</sup> The GDR officials argue that the Salzgitter Erfassungsstelle offends the basic treaty between the two Germanies.<sup>113</sup> In particular Article 6,<sup>114</sup> where the parties agree to respect the independence and separate sovereignty of the two states.<sup>115</sup> The existence of Salzgitter is seen to offend various international principles, including the Helsinki Accords articulating the principle of non-interference in the affairs of sovereign states.<sup>116</sup> The East Germans maintain that as long as Salzgitter exists, a normalizing of relations between the states or nations will be impossible, because it supports a policy of hypocrisy and confrontation,<sup>117</sup> and is a relic of the cold war which threatens the peace and security of Europe.<sup>118</sup>

107. *Id.*

108. *Id.*

109. Sudmeyer, *supra* note 98, at 19, col. 2.

110. *Ein Würmfortsatz*, *Horizont*, No. 3, 1981, at 7, col. 3 [hereinafter cited to as *Horizont*].

111. *Erfassungsstelle in Salzgitter Treibt Noch Immer Ihr Unwessen*, *Neues Deutschland*, Jan. 8, 1981, at 2, col. 1.

112. DDR Korrespondent Olaf Dietze aus Salzgitter, *Aktuelle Kamera*, Nov. 2, 1980.

113. *Presse des Ministeriums für Äußerliche Angelegenheiten der Deutschen Demokratischen Republik, Außenpolitik Korrespondenz*, 16 (1975).

114. The Basic Treaty, art. 6, *supra* note 104.

115. *Horizont*, *supra* note 110, col. 2.

116. *Juristische Aggression*, *Aktuelle Kamera* vom 27.11.80.

117. *Horizont*, *supra* note 110, col. 2.

118. *Neues Deutschland*, *supra* note 111, at 2, col. 2.



## V. OPPONENTS TO SALZGITTER IN WEST GERMANY

Although the work of the Salzgitter Archives is applauded by many West Germans, its existence is not unquestioned. Unlike conservative parties, some groups in the FRG, especially the newly emerged Green Party and, to some extent, the Social Democrats (SPD), believe that the reunion of the two Germanies is unrealistic, and that Salzgitter should be abolished.<sup>119</sup> The West German Republikanischer Anwaltsverein (RAV), or West German Bar Association, maintains the Erfassungsstelle Archives are superfluous and ineffective.<sup>120</sup> In December of 1984, prominent social democratic (SPD) lawyers and politicians, (including the more liberal social democratic bar members Jürgen Schmude, Horst Ehmke and Hans Vogel) recommended at a hearing before the West German Bundestag (parliament) that the Central Archives in Salzgitter be dissolved.<sup>121</sup> The RAV's position is that the West German government holds no legal basis on which to implicate East German authorities.

According to Article 6 of the Basic Treaty,<sup>122</sup> the two Germanies are restricted to exercise power within their own sovereignties.<sup>123</sup> Dr. Werner Holtfort, president of the RAV, asserts that the "cold war" mentality that led to the institution of the Central Archives in Salzgitter is no longer valid, nor does it provide any basis of jurisdiction.<sup>124</sup> In his speech before the West German Parliament, Holtfort stated that "the FRG must accept that one Germany no longer exists, but two . . ." and that the West German citizens can no longer protect the GDR's citizens, nor could they prosecute them under the guise that West German law is for every German."<sup>125</sup> For these reasons, the groups who oppose the Salzgitter Archives believe that the institution lacks any meaningful purpose, and only disrupts the necessary efforts of detente.<sup>126</sup>

## CONCLUSION

As the GDR continues its violations of human rights of its citizens, more East Germans will undoubtedly seek other solutions and resort to protests outside the official, government-guided movement. Arrests, discrimination and forced expatriation, supported by a well-intentioned but misguided West German policy of "buying out" political prisoners, are likely to increase in the future. The debate over the Salzgitter Archives is sure to continue for years to come, both within the West German government, and in talks between the two Germanies. Until the issue is settled

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119. Spoo, *Fossil des Kalten Krieges*, Frankfurter Rundschau, Aug. 15, 1984, at 3, col. 1.

120. *Id.*

121. *Id.*

122. The Basic Treaty, *supra* note 104.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

to the satisfaction of both governments, the Archives will continue to serve as a collection agency for human rights violations in the GDR and allow the FRG to apply a considerable amount of pressure to improve the respect for human rights in the GDR. It is possible that the agency will be abolished at some point in the future in exchange for improvements in the civil rights record of the GDR and better relations between the two countries. Until such time, East German authorities are sure to feel the sting of criticism by having their civil rights record publicly recorded and exposed. As the GDR's confidence and prominence in world affairs grows, the country desires to avoid being portrayed as a persistent violator of its citizens' rights.<sup>127</sup> In no small measure the Salzgitter Archives have served to bring about improvements for GDR citizens by focusing the spotlight on repeated and egregious violations of GDR and internationally accepted norms of behavior in the area of civil rights. Retemeyer states that if the work he and his associates conduct, and the "scare tactics" of the Institute keep one soldier from shooting, then it has paid for itself a thousand times.<sup>128</sup>

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127. The effect of the publicity of civil rights violations is exhibited by cases that are soon rectified after such adverse publicity from concerned organizations.

128. *Weltbild*, *supra* note 40.