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LEGAL PROBLEMS RELATING TO POSSIBLE CONFLICTS BETWEEN PHYSICAL PROTECTION AND THE INTERESTS OF EMPLOYEES

INTRODUCTION

The requirements of physical protection, i.e. the protection of nuclear facilities and materials against malicious acts, have increased in importance for the operation of such plants in the past few years. In this connection it is obvious that some of these requirements, such as security clearances of the personnel or restricted access and checks, considerably affect the interests and rights of those employed there. This is why sporadic criticisms have been recently observed originating from the German trade unions and representatives of the employees - although they are predominantly in favour of the peaceful uses of nuclear energy - which have required a more intensive consideration of the interests of employees with respect to measures for physical protection.

However, in order to avoid any misunderstandings: effective protection of nuclear facilities and materials against malicious acts is indispensable. Moreover the international obligations to "non-proliferation" are the decisive basis of the German Federal Republic's peaceful use of nuclear energy. Therefore the aim of this contribution is not intended to be an investigation of the requirements and measures of physical protection with respect to their concrete necessity and appropriateness. Rather, this contribution is an attempt to indicate possible conflicts between safeguarding interests, on the one hand,

and the interests of the employees, on the other, and to offer possible approaches for the appropriate consideration of the interests of the personnel. In doing so, limitations of time force the author to confine himself to the following more significant problem areas:

1. The security clearance of the personnel of nuclear facilities
2. The arming of plant protection forces
3. The maintaining of official secrets in industry

SECURITY CLEARANCE OF THE PERSONNEL OF NUCLEAR FACILITIES

Personnel employed in nuclear facilities are, as a matter of principle, subjected to prior security clearance (to be distinguished from firstly, the screening of the licensee and his executive staff subject to specific regulations with respect to reliability requirements, and secondly, the screening for receiving authorization to deal with so-called classified information, this latter aspect being discussed below). In practice, the licensee arranges this clearance through his security commissioner with the security authorities which then inform him about the result of the clearance. Should any doubts arise about the advisability of admitting the applicant to the nuclear installation, then the licensee may possibly refrain from taking the planned employment measure (in particularly unfortunate cases, the security clearance will only be completed after the applicant has been employed which, in the case of a negative result, may then possibly lead to dismissal). If one considers the legal bases for this practice then the following picture will result for the Federal Republic of Germany: the only legal basis - which applies not only to nuclear installations but also to any other handling of radioactive materials - is the licensing prerequisite "guarantee of the required protection against malicious acts by third parties"[1]. Up to now the Federal Government has not made any use of its delegated legislative authority to lay down more detailed provisions for implementation by statutory decree[2]. Thus the implementation is incumbent upon the licensing and supervisory authorities according to their best judgement.

This relatively indeterminate legal basis may involve far-reaching effects on the part of the personnel concerned.

- The disclosure of personal data to the security authorities will infringe the general personal right and special rights to data protection of those concerned [3]. Whether this interference is permissible without any explicit legal basis appears at least questionable, especially since it does not seem to have been current practice up to now to obtain the express consent of the person concerned in such screening.
- In the same way legal problems of data protection will arise by the transmission of screening results to the applicant/licensee[4]. The lack of a statutory regulation of this procedure leads to interlacements of administrative functions and interests of the authority, on the one hand, with the licensee's economic interests, on the other. As a rule therefore the authority obliges the licencee to treat the results of screening confidentially, which then again causes further problems for the person concerned (see below).
- As a consequence of security clearance the basic right to freely exercise one's profession is affected, without the criteria being legally defined which in individual cases or in general justify doubts about giving persons professional access to nuclear facilities[5].
- Finally, problems of a fair hearing arise for the person concerned if the usually confidential result of screening is not disclosed to him and he cannot even, for example, clarify in his favour any mistakes relating to his person[6].

Of course it would be unrealistic if these individual interests described above were per se to be given precedence over the state's task of averting disturbances and dangers and of preventatively protecting the basic rights of third parties[7]; but it should be possible to adequately respect these individual interests. It is not intended to provide here a generally valid consideration of these potentially antagonistic protective aims. Nevertheless, even in a cursory assessment it becomes obvious that the individual rights of employees outlined above must not be sacrificed to any safeguarding interests of supposed priority without further examination.

If one therefore assumes that - in spite of the concomitant problems attached to it - security clearances of operating personnel cannot be dispensed with completely for reasons of safeguards control, since the personnel does in principle possess good opportunities to take disruptive action, then the problems described above definitely require a regulation that is acceptable to both constitutional requirements and personal rights[7].

Any regulation in this sense should take the following minimum requirements into consideration:

- Security clearance before admittance to nuclear installations ought to be placed on a specific legal basis; the general licensing prerequisites are not sufficient for this purpose.
- Screening should be confined to the first occasion of entry; repeated screening should be precluded as a matter of principle; only in the case of any serious subsequent findings (to be defined) should an instruction of the licensee by the security authorities ex officio be taken into consideration.
- Screening practice should - in accordance with the principle of commensurability - be limited to areas which are actually sensitive with regard to security (excepting e.g. the administration or the staff canteen in nuclear facilities).

If necessary, the safety-related area should be classified according to security categories.

- Screening should - irrespective of its legal basis - be dependent upon the consent of the person concerned. In the course of new appointments the employer should be obliged to obtain this consent as early as possible, so that the applicant's freedom of choice is not affected (for example at the point when the application forms are submitted in conjunction with a personal questionnaire).

- Critera of evaluation should be established for the relevance of information from the police or security authorities for employment at nuclear establishments.

- In order to ensure a fair hearing in the case of any potentially unfavourable screening results, the person involved should as a matter of principle be informed about the result of such screening by the administrative authority. The right to be heard in court with respect to the screening decisions ought to be guaranteed.

The undoubtedly achievable aim of this regulation should be the protection of the employees' personal rights and, in particular, of their right to practise their profession, without having to accept any relevant disadvantages in respect of physical protection.

ARMING THE PLANT PROTECTION FORCE

A further sphere of possible conflicts between physical protection and the interests of employees arises from the practice of the licensing and supervisory authorities of requiring the operator of nuclear installations to establish an armed plant

protection force (the equipment and strength of which is also prescribed) involving, moreover, the express obligation of providing so-called delaying action until the arrival of the local police force, i.e. averting dangers in the interim.

This practice is evidently based on the conception that the interval between the start of an assault and the arrival of the police force after having been alerted cannot be bridged either by purely technical precautions (fencing, walls, etc.) or by the permanent presence of police forces at the site, but rather only by the deployment of in-plant protection forces.

It is obvious that such a practice involves constitutional problems. It would indeed be challenging to subject these problems to a more thorough analysis. However - due to the limited subject matter of this contribution - these problems will only be illustrated in the following to such an extent as appears necessary or helpful to the understanding of the employees' rights which are affected. [9)]

Consequently, attention will only be drawn to the following legal problems:

- The protection of nuclear installations against illegal assaults is one of the state's tasks in averting dangers and in the preventive combatting of criminal offences.[10)] In this context, it should be noted that although the protection of private rights (such as the operator's property and domestic authority) is part of the state's task of danger prevention, nevertheless protection in this case is exclusively governed by particular public interests and state obligations.[11)] For it would not occur to any authority to impose such conditions simply to protect private property.

- The delegation of this state function to private individuals involves at the same time a serious restriction of constitutional principles, namely insofar as the private individual is not bound by the legal restraints of police defence measures (see below for further details).[12)]

- Restrictions on property are certainly permissible and necessary in the interests of the general public, so-called social ties.[13] Nevertheless, it does appear problematic to burden property with the obligation, under certain circumstances, to actively interfere with the rights of third parties, namely with the rights to life and freedom from physical injury of potential or even only presumed assailants.

- It is also questionable whether the plant operator has a sufficient legal basis for this. The civil rights to self-defence and self-help [14], which are here referred to, as such only confer the power to defence (moreover of a subsidiary nature as compared with the state's function of averting danger) and not the duty to put up resistance.

- Finally, problems also arise from the fact that the operator, as the addressee of the authorities' requirements, is not in a position to carry out such tasks without the assistance of third parties, whether it be his own plant protection force or a commissioned plant protection enterprise. The fulfilment and effectiveness of such a requirement therefore depends on the question whether it is possible to effectively oblige third parties to carry out this task.

For the members of the plant protection force these general legal problems continue as follows:

- If one assumes that the arming of the plant protection force should not merely be of a purely deterrent nature, but should also effectively ensure delaying action until the state police arrive, then it ought to be possible to effectively oblige the members of the plant protection force by contract to avert danger even by risking life and limb. It is at least questionable whether such a contractual obligation is invalid because it is contra bonos mores.[15]

- It is also questionable whether the civil rights of self-defence can be the basis of abstract contractual self-obligation, since as mentioned above they are only powers in case of emergency and not generally valid duties of defence. This is even more the case when one considers that they should not serve to defend private objects of legal protection, but substantially to safeguard specific public objects of legal protection. The question whether and to what extent public objects of legal protection confer the right of self-defence is, however, highly contentious and cannot be immediately answered in the affirmative.[15a)]

- Moreover, the admissibility prerequisites and limits of application of civil self-defence are deliberately lacking clear definition, so that a threatened citizen does not have to weigh the pros and cons of imperative means of defence, which would be unreasonable for him in such an emergency. In the case of an actual illegal assault upon his objects of legal protection he has therefore in principle only to balance the commensurability of means of attack and defence. On the other hand, according to German jurisdiction, he only has to weigh the legal merits in the case of an extreme disproportion between his objects of legal protection under attack and those of the assailant.[16)]

- In contrast to this the intervention requirements for the police authorities clearly go much further since they already begin in the sphere of preventive action against criminal offences; however, the limits of application are definitely more restricted, since the legal merits must not only be considered in each specific case, but also particular forms of the use of force, especially the employment of firearms, are dependent upon strictly regulated conditions defined by special laws.[17)]

- This shows that the intervention requirements and limits of application of the means of averting danger exhibit decisive differences, depending on the legal basis and by whom this function is performed. These differences may affect the protection of victims not only in the case of actual assailants but also for presumed assailants and in certain circumstances even for third parties not involved. If this practice of private armed plant protection forces described above continues and possibly increases, it is foreseeable that the jurisdiction will be obliged to make corrections with respect to insupportable legal disadvantages for possible victims. Thus if the members of the plant protection force take recourse to civil rights of self-defence for the purpose of averting dangers they will expose themselves to incalculable and therefore unreasonable legal uncertainties and risks.

- Finally it must be borne in mind that also with respect to the liability situation, the private member of the plant protection force is clearly in a worse position than the state enforcement officer, although their task here is functionally the same. While the police officer according to the relevant Civil Service Acts is only liable for external and internal damage in the case of wilful intent and gross negligence[18], the private plant protection staff member is liable according to the terms of his employment contract and for damage to absolute objects of legal protection (such as life, health and property of the victim) whenever he is at fault, that is to say even in the case of slight negligence[19]; even the privileged positions as to liability in the internal relationship between employee and employer which are valid in working life do not completely compensate for this disadvantage.

The legal problems outlined above on the part of the plant protection personnel ought to give occasion to critically reconsider the current practice of the interim averting of danger by the operator's personnel. It cannot be expected that the average member of the

plant protection force is in a position in view of the unclear legal bases to consider the complicated facts and circumstances in a sophisticated manner in order to take appropriate and admissible measures of defence in dangerous situations which suddenly arise. Therefore it must be apprehended that the recourse to civil rights of self-defence for the purposes of the state function of averting danger, cannot in the final analysis lead to a solution reasonable for the individual plant protection staff member and acceptable to and feasible for the general public in view of the legal situation currently prevailing in Germany.

If on the other hand one assumes that - according to the hypothesis stated above - there is a security deficit which can only be bridged by an in-plant protection force until the state police force arrives, then one must look for suitable solutions as alternatives to current practice.

Basically the following models can be taken into consideration:

- police forces should also take over the interim averting of danger as their statutory duty,
- police forces should take over the interim averting of danger on the basis of a voluntary administrative agreement with the operator,
- an in-plant operational reserve should perform the task of the interim averting of danger; however on state authority by appointing certain members of the plant protection force auxiliary police officers.

Without wishing to give a final assessment of these alternatives here, a brief estimation of the feasibility and the legal advantages of each possible solution will be attempted below.

- The solution whereby the police carry out a statutory duty would presuppose that the operator had a legal right to such state protection. In the final analysis this must be denied.

In view of the lack of a legal basis provided by special laws, such a claim could only result from the so-called general principle of legality of the regulatory authorities, i.e. in the Federal Republic of Germany the principle of mandatory prosecution, which however only substantiates a claim to protection for the citizen if there are signs of concrete danger for public safety and order. Such a claim is therefore denied for only potentially threatened nuclear installations (even though the nuclear laws require the operator to provide such protection as a necessity).

For this reason such a solution will prove in the final analysis to be unenforceable.

- In contrast, the solution of the police carrying out a voluntary task by virtue of a contractual agreement with the operator would not involve such doubts concerning legality.

This solution would in practice take the form that a fairly small operational police reserve would be permanently kept in readiness for action at the site of the nuclear installation and in the event of an assault would provide delaying action until police reinforcements arrived from the local area.

This solution would have the advantage that the function of averting danger would be retained by the state and would be carried out with due observance of the constitutionality and legality of the administration in accordance with police laws. Since this alternative would depend on the willingness of the regulatory authorities to go beyond their statutory duty of averting concrete dangers, the chances of this being realized cannot be conclusively assessed. However, certain factors indicate that the inclination to adopt this solution is extremely slight, especially since despite the limited strength of the police forces even the legal tasks of physical protection with respect to personnel and plant have continually increased to the detriment of the police's other statutory functions.

- Particular attention should therefore be paid to the solution by means of an in-plant operational reserve functioning on police authority, representing a compromise between plant and police, i.e. between private and public law in the exercising of this task.

  This solution would in practice take the form that the plant protection force would indeed carry out the conventional routine plant protection functions of guarding, checking personnel etc. as stipulated in the employment contracts concluded with the operator under private law; however they would in advance be appointed auxiliary police officers according to the police regulations of the Federal States in case of the need to avert danger, and would be able to exercise this task in such a situation as a state function based on the police regulations for averting danger.

- Whether this solution would be possible on the basis of the laws for the Federal States' regulatory authorities or whether this would require supplementary regulations concerning the delegation of authority can be left undecided here[20]. The legal advantages involved in this solution imply, however, that it would be worthwhile to investigate this approach more seriously with respect to its feasibility, for

  - it would avoid the constitutional and legal problems of transferring public functions to private implementation
  - it would take into account doubts under police law about employing their own forces in the sphere of the potential averting of danger
  - it would at the same time avoid the permanent presence of police forces on plant premises and the possible concomitant negative side effects,
  - finally the permissibility and limits of averting danger would conform with the considerably more precise and at the same time more effective provisions of the

regulatory authorities, which are governed by public law - in contrast to the solution under purely private law - and would thus avoid both the liability disadvantages for the plant protection force personnel and also the disadvantages with respect to the protection of legal rights for potential victims.

It would therefore be desirable that the literature on nuclear as well as police law should deal in more detail with these problems of averting danger and the transfer of this task to private responsibility, especially since these problems are undoubtedly not confined to nuclear engineering, but similar difficulties can be foreseen for other sensitive large-scale technologies, e.g. defence engineering or the chemical industry. However, if this alternative should prove to be unrealizable, one should at least consider the inadequacies of the legal bases of private self-defence for such purposes relating to the professional averting of danger. This means that in case of a commercial-based performance of the tasks of averting danger by private institutions the legal requirements would have to be specified more precisely and the possibility of applying force strictly limited. In this connection, an alteration to the relevant trade regulations[21)] presents itself as a possibility. Nevertheless, this would not take any account of the constitutional and legal doubts mentioned at the beginning, rather it would only alleviate the insupportable legal consequences of the current practice of the armed plant protection force.

MAINTAINING OF OFFICIAL SECRETS IN INDUSTRY AND THE RIGHT TO PARTICIPATION OF THE EMPLOYEES' REPRESENTATIVES

The third topic to be elucidated in this contribution will deal with the effects of the so-called procedure for maintaining official secrets in industry on the participatory rights of employees' representatives.
The Federal Republic of Germany, like any other state, has a legal system to maintain state secrets.[22] Insofar as such official secrets originate or are required in industry as well this system of governmental maintenance of secrecy is also transferred to industry - by means of corresponding administrative provisions. Even within the enterprise the secrets in question may only be disclosed to those persons who have been authorized to handle classified information after specific security clearance and are therefore obliged to observe the state requirements for maintaining official secrets.

Examples of application in nuclear engineering are above all licensing documents and requirements concerning safeguards against sabotage or proliferation, but also certain inventions which have to be kept secret in the interest of security.[23] Such secrecy is without question also necessary in industry in order to protect the public security of the state and its international obligations. Difficulties arise, however, if such obligations to maintain secrecy touch the powers of participation and associated rights to obtain information of the employees' representations.

Pursuant to the German law concerning employees' representatives and co-determination such points of collision occur above all in the spheres of working regulations and technical monitoring equipment, i.e. especially in connection with entry and exit checks, television monitors, equipment for automatic attendance recording and the like, in which areas the employees' representatives have obligatory co-determination rights and pertinent rights to

obtain information.[24] This involves in particular the following problems and legal questions:

- Insofar as certain information or documents have been designated as classified information they may not be disclosed to members of the employees' representation unless the latter have exceptionally been authorized to personally handle classified information. Any consequent infringement of the duty to provide information as laid down in the Employees' Representation Act, or any consequent impediments to the activities of the employees' representations by the employer would at least not make him liable to prosecution.
- On the other hand, the effective establishment of regulatory measures by the employer, such as personnel checks or the installation and application of technical monitoring equipment, is imperatively subject to the consent of the employees' representation without which these measures cannot be made binding upon the employees.
- Neither could this problem be completely solved if such measures were imposed by the licensing or supervisory authorities.

  Firstly it is in principle doubtful whether special directives by authorities are able to supersede industrial co-determination[25]. Secondly, according to the principles of commensurability, which also means the prohibition of excessive intervention, resulting from administrative law, the authority will be bound to leave the operator certain scopes of action in taking the necessary safeguards which, in any event, would require co-determination by the employees' representation.

- As a result the plant owner is therefore dependent on the consent of his employees' representatives with respect to certain safeguards; although in the case of conflict he can only obtain such consent by providing information in a relatively open manner, however under certain circumstances he may not disclose such information for reasons of secrecy.

Which solutional possibilities suggest themselves for this conflict between maintaining official secrets and in-plant co-determination?

- It might be considered to rotationally authorize all the members of the employees' representation as a precaution for each term of office to handle classified information. However on closer inspection, this solution cannot be seriously pursued. For in individual cases one would have to reckon with authorization problems, the trade unions and employees' representations would oppose such regular screening practice, and such an increase in the number of potential bearers of secrets would not be of benefit to an effective maintenance of official secrets either.

- It could also be considered that the legal obligation of the employees' representatives to maintain secrecy with respect to trade secrets[26)] would be sufficient and one could refrain from specific official authorization. However, in the final analysis this fails due to the fundamentally different protective purposes of the requirements of secrecy for state secrets and trade secrets. Since there are no privileges as regards information within the employees' representation, the above-mentioned doubts also arise about the effectiveness of state secrecy if such information were extended to the whole body.

- The solution can therefore only be found in the form of a specific committee of the employees' representation which would be authorized to handle classified information and would commit itself accordingly. A legal model for such a classified information committee can be found in the Staff Representation Act of the public service, in this case the Federal Republic of Germany.

  However, it appears that in the transfer of this public service provision to the industrial law concerning employees' representation and co-determination such a special committee is not fully compatible with the organizational and informational regulations of the Employees' Representation Act.[28)] According to these regulations the whole body must retain

at least the essential functions and the control of the committee work; privileges as regards information within the whole body, for instance relating to trade secrets, are not provided for. Therefore, such a special committee might possibly be regarded as an inadmissible overall delegation of functions to be performed by the whole body. Finally, it must be apprehended that there will be difficulties as regards the readiness of employees' representatives, and the trade unions supporting them, to become involved in a secrecy going beyond the established law.

On the basis of these considerations it would be desirable that the present German Employees' Representation Act should definitely pay attention to the fact that state secrecy is practised in a large number of sensitive industrial enterprises. This would mean that the Employees' Representation Act should be extended to include a provision for the creation of classified information committees and their participation in conformity with the regulations of staff representation in the public services sector.[29)]

Until such an amendment of the law is effected, those concerned should manage by agreeing upon an analogous application of the regulations applicable to the public service. However, this presupposes an understanding on both sides, namely of the necessity of state secrecy in industry and of the effective participation of the employees' representation in plants.

CONCLUDING REMARK.

If one reconsiders the three problem areas discussed above, namely the practice of general security clearance, the arming of the plant protection forces and the maintenance of official secrets in industry, then a tendency towards legal fragmentation is to be observed on the one hand, which is also perceivable in other areas, although on the other hand the interlacements and cross connections between commercial and labour law as well as public and private law are becoming more and more complex. This fragmentation of our legal system into different special irreconciled regulations involves the risk that

these different regulations possibly contradict and hinder one another. Within the subject described above therefore the fear does not appear to be completely unfounded that insufficient consideration of interests relating to personal rights and labour law in connection with measures necessary for physical protection will nourish prejudices, already widespread enough, to the effect that nuclear engineering (and thus modern large-scale technology as a whole) cannot be safeguarded by constitutional means and can therefore not be justified.

This contribution is intended to show and actually support the convinction that this prejudice is not conclusive, but rather surmountable.

APPENDIX.

LEGAL SOURCES AND BIBLIOGRAPHICAL REFERENCES:

1). Para. 7 subsection 2 no. 5 "Gesetz über die friedliche Verwendung der Kernenergie und den Schutz gegen ihre Gefahren" ("Atomgesetz") as amended on 31st Oct., 1976 (BGBl I p. 3053).

2). Para. 12 subsection 1 no. 10 "Atomgesetz".

3). Art. 2 subsection 1 "Grundgesetz für die Bundesrepublik Deutschland" ("Grundgesetz") of 23rd May, 1949 (BGBl I p. 1); cf. also Art. 8 of the Human Rights Convention of 4th Nov., 1950 ("Bundesgesetz" of 7th Aug., 1952 - BGBl II p. 686) and para. 24 "Gesetz zum Schutz personenbezogener Daten bei der Datenverarbeitung" - ("Bundesdatenschutzgesetz") of 27th Jan., 1977 (BGBl I p. 201).

4). Para. 11 "Bundesdatenschutzgesetz" and the relevant Land data protection laws, e.g. para. 13 "Datenschutzgesetz Nordrhein-Westfalen" of 19th Dec., 1978 (GV NW p. 640).

5). Art. 12 subsection 1 "Grundgesetz"; cf. also Art. 4 Human Rights Convention.

6). Specific legal principle of German administrative law, cf. para. 28 "Verwaltungsverfahrensgesetz" of 25th May, 1976 (BGBl I p. 1253); cf. however also the guarantee of access to the courts of Art. 19 subsection 4 "Grundgesetz" as well as the right to a fair hearing in court of Art. 103 "Grundgesetz".

7). See Art. 20 subsection 1 "Grundgesetz", the specific legal principle of German administrative law on the state's duty and power to avert danger as well as the civil rights of potentially affected third parties from Art. 2 subsection 2 "Grundgesetz".

8). A statutory order according to para. 12 subsection 1 no. 10 "Atomgesetz" would be the form of the regulation and basis for the Federal Republic of Germany.

9). However, reference should also be made to the essays by Lukes "Werkschutz für Kernanlagen" in "Energiewirtschaftliche Tagesfragen" volume 1975 p. 23 ff. and Hoffmann/Riem "Übergang der Polizeigewalt auf Private? Überlegungen zur Entwicklung gewerblicher Sicherheitskräfte" in "Zeitschrift für Rechtspolitik" volume 1977 p. 277 ff.

10). Specific legal principle of German administrative law which is reflected accordingly in the police laws of the German Land governments.

11). Viz. the state tasks of preventative protection of civil rights from Art. 2 subsection 2 "Grundgesetz" and specific internal and external national interests, as they are expressed in the applications of the "Atomgesetz", see there para. 1 nos. 2, 3 and 4.

12). Art. 20 subsection 3 "Grundgesetz" in conjunction with the police laws of the Federal and Land governments on the application and limits of direct compulsion in the exercise of public authority (e.g. paras. 10-14 "Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes" of 10th March, 1961 - BGBl I p. 165 - and paras. 41 - 44 "Polizeigesetz des Landes Nordrhein-Westfalen" of 25th March, 1980 -GV NW p. 234).

13). See Art. 14 subsection 2 "Grundgesetz" as well as the corresponding articles of the Land constitutions; cf. also Art 1 of the supplementary protocol of the Human Rights Convention.

14). See paras. 227 ff. "Bürgerliches Gesetzbuch" and paras. 32 ff. "Strafgesetzbuch"; cf. also Art. 2 IIa of the Human Rights Convention.

15). See para. 138 "Bürgerliches Gesetzbuch".

15 a). See fn. 11 with respect to the state objects of legal protection; as regards the legal question itself cf. e.g. the specifically regulated right to resist assaults on the constitutional order of the Federal Republic of Germany of Art. 20 subsection 4 "Grundgesetz".

16). Cf. the evidence of German jurisdiction in Schönke-Schröder (Comment on the "Strafgesetzbuch", 19th edition 1978, published by C.H. Beck, Munich) in note 50 on para. 32 "Strafgesetzbuch".

17). See e.g. para. 10 subsection 1 no. 1 "Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes" (see fn. 12), as well as the relevant police laws of the Land governments, e.g. para. 42 "Polizeigesetz des Landes Nordrhein-Westfalen" (see fn. 12).

18). Cf. para. 839 subsection 1 "Bürgerliches Gesetzbuch" in conjunction with Art. 34 "Grundgesetz" as well as the relevant Civil Service Acts of the Federal and Land governments.

19). See paras. 823 and 276 "Bürgerliches Gesetzbuch".

20). There are certain arguments in favour of the first opinion, cf. e.g. para. 11 "Polizeiorganisationsgesetz Nordrhein-Westfalen" of 13th May, 1980 (GV NW p. 521) in conjunction with the "Richtlinien für die Bestellung von Hilfspolizeibeamten" of 7 th Sept., 1954 (SMBl NW p. 20510); cf. however also para. 1 subsection 2 "Gesetz über die Anwendung unmittelbaren Zwanges und die Ausübung besonderer Befugnisse durch Soldaten der Bundeswehr und zivile Wachpersonen" of

12th Aug., 1965 (BGBl I p. 796).

21). See the "Verordnung über das Bewachungsgewerbe" of 22nd Nov., 1963 as amended on 1st June, 1976 (BGBl I p. 1341).

22). See paras. 353 b, 11 subsection 1 nos. 2 and 4 "Strafgesetzbuch" in conjunction with the "Verpflichtungsgesetz" as amended in Art. 42 "Einführungsgesetz zum Strafgesetzbuch" as well as the Civil Service Laws of the Federal and Land governments.

23). Cf. para. 8 "Patentgesetz" as amended on 2nd Jan., 1968 (BGBl I p. 1) with the Federal Government's opportunity to order secret patents in the interest of national security.

24). See para. 87 subsection 1 nos. 1 and 6 "Betriebsverfassungsgesetz" of 15th Jan., 1972 (BGBl I p. 13).

25). Such a blocking effect is only envisaged for laws (in the substantive sense) and for collective agreements according to para. 87 subsection 1 preamble "Betriebsverfassungsgesetz".

26). See para. 79 "Betriebsverfassungsgesetz".

27). See para. 93 "Bundespersonalvertretungsgesetz" of 15th March, 1974 (BGBl I p. 693); cf. also fn. 29.

28) See paras. 27, 28 and 79 "Betriebsverfassungsgesetz".

29). See para. 93 "Bundespersonalvertretungsgesetz" as well as the corresponding regulations of the Land governments (para. 88 "Personalvertretungsgesetz Baden-Württemberg", Art. 88 "Bayrisches Personalvertretungsgesetz", para. 99 "Hamburgisches Personalvertretungsgesetz" and para. 88 "Personalvertretungsgesetz Schleswig-Holstein").