

# **DOCUMENTATION**

## **NEO-NAZI TERROR IN CONTEMPORARY GERMANY:**

**THE NATIONAL SOCIALIST UNDERGROUND (NSU) -  
RACIST MURDERS, BOMB ATTACKS, NEO-NAZI  
NETWORKS AND STATE COLLUSION.**

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By Petra Pau and Martina Renner

## FOREWORD

The exposure of the “*National Socialist Underground*” (NSU) neo-Nazi network around the core trio of three neo-Nazis – the deceased *Uwe Böhnhardt* and *Uwe Mundlos* and *Beate Zschäpe* – has been a long and strenuous effort. Since November 4, 2011, the German public and police have learned that two alleged bank-robbers – *Uwe Mundlos* (38) and *Uwe Böhnhardt* (38), who were found dead in a caravan in the city of Eisenach (Thuringia) after a bank robbery – and their accomplice *Beate Zschäpe* (37), who turned herself in to the police on November 8, 2011, after having set an apartment and half of a house on fire in the city of Zwickau (Saxony) on the same day that her long-term companions died in Eisenach, had formed the presumed core trio of a murderous neo-Nazi network called “*National Socialist Underground*” (NSU). Shortly after November 4, 2011, a DVD was sent to several news media and organisations in which the NSU claimed responsibility for the murder of nine migrants of Turkish, Kurdish and Greek descent in the years 2000 to 2006; the killing of a police-officer and the near fatal shooting of her colleague in the city of Heilbronn in 2007, and two bomb attacks in the city of Cologne in 2001 and 2004. The bomb that exploded in the *Keupstrasse* in Cologne on June 10, 2004, was a nail-bomb that injured two dozen passers-by and visitors to a hairdresser in front of which the bomb had been placed in a bicycle case. Investigators later also learned that the presumed NSU core trio had been living in the cities of Chemnitz and Zwickau (Saxony) with the help of at least three dozen male and female neo-Nazi supporters – i. e. using assumed identities, passports and driver’s licenses and health insurance cards of neo-Nazi supporters to rent apartments and caravans – for nearly thirteen years. They had escaped arrest in January of 1998 when police let them slip away after the discovery of three pipe-bombs and 1.2 kg of TNT in a garage rented in the city of Jena (Thuringia), where the three neo-Nazis had been active since the early 1990s in a militant neo-Nazi organisation called “*Kameradschaft Jena*” (companionship Jena), which was part of a larger organisation named “*Thüringer Heimatschutz*” (Thuringian Homeland Security). Police also learned in November 2011 that the three had financed their activities with the help of more than a dozen bank robberies in the Eastern federal states of Saxony, Mecklenburg-Western Pomerania and Thuringia.

Even though the police realized early on in the investigation of the racist murders that they were faced with murder series in which the perpetrators were using the same weapon – a *Česká 83* pistol of Czech origin – over and over again, hundreds of policemen who were involved in the investigation around the murder series were unable to come up with the idea that the murder series was motivated by racism and had been per-

petrated by neo-Nazis. Instead, until November 2011, the racist murder series – which had been dubbed “the Döner killer series” by the police and the German media even though only two of the victims had been working in Turkish fast-food shops whereas the other seven victims had been working as small business owners selling flowers, vegetables, keys, newspapers, or sweets or were sewing clothes – had been publicly blamed by the police and the media on a “Turkish mafia” and “organized crime by migrants”.

### Racism and the NSU network

The victims – *Enver Şimşek* (38), shot to death at his flower stand in Nuremberg on September 9, 2000; *Abdurrahim Özüdoğru* (49), shot to death in his tailor shop in the city of Nuremberg (Bavaria) on June 13, 2001; *Süleyman Taşköprü* (31), shot to death in his grocery store on June 27, 2011, in Hamburg; *Habil Kılıç* (38), shot to death in his grocery store on August 29, 2003, in the city of Munich (Bavaria); *Mehmet Turgut* (25), shot to death in a fast-food shop on February 24, 2004, in the city of Rostock (Mecklenburg-Western Pomerania); *İsmail Yaşar* (50), shot to death at his fast-food shop on June 9, 2005, in the city of Nuremberg (Bavaria); *Theodoros Boulgarides* (41), shot to death in his locksmith shop on June 25, 2005, in the city of Munich (Bavaria); *Halit Yozgat* (21), shot to death in his internet shop on April 4, 2006, in Kassel (Hesse); *Mehmet Kubaşık* (39), shot to death in his kiosk on April 6, 2006, in Dortmund (North Rhine-Westphalia); and *Michèle Kiesewetter* (22), shot to death while on duty as a police-officer on April 25, 2007, in the city of Heilbronn (Baden-Wuerttemberg) – and their families had been publicly scolded by the police and the media for “remaining silent” about the presumed basis for the killings of their beloved husbands, fathers and sons. “For eleven years we were not allowed to grieve for our loved ones,” said *Semiya Şimşek*, daughter of the first NSU victim *Enver Şimşek* during the official commemoration ceremony in February 2012 in Berlin. German Chancellor Angela Merkel gave the keynote speech at the ceremony. She described the murder series as a “disgrace for our country” and asked the victims’ relatives for forgiveness for the police investigators’ wrongful suspicions. Merkel also pledged a comprehensive and thorough going elucidation of the NSU affair.

Over the course of the last three years, four parliamentary Committees of Enquiry have completed extensive research: The parliamentary Committees in the state assemblies of Bavaria, Saxony and Thuringia and in the federal parliament, the German Bundestag. The parliamentary groups of DIE LINKE have played an essential part in the Enquiry Committees in the state assemblies of Thuringia and Saxony and in the Bundestag. The latter delivered its unanimous opinion

and findings in September 2013 stating that the failure of the police and the intelligence services to recognize and admit the existence of neo-Nazi and right-wing terrorist structures in Germany was one of the main reasons why the investigators at no point connected three fugitive neo-Nazis from Thuringia – *Uwe Mundlos*, *Uwe Böhnhardt* and *Beate Zschäpe*, who had escaped arrest following police discovery of 1.2 kg of TNT in a garage that had been rented by the trio in the city of Jena on January 26, 1998 – to the series of murders of nine migrants and a police woman. And the parliamentarians also found both the police in Thuringia and the domestic intelligence services of Thuringia and the federal domestic intelligence service – the Federal Office for the Protection of the Constitution – responsible for the failure to trace the fugitives after their escape in January 1998 even though the police and the intelligence services had numerous leads that the trio was living in the city of Chemnitz and later in the city of Zwickau (both Saxony) and were supported by well-known neo-Nazis organized mainly in the international networks of “Blood & Honour” and the Hammerskin Nation. The Enquiry Committee of the Bundestag also found that numerous long-term neo-Nazi paid informers as well as the occasional neo-Nazi informers working for a dozen domestic intelligence services did not prove useful either in the search for the fugitive presumed NSU core-trio nor in combatting the neo-Nazi movement as a whole. The criticism of the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz) was made more serious due to the destruction of dozens of files on long-term neo-Nazi paid informers with direct involvement in the Thuringian neo-Nazi scene that took place in the headquarter of the Federal Office for the Protection of the Constitution in Cologne on November 11, 2011, shortly after the existence of the NSU had become public.

### **International solidarity and an international debate is needed**

The joint appraisals and conclusions of the Bundestag’s Parliamentary Enquiry Committee contains 1700 pages.<sup>1</sup> In the following 100 pages we have translated the dissenting opinion of the parliamentary group of DIE LINKE (THE LEFT) into English. The dissenting opinion focusses on aspects that are either missing in the joint report – such as racism – or that have to be viewed from a different perspective – such as the role of the intelligence services and their informers with regard to the development of the militant neo-Nazi movement in general and the NSU network in particular.

We were motivated to create an English version of our dissenting opinion by two factors: The parliamentary group of DIE LINKE is convinced that racism is among the main reasons for the state’s failure in the police investigation of the Česká murder series and the bomb attacks in Cologne. Since institutional racism is an international phenomenon and has sparked investigations of state authorities in a number of coun-

tries – e.g. the MacPherson Commission in Great Britain following the killing of the black teenager Stephen Lawrence in London in 1993 – we believe it is necessary to encourage international debate on the issue. We are also convinced that an internationalist perspective and an international debate on right-wing and racist terror is of utmost importance in order to effectively combat neo-Nazi terror and racist violence. And we are convinced that we need an international debate on the role of secret services and their practices regarding neo-Nazi structures and movements.

Both the German police and the German public have a lot to learn, for example, from the public discourse on institutional racism and police authorities in the United States and Great Britain. And on the other hand, continuous international scrutiny is needed of the progress of the investigations into the NSU network and the involvement of the intelligence services in the neo-Nazi movements through the system of long-term neo-Nazi paid informers.

The relatives of the NSU murder victims and the surviving victims of the NSU’s bomb attacks need our solidarity and the solidarity of a watchful and alert international public. Our commitment to continue to press for a comprehensive exposure of the state authorities’ mistakes and failures in the NSU complex comes from our antifascist and anti-racist commitment. Therefore, we feel committed to supporting the urgent demand of the NSU victims’ relatives and the injured NSU victims to address the numerous questions that have not been answered so far either in the four parliamentary Enquiry Commissions or in the trial of *Beate Zschäpe* and four alleged supporters and members of the NSU that has been going on since April 2013 before the Munich Higher Regional Court. *Beate Zschäpe* and her co-defendants are accused of having aided and abetted ten murders and two bomb attacks in the city of Cologne and of membership in and/or support for a terrorist organisation under paragraph 129a of the German Criminal Code. The families of the murder victims and the injured NSU victims still demand answers to the question of how and why their husbands, fathers and sons were chosen as targets by the killers. They want to know who helped the NSU core trio and they want to know the full extent of state involvement in and collusion with the neo-Nazi movement.

We hope that their demands for answers and their wish for a new “culture of solidarity”, as *Gamze Kubasik*, daughter of *Mehmet Kubasik*, who was murdered by the NSU in April 2006, said at the commemoration ceremony, will be heard by people around the world. And we would like to thank the *Rosa Luxemburg Foundation* for making the English version of the minority report possible.

Berlin, January 2015

<sup>1</sup> The Enquiry Committee’s Report is available in German for download on the website of the Bundestag: <http://www.bundestag.de/bundestag/ausschuesse17/ua/2untersuchungsausschuss/Bericht.pdf>

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## D. DIE LINKE PARLIAMENTARY GROUP

### Summary of Results and Conclusions on the Dissenting Opinion of Parliamentary Group DIE LINKE

#### Structural and institutional racism as hallmarks of police work relating to the Česká murder series

In order to explain the identical direction taken by investigations at all crime scenes, namely criminalising and stigmatising the murder victims, their family members and the victims of the explosives attack, it seems reasonable to start from the assumption of structural or institutional racism. The parliamentary group DIE LINKE is convinced that institutional racism, beyond the individual attitudes and convictions of the individual investigators, can be identified as a structural hallmark of police work during investigations on the racist series of murders.

#### Fatal misappraisals relating to right-wing terrorism by Germany's domestic intelligence services and the police.

The fatal misappraisals by the domestic security services and the police concerning the existence of right-wing terrorist structures in Germany – combined with an ethnicising and racist view of the murder victims and their family members – stood in the way of investigators realising that the so-called Česká murders could be a series of murders with racist or neo-Nazi motivation.

#### Prime responsibility: the Federal Office for the Protection of the Constitution

The Federal Office for the Protection of the Constitution (BfV/Germany's domestic secret service agency) bears responsibility for the twenty-year-long trivialization of the neo-Nazi movement, its militant organisations and networks, as well as for the support of precisely those networks through neo-Nazis paid by the Federal Office for the Protection of the Constitution (BfV) to function as long-term informers.

The security services did not recognise the dangerous nature of the suspected NSU core trio and their supporters, despite the use of long-term informers, observations and G 10 measures.

The Federal Office for the Protection of the Constitution (BfV) together with the Thuringian Office for the Protection of the Constitution (LfV) is specifically responsible for failing to identify to a sufficient degree the dangerous nature of the "Thüringer Heimatschutz" [Thuringian Homeland Security, neo-Nazi organisation, Editor's note] and of the Blood & Honour network, including supporters of the suspected NSU core trio. This occurred even although numerous long-term paid informers of the Federal Office for the Protection of the Constitution (BfV) and of various Federal state Offices for the Protection of the Constitution were also active in these networks, which were the object of numerous intelligence operations – including G 10 measures and surveillances.

#### The system of long-term paid informers is a central cause of the security services' failure.

The use of what are described as the security services' long-term paid informers (V-Leute) with protection of sources and impunity for criminal long-term paid informers is one of the central reasons for the complete failure of the secret services in the context of the affair pertaining to the NSU. In the cases examined by the Committee, there had not been a single case in which the benefits derived from using long-term informers in the neo-Nazi scene were greater than the damage caused by these long-term informers.

#### Stop using long-term informers

As an immediate response to the failure of the Federal Office for the Protection of the Constitution, the use of long-term paid informers in the neo-Nazi scene must be ended. The system of long-term paid informers cannot be reformed. This system will continue to support and protect neo-Nazi structures that for example attack migrants and refugees and threaten politically active citizens.

#### The existing Federal Office for the Protection of the Constitution must be replaced by a Federal Coordination Agency and a Federal Foundation on "Group-Focused Enmity".

In the light of the structural shortcomings and statutory violations, the domestic security bodies at the national and federal state level in Germany must, from both a political and legal perspective, be disbanded. In the view of the parliamentary group DIE LINKE, the measures that have to date been initiated and planned by the Federal Minister of the Interior and the Ministers of the Interior at federal state level do not in any way take sufficient account of this. After the most serious crisis of these bodies, the approach adopted simply consolidates their central components. A "*Federal Coordination Agency for documentation of neo-Nazi, racist and anti-Semitic attitudes and ambitions as well as other manifestations of group-focused enmity*" (short title: *Coordination Agency for Documentation of Group-Focused Enmity*), established by a Federal Bill, would, after an initial phase of development, replace the "Federal Office for Protection of the Constitution" as the Federation's central agency for purposes of protection of the constitution pursuant to Art. 87, Sub-Section 1, Sentence 2, Basic Law. The Coordination Agency shall not itself appraise and process the information and knowledge received in keeping with these provisions. This work would be done by a further, yet to be established, body: "*Federal Foundation for Observation, Investigation and Intelligence of all forms of Group-Focused Enmity*" (short title: *Federal Foundation for Observation and Investigation of all Group-Focused Enmity*).

**We need an independent police complaints body as one of the lessons learnt from the investigations into the Česká murder series.**

There must be possibilities for the general public to criticise police work and call its conduct into question. This has once again been demonstrated by the way in which the victims and the surviving family members of the NSU's acts have been treated. There must be a contact body with comprehensive competences that can be contacted by people who wish to complain about failings in the police's behaviour, about erroneous investigations or about problematic treatment of victims of crime. This body must be set up outside police structures and must be independent. In the 16<sup>th</sup> and 17<sup>th</sup> legislative periods, DIE LINKE has made proposals pertaining to the introduction of an independent police complaints body of this kind.

**We need a survey on attitudes relating to the topic "Racism and the Police".**

The parliamentary group DIE LINKE proposes that the Conference of Ministers of the Interior commission a survey of attitudes in Germany's various police forces on the topic "Racism and the Police". That will provide an objective basis for discussion on the racist prejudices and attitudinal potential that may be present in the police forces, and would mean that the relevant data could provide a basis for measures and recommendations that may prove necessary.

**The federal funding for advice projects and civil society initiatives must be doubled to 50 million Euro.**

Doubling the federal funding available to date would send a clear message to those directly affected and to

civil society as a whole, which is urgently needed: it would indicate that those with political responsibility have recognised that right-wing extremism and racism are not time-delimited phenomena that will disappear again of their own accord. On the contrary, these are enduring problems for the whole of society – similar to problems pertaining to drugs and HIV – and long-term counselling and advice structures are necessary to combat these problems.

**The "extremism clause" must be deleted.**

Removing factors that impede the work of civil society initiatives is long overdue. This includes first and foremost what is known as the "extremism clause", which, at the request inter alia of the Federal Ministry for Family Affairs and of other ministries at the national and federal state level, must be signed in return for provision of state funding.

**Integrating refugees and creating a humanitarian right of residence for victims of racist violence.**

Victims of racist violent who do not have residence status or whose status is that of temporary suspension of deportation status should via the addition of provisions to this effect to § 25 of the Bill on the Right of Residence be granted a humanitarian residence right. Including provisions to this effect in the Bill on the Right of Residence it would transmit a clear message to the perpetrators of this kind of attack and to their associates – namely that measures are taken explicitly to counteract their political aim of "getting rid of foreigners" and that their goal of driving those affected away is foiled as representatives of the state stand up for those attacked, also in material terms.

No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.

Article 3 Para 3 Basic Law  
for the Federal Republic of Germany

## I. INTRODUCTORY COMMENT

This dissenting opinion of the parliamentary group DIE LINKE in particular addresses aspects that have not been examined in sufficient detail in the joint appraisals and conclusions of all parliamentary groups. The dissenting opinion primarily tackles the central reasons for the state's failure in the affair pertaining to the NSU: the trivialisation and concealment by state bodies of the dangers of right-wing extremism, and the question of institutional racism.

## II. FOREWORD

In a letter to Federal President *Joachim Gauck*, rejecting his invitation to the family members of those murdered by the NSU and to people injured by the bomb attacks to make an official visit to Schloss Bellevue on 21st February 2013, *Aysen Taşköprü*, the sister of Süleyman Taşköprü, who was murdered on 27<sup>th</sup> June 2001 in Hamburg, describes the entire spectrum of devastation, post-traumatic stress and fear that the murders and the ensuing investigations by the law enforcement bodies caused: In summer 2001 neo-Nazis killed my brother. In late summer 2011 – 10 years later – rang my doorbell. They brought me my brother's personal belongings. I asked the officer why they had brought the things now, and whether they had discovered something new. She simply said that they had forgotten to return his things to me. I sat for hours by my dead brother's things. It was days before I could bring myself to tell my parents that his things had been returned. I was completely devastated. And then one evening I was sitting watching television and all of a sudden they showed the video in which the NSU announced its responsibility. I started to scream and could not stop. There was my brother, lying in his own blood, on the red and white tiles I knew so well. I see his delicate hands and I recognised his watch. And no smile on his lips; he has been murdered and is lying on the cold tiles in his own blood. My little boy wakes up because I am screaming; I have to pull myself together to settle him down and get him back to sleep. My brother died a second time that day and something broke inside me. My body and my spirit go their own way. I no longer have a grip on my life.

I was born in Turkey in 1974 and have lived in Germany since 1979. I went to school here, trained and worked here. My son was born here and I saw myself as a German with Turkish roots.

Even in March 2011 I could still laugh about it when an official at the town hall told my son he wasn't German. The little boy was completely amazed and explained to her very seriously that he most certainly was German, and that he had a German passport. [...] I can no longer laugh about that anymore. I once had a life and a home. I no longer have a life. [...] I no longer have a home either, for being at home means being safe. Since we discovered that my brother was murdered just because he was Turkish, we are afraid. What kind of home is that, with people shooting at you because your roots were elsewhere? [...]

They sent me on a rest-cure for three weeks, but even after that I was in such bad shape that I could no longer work in my previous job. My doctor had diagnosed that I was not able to work. The health insurance scheme called me to an appointment and told me that I should withdraw my sick leave and take holiday. When I refused to do that, I received a letter that announced I was not ill at all and that the Social Medical Service had classified me as fit to work. However, they had never seen me let alone spoken to me. Since then I am sent back and forth between my employer, who is pushing for a contract suspending my employment contract, the health insurance scheme, which does not believe that I am ill and the Job Centre, which wants to know about my residency status. I feel that I am not wanted here.

All that I want now are answers. Who is behind the NSU? Why my brother? What did the German state have to do with it? Who destroyed the files and why?"<sup>2</sup>

The letter from *Aysen Taşköprü* is not just a document of despair about losing her brother but also about the years of suspicions and social isolation the family was forced to endure. The letter is also a document about the reality of life in Germany in 2013, where children, women and men with migrant roots are still treated by the law, by representatives of the authorities and in everyday life as "foreigners" and "the others" – even if, like *Aysen Taşköprü's* son, they were born in Germany or have, like her, lived here for 30 years.

The Committee of Enquiry attempted to help counteract the loss of a sense of safety and being at home, which are described by many family members of the NSU murder victims through its work by means of elucidating events and through transparency in its working progress. That is all the more important in the light of the results of a survey by the Dortmund-based Futureorg-Institut<sup>3</sup> of over 1,000 migrants of Turkish origin living in Germany on the impact of the NSU murders. This survey showed that a large majority of those interviewed is not convinced that the NSU murders will be completely clarified. Only nine per cent of those sur-

<sup>2</sup> Wording of the letter of the Hamburg murder victim's sister: Der Brief der Schwester des Hamburger NSU-Mordopfers", in: Hamburger Abendblatt vom 16.2.2013; [www.abendblatt.de/politik/article113679608/Der-Brief-der-Schwester-des-Hamburger-NSU-Opfers.html](http://www.abendblatt.de/politik/article113679608/Der-Brief-der-Schwester-des-Hamburger-NSU-Opfers.html). <sup>3</sup> Kamuran Seezer/Kathleen Brüssow, "Ergebnisse der ersten Befragung zu den NSU-Morden", 15<sup>th</sup> July 2013, [www.taz.de/file-admin/static/pdf/2013-07-22\\_03\\_endaX\\_Auswertung\\_NSU\\_040713.pdf](http://www.taz.de/file-admin/static/pdf/2013-07-22_03_endaX_Auswertung_NSU_040713.pdf).

veyed considers that the NSU-Committee of Enquiry are able to properly clear up the role of the security services and around two-thirds of interviewees indicated that they felt strongly or very strongly personally affected by the NSU murders – and that this also influenced their private plans. The study indicated that only in the group of interviewees under 25 did the majority still trust German politics and German institutions.

Against this backdrop, elucidating and examining the ramifications of the NSU series of murders also involves the question of the kind of society in which we want to live. It involves finally doing justice to the affirmation that German is a country of immigration, identifying racism and racist prejudices – wherever we encounter them – for what they are, scrapping discriminatory bills and administrative ordinances and taking decisive actions against discriminatory actions by state authorities.

### III. INTRODUCTION

The concluding report of the 2<sup>nd</sup> Parliamentary Committee of Enquiry (PCE) on the one hand documents the fact that the eighteen-month work of this oversight and elucidation was necessary, correct and important. On the other hand, in the view of the DIE LINKE parliamentary group, neither the Committee of Enquiry nor the concluding report claim to have completely and really satisfactorily shed light on the NSU affair with all facts of the state failure that made it possible for the racist series of murders of nine migrant small-scale entrepreneurs and the murder of *Michèle Kiesewetter*, the bombing attacks in Cologne and the series of robberies, to occur.

The persistence and concerted endeavours of the MPs have allowed the general public to gain a sense of the shocking extent of the failure and the mistakes made by German law enforcement agencies and the security services, in the search for *Uwe Böhnhardt*, *Uwe Mundlos* and *Beate Zschäpe*, who had gone underground on 26<sup>th</sup> January 1998, in the analysis of right-wing terrorist structures and in the search for the perpetrators of the so-called Česká murder series, the bombing attacks in Cologne and the series of robberies.

The work of the Parliamentary Committee of Enquiry (PCE) has been accompanied by considerable press interest and by public attention that has split into two camps since the self-exposure of the “Nationalsozialistische Untergrund” (NSU/National Socialist Underground) on 4<sup>th</sup> November 2011: many people in Germany assume that the way in which the police and security agencies deal with neo-Nazis is also in many cases characterised by ignorance, incompetence and trivialisation before the early 1990s too and that this is still the case. They hold that it is precisely this fatal mix that made the emergence of the NSU and its acts of violence possible. In contrast, others cannot imagine that the suspected NSU core trio – *Uwe Böhnhardt*, *Uwe Mundlos* und *Beate Zschäpe* – would have been

able to live illegally and commit these murders for such a long time without assistance or support from individual representatives of the state authorities.

After intensive studies of more than 12,000 files of records, questioning of over 90 witnesses and almost 400 orders for evidence in 76 meetings, but also in the light of the Committees of Enquiry, in some cases meeting in parallel, in the federal state parliaments of Bavaria, Saxony and Thuringia, the DIE LINKE parliamentary group comes to the conclusion that the Committee of Enquiry has found massive evidence that the danger to societal minorities and to democracy and the rule of law in Germany that arose and continues to arise from the extreme right in general and from right-wing terrorist structures in particular was ignored, trivialised and covered up for two decades by the security services and the police forces of the federal states and the Federation. However, the Committee of Enquiry has found no evidence that state authorities or individual representatives of state bodies supported the suspected NSU core trio.

We would however not exclude the possibility that in the course of the criminal proceedings before the Higher Regional Court (OLG) Munich, during further investigations by the Federal Criminal Police Office (BKA) and the Federal Attorney General, in ongoing work in parliamentary Committees of Enquiry in Thuringia and Saxony, as well as possibly in other parliamentary bodies evidence may emerge indicating that long-term paid informers of the security services or police authorities were more deeply entangled in the NSU network.

Many complexes of issues could not be addressed in depth by the 2<sup>nd</sup> PCE due to the limited time frame. In some cases further questions for witnesses arose weeks or months after statements made by those witnesses to the committee – for example due to the discovery of further files or to the very late provision of such files – which in some cases were most definitely provided too late for questioning of some witnesses. In the light of the tight time frame for the Committee of Enquiry for both the witnesses and for the state authorities and ministries involved at national and federal state level it was extremely clear that the committee would not be able to summon and re-question witnesses who had contradicted themselves or remained silent concerning important facts.

#### The unanswered questions remain

The final report and the Enquiry Committee cannot provide answers to the following questions, among others:

The Enquiry Committee did not find any answers to the question of how the individual victims of the NSU murder series were chosen. This question has been haunting the relatives of the murder victims. As a result, the relatives continue to be alone with their uncertainty as to why, of all people, their husband, their father, their brother or uncle was murdered. One can only hope that the trial at the Higher Regional Court

of Munich will provide them with answers that satisfy them and can help them to overcome their loss.

The Enquiry Committee also did not find an answer to the question of the motive for the murder of the policewoman *Michèle Kiesewetter* and the attempted murder of her colleague.

- The question also remains open whether the perpetrators had neo-Nazi supporters at each of the murder sites. The Enquiry Committee has tried to get an overview of militant neo-Nazi networks and activists in the cities where murders, attacks and robberies took place – Nuremberg, Cologne, Hamburg, Munich, Rostock, Dortmund, and Kassel, as well as Chemnitz and Zwickau – through intensive questioning of police officers of the homicide squads involved, as well as of representatives of the states' Offices for the Protection of the Constitution in the places where the crimes occurred. As a result, it has become obvious that activists from structures of the neo-Nazi network "Blood & Honour" (B&H) – which has been officially banned by the Federal Ministry of Interior since September 2000 – have been residing and have continued to be active in all cities where the series took place. A large number of men and women who aided the alleged NSU core trio had been or has been active in the B&H network. However, the Enquiry Committee failed to resolve the question of direct connections between the alleged NSU core trio and neo-Nazis in the cities where the crimes took place. This is another unanswered question and one hopes that further investigations of the Federal Criminal Police Office (BKA) and the trial in Munich will provide further results.
- The Enquiry Committee has not succeeded in shedding light on the motive – or the multiple motives – of the head of department at the Federal Office for the Protection of the Constitution (BfV) who on November 11<sup>th</sup>, 2011, destroyed the operative files of seven paid long-term neo-Nazi informers who were recruited during the so-called "Operation Rennsteig"<sup>4</sup> of the Federal Office for the Protection of the Constitution. However, the parliamentary group of DIE LINKE assumes that one cannot and must not exclude links to the NSU network as a motive for the destruction of these specific files. This assessment also applies to the destruction of four so-called Additional Files to G-10 measures<sup>5</sup> against neo-Nazis – some of which had been undertaken in connection with right-wing terrorist activities – by the Federal Ministry of the Interior in April 2012.
- The Enquiry Committee was also unable to penetrate the wall erected by the Federal Office for the Protection of the Constitution – and the Federal Intelligence Service (BND) – in order to evade parliamentary and public oversight of their international cooperation with partner intelligence services in relation to international neo-Nazi networks such as Combat 18, "Blood & Honour", and Hammerskins. Many questions remain unanswered in this field, especially the

question of what kind of information was exchanged on the attempts by the international network of "Blood & Honour" and Combat 18 to spread fear and terror against social minorities through targeted bomb attacks and murder on the European mainland at the turn of the millennium and in the decade since the year 2000, as well as information exchanged between foreign intelligence service partners and the Federal Office for the Protection of the Constitution. Before the turn of the millennium, in April 1999, three people had been killed and at least 149 injured in neo-Nazi bomb attacks in London.

### Reflecting on our own prejudices and errors of judgement

We believe there is a necessity for a self-critical reflection of our own view of the Česká murder series and the dangers of neo-Nazis and right-wing terrorism.

The parliamentary group of DIE LINKE in the 16<sup>th</sup> German Bundestag filed a minor parliamentary interpellation regarding the Česká murder series to the former CDU/SPD coalition government. DIE LINKE was the only political party represented in the Bundestag that tried to respond to the growing fear and anxiety within the migrant communities by filing specific questions about the knowledge of the Federal Ministry of Interior on the Česká murder series.<sup>6</sup> Because several thousand people had participated in demonstrations following the murders of *Halit Yozgat* and *Mehmet Kubasik* in April 2006 in Kassel and Dortmund, DIE LINKE appealed to the public and the state institutions to take their fear of an impending 10<sup>th</sup> murder in the so-called Česká murder series seriously. Even though the response of the former Federal Minister of the Interior *Wolfgang Schäuble* was not at all satisfactory – the Federal Ministry of Interior in its answers declared itself to be absolutely not responsible for the Česká murder series and referred to the responsibility

<sup>4</sup> "Operation Rennsteig" is a codename for a joint domestic secret service operation by the Federal Office for the Protection of the Constitution, the Thuringian Office for the Protection of the Constitution, the Military Counterintelligence Service (MAD) and the Bavarian Office for the Protection of the Constitution that took place in the neo-Nazi movement the federal state of Thuringia in the mid- and late 1990ies and was named after the mountainous region of Rennsteig. Its aim was to recruit as many long-term paid informers as possible within the neo-Nazi organisation "Thüringer Heimatschutz" ("Thuringian Homeland Security") and other neo-Nazi organisations in Thuringia. [Editor's note] <sup>5</sup> G-10 is an abbreviation for "Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses (G10)". The abbreviation stands for Article 10 Act of the "Federal Law on the restriction of privacy of correspondence, post and telecommunications" and "G-10 measures" are instances of surveillance of home and all forms of communication. [Editor's note] <sup>6</sup> Official Document No. 16/5057: Ungeklärte Mordfälle unter Gewerbetreibenden türkischer bzw. griechischer Herkunft (Unresolved murder cases of business owners of Turkish or Greek descent). <sup>7</sup> *ibid.* For example, the response to question 1 – "What is the opinion of the federal government about the work of the authorized investigating authorities that have been attempting to solve the above-mentioned cases?" – is "State prosecution authorities in Bavaria, Hamburg, Hesse, Mecklenburg-Western Pomerania, and North Rhine-Westphalia have initiated investigations because of unresolved murder cases against small business owners of Turkish and/or Greek descent. The federal government does not comment on investigation proceedings led by judicial administrations of federal states." As an answer to questions 2–5 the federal government refers to the answer to question no. 1. An answer to questions 6 and 7, which ask about specific protection measures for the affected communities is also denied – the federal government declares itself not responsible for matters that are dealt with on a federal state level. To the last question, which asks why the media keeps silent about the murder series, the federal government replies that it does not have any information on the matter.

of the federal states<sup>7</sup> – DIE LINKE failed to file further parliamentary interpellations and failed to ask critical questions in those federal states where the murder series and bomb attacks took place. Ultimately, we also have to admit that we uncritically accepted the claim by the police and the media that the perpetrators of the murder series and the bomb attacks had to be organised criminals of Turkish descent. And we also have to admit that racist prejudices and stereotypes were stronger than critical questioning.

DIE LINKE and its predecessor party PDS, as well as antifascist initiatives, civil society alliances and dedicated journalists, are among those who have kept the danger of neo-Nazis and right-wing terrorist activities on the political agenda despite all attempts to minimize and deny the problem over the last twenty years. In the state assemblies and the federal parliament we have quite often filed minor and grand parliamentary interpellations about discoveries of weapons in the possession of neo-Nazis, about the danger of international neo-Nazi networks such as “Blood & Honour”, and about the extent of right-wing and racist violence, as well as about the perception deficits of state authorities.<sup>8</sup> In many instances the answers of the Bundestag and the governments of the federal state and their subordinate ministries and departments have been unsatisfactory, appeasing, trivializing, or straight-out false. Despite that and despite the daily experiences of threats and physical attacks as well as firebombs against committed party members locally and against parliamentarians of DIE LINKE in the state assemblies and the Bundestag<sup>9</sup> we were ultimately no more able than others to imagine that for years neo-Nazi activists would be able to implement the terror concepts of “leaderless resistance” and “Race War” in Germany without being stopped by the state prosecution authorities.

We have to admit that our trust in the criminal prosecution authorities has been fundamentally disappointed. And we can only imagine how deep the anxiety and fear in the migrant communities must be since November 4, 2011, especially since the trust of many migrants had already been shaken after the first wave of racist violence in the 1990s, particularly following the deadly arson attacks in the cities of Mölln and Solingen. Improved protection and security for migrants as well as social minorities are an acute and central issue of DIE LINKE. Reforms such as the measures we are proposing are absolutely necessary in order to reestablish trust in the criminal prosecution authorities.

The 18<sup>th</sup> German Bundestag is now responsible for vigilantly and critically monitoring future developments in the NSU complex following the closure of the 2<sup>nd</sup> Parliamentary Enquiry Committee’s work. If necessary, we will react again with the instruments of parliamentary control and investigation because Chancellor Angela Merkel’s promise of “comprehensive investigation” to the relatives of the NSU murder victims and the injured victims of the bomb attacks and robberies has in no way been sufficiently fulfilled.

#### IV. APPRAISALS IN THE CONTEXT OF THE FACT-FINDING PART OF THE JOINT APPRAISALS AND CONCLUSIONS

The chapters following in section A. on specific issues of the parliamentary investigation, as well as the additions and dissenting opinions from the joint conclusions, contain factual elements, as well as appraising elements.

##### 1. The Česká Murder series

###### a) Structural and/or institutional racism and ethnicising attributions in the investigations of the Česká murder series and the bomb attacks in Cologne

The police investigations of the violent crimes that are attributed to the NSU have been marked by racist prejudice and ascriptions. From the start – and in most cases without any changes in the directions of the investigation – the families of the victims and/or the murder victims were placed at the centre of police investigations. The investigations of the police were directed against them. The victims of most grave crimes were placed themselves in the dubious surroundings of criminal activities. Mitigating results of investigations were not used in order to clear up the suspicion against the relatives. Instead they were only used as starting points to continue searching for new suspicious elements in the victims’ lives and communities. In the aftermath of the eighth and ninth NSU murders – on April 4, 2006, *Mehmet Kubaşık* (39) died in his kiosk in Dortmund and on April 6, 2006, *Halit*

<sup>8</sup> DIE LINKE in the Bundestag and in some state assemblies has been filing monthly minor or written parliamentary interpellations about the extent of right-wing and racist crime and violent crime, i. e. about “Xenophobic and right-wing extremist crimes in the Federal Republic of Germany in (Month/Year) (“Ausländerfeindliche und rechtsextremistische Straftaten in der Bundesrepublik Deutschland im (Monat/Jahr)”). One example of the continued downplaying during the investigation is the responses to the written interpellation about “Weapons purchases by right-wing extremists” (“Waffenkäufe durch Rechtsextremisten”) in Official Document 15/4611, dated December 30, 2004; the written interpellation about “Right-wing extremist, xenophobic and anti-Semitic publications, books, CDs, films on the index in 2003” (“Indizierung rechtsextremer, fremdenfeindlicher und antisemitischer Schriften, Bücher, CDs, Filme und Tonträger im Jahr 2003”) in Official Document 15/2512 dated February 13, 2004; the oral interpellation about “Knowledge of the federal government about ‘Combat 18 Pinneberg’” (“Kenntnis der Bundesregierung über ‘Combat 18 Pinneberg’”) in the 74<sup>th</sup> Bundestag session on November 12, 2003, in Official Document 15/1946; the oral interpellation about the “Connections between German and Swedish right-wing extremist groups” (“Verbindungen zwischen deutschen und schwedischen rechtsextremen Gruppen”) in Official Document 15/1555; the oral interpellation about “Diverging numbers of homicides from the Right since Germany’s unification” (“Unterschiedliche Zahlenangaben über die Opfer von Tötungsdelikten von rechts seit der deutschen Einheit”) in the 36<sup>th</sup> Bundestag session on April 2, 2003, in Official Document 15/724; “Possible right-wing extremist activities of members of the federal army and their publication in the interne” (“Mögliche rechtsextreme Aktivitäten von Angehörigen der Bundeswehr und ihre Verbreitung durch das Internet”), dated March 9, 1998, in Official Document 13/10080; “Presumed homicides by a member of the neo-Nazi scene in Berlin” (“Mutmaßliche Tötungsdelikte durch ein Mitglied der Berliner Neonazi-Szene”), dated March 24, 1997, in Official Document 13/4494; “Current restructuring processes in the German right-wing extremist movement” (“Gegenwärtige Umstrukturierungen im bundesdeutschen Rechtsextremismus”), dated April 26, 1996, in Official Document 13/4494; “Right-wing extremist violent crimes and homicides in 1994” (“Rechtsextreme Gewalttaten und Tötungsdelikte im Jahr 1994”), dated June 22, 1995, in Official Document 13/1765; and “Neo-Nazi Blood & Honour network,” dated February 2, 2011, in Official Document 17/4624. All official documents can be downloaded with their Official Document No. at <http://www.bundestag.de>. <sup>9</sup> Representatives of other democratic parties are also regularly affected by such attacks.

*Yozgat* (21) died in his internet-shop in Kassel – the Berlin-based newspaper *Berliner Zeitung* reported an interview with *Wolfgang Geier*, the former head of the BAO “Bosporus” [the Besondere Aufbauorganisation “Bosporus” was the Special Investigation Unit “Bosporus” based in the Nuremberg Police Department and assigned to coordinate the investigation of the Česká murder series, Editor’s note]. Geier said he thinks

“that he hasn’t always told the truth in the interrogations. Or not the whole truth. ‘I am thinking of acquaintances, friends and relatives of the victims. And I am not sure whether they are not able to tell us anything or whether they don’t want to tell us anything. In any case, we didn’t get any valuable hints from that side.’”

*Geier*, writes the *Berliner Zeitung*, is talking about a parallel world into which he got an insight and where trust in the authorities did not exist. Some time ago, the police had increased the reward for any relevant information from 30,000 to 300,000 Euro.

“They had hoped that even within a criminal organisation someone could be found who would get weak in the face of such a large sum of money. But it has remained silent.”<sup>10</sup>

The relatives of the murder victims and the injured victims of the bomb attack in the Keupstraße in Cologne were placed in a thoroughly ethnically ascribed milieu of so-called “Turkish crime,” “organised crime,” “drug trafficking,” “illegal gambling,” “human trafficking,” “Döner-Mafia,” and “Flower Mafia.” The police and the state prosecutors used the aforementioned and other attributions in their search for the motives and the masterminds of the Česká murder series. The investigators also used these terms for their filing system of hundreds of “leads.”

The police were searching for commonalities between the victims because, at the latest after the second murder, of *Abdurrahim Özüdoğru* on June 13, 2001, in Nuremberg, it was obvious that they were dealing with serial murders. Looking back today it seems absolutely inexplicable that the commonality was not seen in the migrant background in their respective Turkish, Kurdish or Greek descent – the only characteristic that was common to all the murder victims. Instead, it was implied – ultimately solely based on their ethnic background – that all victims had connections to organised crime.

It is therefore reasonable to assume the existence of structural and/or institutional racism in order to explain this direction for the police investigation, which was the same at all murder sites and stigmatized and criminalized the murder victims, their relatives, and the victims of the bomb attacks. The parliamentary group of DIE LINKE is convinced that structural and/or institutional racism can be seen as a structural characteristic of the police work in this case – beyond the individual attitudes and beliefs of each police detective.

### aa) Excursus: How do we understand structural and institutional racism

Structural and/or institutional racism is a form of racism that derives its methods, norms and legal foundations from social institutions and is at first independent of the individual motivations and actions. Disadvantages and discrimination are experienced in and by different important social institutions. They can be found in the education system, in the system of political participation, in the labour and housing sector, and also in the context of police work. *Robert Miles* perceives institutional racism as a material form of racist exclusionary practices resulting directly from a racist discourse.<sup>11</sup> The existence and the consequences of structural and/or institutional racism in key social sectors such as education or labour are also proven by the latest survey “*Diskriminierung im Bildungsbereich und im Arbeitsleben*” (“Discrimination in the Education Sector and Working Life”) of the Federal Anti-Discrimination Agency (ADS).<sup>12</sup> An example of institutional racism in the police sector is the so-called “entry sheet KP 8” and/or “grant and information file ISTPOL” forms for the criminal file of suspects that were used from 1984 until the late 1990s. Police officers of the federal states and the federal police were told to mark one of the following characteristics when describing suspects:

“Asian, Negroid, Nordic/Middle European, oriental, Southern, Slavic, Indian [Editor’s note: American Indian]”.<sup>13</sup>

Even though these entry sheets have since been changed, one has to assume that these racist classifications were aggravated by the following set of instructions, which included explanations such as:

“Negroid = dark colour of skin and hair, curly hair, bulging lips. Slavic = broad face, prominent cheekbones. Nordic/Middle European = tall, light-skinned persons.”<sup>14</sup>

These stereotypes have influenced some generations of policemen in their perception of suspects.

*Günter Schicht*, expert witness and criminologist, expanded on the issue in the expert hearing at the end of the evidentiary proceedings:

“One has to add the influence of group-related prejudices. I think that among police officers racism as a conception of the world surely is an exception. However, group-related prejudices are the rule – just as in society as a whole. I have called this mechanism ‘subliminal ethnical profiling.’ The officers are not aware of such influences. Just recently I attended an event (...) when a young police officer from a riot squad – who himself had a migrant background – gave

<sup>10</sup> “Der Fall Bosporus” by Wolfgang Korth, in *Berliner Zeitung* on July 15, 2006, <http://www.berliner-zeitung.de/newsticker/neun-maenner-werden-mit-derselben-waffe-erschossen-seit-jahren-sucht-die-polizei-den-taeter---und-findet-einen-verdaechtigen-verfassungsschuetzer-der-fall-bosporus,10917074,10403504.html>, last viewed on August 20, 2013. <sup>11</sup> See *Robert Miles*, *Rassismus. Einführung in die Geschichte und Praxis eines Begriffs*, Hamburg 1991. Original Edition: *Robert Miles*, *Racism*, Routledge, 1989. <sup>12</sup> “Diskriminierung im Bildungsbereich und im Arbeitsleben,” [www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2013/Bericht\\_Bundestag\\_20130813.html?sessionid=3EE598D7F587C49A3442C20720FF87C4\\_2\\_cid322](http://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2013/Bericht_Bundestag_20130813.html?sessionid=3EE598D7F587C49A3442C20720FF87C4_2_cid322). <sup>13</sup> See MAT\_B\_TH-3\_Auswahl\Schäfer Michel.pdf, Blatt 4, further criticism on entry sheet KP 8: Bundestag Official Document Nr.13/6623 Minor Interpellation by the parliamentary group of the Green Party “Kritik an rassistischen Typisierungen in polizeilichen Erfassungsbögen” <http://dipbt.bundestag.de/doc/btd/13/066/1306623.pdf>. <sup>14</sup> *Ibid*.

a statement and actually wanted to speak out against racial profiling. For sure we can say that he wasn't a racist. But the content of his statement was an expression of racial profiling. He said: Everyone knows that 90 percent of the black people in the Hasenheide public park in Berlin are drug dealers. – This form of profiling is expressed in a subliminal way and the officers are not necessarily aware of it. But it does exist (...) I am convinced that we should mainly draw conclusions for training purposes. There are specific trainings for dealing with victims. There are specific trainings for dealing with right-wing extremism. There are good trainings for specialists. But these offers do not reach the masses. This offer does not have the effect that it should have."<sup>15</sup>

### **b) Structural and institutional racism in the context of the police investigations**

The questioning by the Enquiry Committee of the investigators who worked on the sites of the NSU murder series have illustrated that the investigations were carried out with preconceptions, ascriptions and stereotyping that explicitly did not derive from racism on the part of the individual investigators, but which are to be attributed to the above-mentioned forms of structural and/or institutional racism.

This is a problem affecting the whole of society<sup>16</sup>, but has a specific importance and scope in the context of police work and investigations.

All of the policemen who were heard as witnesses have assured the Enquiry Committee that the ethnic background of the victims was irrelevant to the way the investigations were conducted. Individually and subjectively this description of "equal treatment" might be appropriate, but it has to be questioned in light of the overall social context. Preconceptions and prejudices broadly present in society at large have also shaped the view of the individual investigator of both the murder victims and their relatives, as well as of assumed perpetrators.

### **aa) Example: The Operative Case Analysis of the LKA Baden-Wuerttemberg in 2007**

The so-called "Operative Case Analysis" of the LKA Baden-Wuerttemberg that was done in the beginning of 2007 is among the examples of this structural and/or institutional racism: Following nine murders and hundreds of unsuccessfully processed leads, the investigators of BAO "Bosporus" first commissioned a second "Operative Case Study" (OFA) in the spring of 2006 by specifically trained specialist profilers of the LKA Bavaria. Their result came rather close to the profile of the NSU, but also to an Operative Case Study by the LKA North Rhine-Westphalia on the bomb attack in the Keupstraße in Cologne in 2004: Those who were responsible for the deeds were one or two perpetrators from the right-wing extremist milieu who acted out of "hatred against Turks" and who considered the neo-Nazi scene to be ineffective. But the BKA and the majority of the special police commissions in the seven federal states started almost immediately to vigor-

ously discredit the analysis of the profilers of the Bavarian LKA. As a result the BAO "Bosporus" did not use the opportunity to make the result of the analysis public before the World Soccer Cup in Germany started in the summer of 2006, presumably out of fear of causing "hysteria" among Turkish business people.<sup>17</sup> Giving in to pressure from the BKA, the LKA Hamburg and LKA Hesse, a counter-analysis was commissioned by the LKA Baden-Wuerttemberg, which was presented in January 2007.<sup>18</sup>

The structurally racist preconceptions of the investigators are expressed in an exemplary way in this Operative Case Study of the LKA Baden-Wuerttemberg. The possible background of the perpetrators is described as follows:

"The deeds do not constitute spontaneous acts based on an impulse of affects. Therefore one has to assume that the perpetrator is characterized by the ability and willingness to anticipate and plan in his thoughts the murder of numerous human individuals in the context of a cold process of consideration (distanced from the individual victims). In light of the fact that the killing of people is held as highly taboo in our cultural sphere, one can deduce that the perpetrator is located far outside of the local system of norms and values with regard to his behavioral system."<sup>19</sup>

Due to an ethnicising perspective, the crime and the perpetrator are being located outside of the German and/or European cultural sphere and assumed to belong a foreign group that also includes the victims. A connection between the perpetrators and victims is assumed whereby the victims (and their relatives) are in the same way located outside the German/European framework of values and made into "foreigners" in the same way as the perpetrators.

"An explanation for such an irrational element in the structure of the perpetrator's motive can be at most found in the Code of Honour and/or an internal Code that is of great importance for the perpetrators. This would point to a group of perpetrators that is influenced by the aforementioned respective norms and values. A group with such an internal Code and/or Code of Honour is in all likelihood organised in a highly hierarchical manner and is likely to have a 'chief' who needs to save face in front of the others as well."<sup>20</sup>

And finally, under the headline "Cultural-ethnic background" [of the perpetrators], the Operative Case Analysis states:

"The rigid Code of Honour that characterizes the group rather points to a group in the East and/or South-East European region (not a West European background)."<sup>21</sup>

<sup>15</sup> see *Schicht*, Record of Proceedings No. 72, p. 45. <sup>16</sup> See *Wilhelm Heitmeyer et al.*, Deutsche Zustände, 10 Bände, Frankfurt 2002–2011. <sup>17</sup> *Geier*, Record of Proceedings No. 12, p. 50; also BT-Drs. 17/14600, Final Report of 2<sup>nd</sup> PUA, p. 576 and *Beckstein*, Record of Proceedings No. 17, p. 80 f. <sup>18</sup> The BKA was also not impressed by an Operative Case Study by the FBI, whose profilers had come to a conclusion similar to that of the LKA Bavaria profilers in the so-called 2<sup>nd</sup> OFA, namely that the perpetrators were motivated by "hatred against people of Turkish background." "Not very helpful," noted at the time a BKA head of department in the margins of the FBI analysis, compare Bundestag Official Document No. 17/44000, Final Report of 2<sup>nd</sup> PCE, p. 579. <sup>19</sup> MAT\_A\_GBA-5, p. 162 f. <sup>20</sup> MAT\_A\_GBA-5, p. 162 f./7412) *ibid.* p. 180. <sup>21</sup> MAT\_A\_BKA-2-14 OFA Česká Serie, p. 475.



The ethnicising view of the murder series that is obvious in the Operative Case Analysis by the LKA Baden-Wuerttemberg confirms racist preconceptions that can shape a person's view beyond their individual attitudes. In view of the large number of references in the investigation files of BAO "Bosporus" that were presented to the Committee of Enquiry and contained similar preconceptions and attributions, one has to assume that the police investigations of the murder series and bomb attacks was influenced by these exact preconceptions.

### bb) Ethnicising attributions

One can also find similar attributions in notes in police files about presumed suspects, for example, in the files of the *Ermittlungsgruppe (EG) Sprengstoff* ["Explosives Investigation Group" in the Police Department of Cologne, Editor's note] in Cologne. They noted at the end of their investigation against Ö.Y. in the context of the explosives attack in the Keupstraße:

"The family leads an orderly family life. [...] Ö.Y. is described as an affable, nice person, reliable employer and a good hairdresser. Especially in the statements of his former business partners, one can find that the hairdressers' salon Ö.Y. is a shop run more on Turkish/oriental principles and cannot be compared to a business that is organised according to West European principles. The payment of the employees and business partners was not fixed by contracts and in general also was paid in cash. [...] It could not be verified whether persons from the 'Milieu' belonged to the hairdressers' circle of clients. Male persons who were tall and striking have indeed visited the salon."<sup>22</sup>

The urgent question arises here why a common practice of cash payments to employees in small businesses – independent of the shop owner's background or citizenship – is being described with the ethnicising attribute "*Turkish/oriental*" in the file's notices. One can find similar ethnicising attributions in the conclusions of BAO "Bosporus" directly linking some of the murder victims' Turkish background to presumed tax debts or in reality overdrawn accounts.

Another example of ethnicising attributions can be found in the choice of the name of the Murder Squads such as Soko "Halbmond" [Special Commission "Crescent", Editor's note] or BAO "Bosporus," as well as in the opening statement of witness Schwarz from the LKA Hamburg in front of the Committee of Enquiry. Schwarz described the personality of *Süleyman Taşkoprü*, the third NSU murder victim who was killed on June 27, 2001, in Hamburg:

"*Süleyman Taşkoprü* was something that we at the LKA have called 'a regular Turkish male': passionate, of a very vigorous and dominant nature. He also had a significant number of appearances in the context of police investigations."<sup>23</sup>

In light of the victims' background, it also does not seem to be a coincidence or an expression of the investigators' desperation that investigators in Cologne and Hamburg did not hesitate to consult a clairvoyant and

an Iranian "psychic," especially in view of the fact that the LKA Hamburg was among the strongest critics of the 2<sup>nd</sup> Operative Case Analysis by the Bavarian profilers and strongly doubted their scientific approach.

The inconsistency in dealing with the background of the murder victims' relatives within one single Police Headquarter can be seen in Kassel during the investigations on the April 26, 2006, murder of *Halit Yozgat*: Shortly after an officer of the state office for the protection of the constitution in Hesse had come under suspicion, the LfV Hesse claimed with reference to informants' notices that members of the congregation of a mosque – that had presumably been also attended by the victims' father, *İsmail Yozgat* – were planning on taking revenge action against the officer of the LfV. Consequently the Police Headquarter Kassel wrote a notice in the file on August 2, 2006, whereby the threat to the LfV officer was seen in "the ethnic-cultural backgrounds of the victims' families."<sup>24</sup> Later on, however, the police realized that *İsmail Yozgat* did not participate in a single Friday prayer at this mosque and ended the telecommunication surveillance measures of the *Yozgat* family.<sup>25</sup>

The closing statement of the homicide division (MK) "Café" [Murder Squad "Café", Editor's note] responsible for the investigations following the murder of *Halit Yozgat* in Kassel at the same time shows that the investigators are capable of statements about the victims' family relatives without using ethnicising attributions. Following the closure of the in-depth investigations against Halit Yozgat's family the MK "Café" noted on September 21, 2006:

"that the family of the victim was a 'normal' family with everyday problems [...]"

### cc) Fatal collusion: ethnicising attributions and perception deficits by the police regarding right-wing violence

The way the investigators dealt with the statements of a female witness from Nuremberg who had provided a precise description of the perpetrators after the murder of *İsmail Yaşar* in Nuremberg on June 9, 2005, which also led to the drawing of a composite sketch, is an example of the grave impact on the Česká murder series investigations caused by ethnicising preconceptions in conjunction with massive perception deficits with regard to the existence of right-wing terrorist structures. On June 21, 2005, just two weeks after the murder of *İsmail Yaşar*, the head of the Cologne EG "Sprengstoff" contacted the BAO "Bosporus" in Nuremberg in order to point out similarities between the composite sketch in the *Yaşar* case and the video recordings of the suspects after the explosives attacks in the Keupstraße in Cologne. The officer also pointed out the common

<sup>22</sup> Note by EG Sprengstoff dated December 15, 2005, MAT A GBA-4/24e, Bl. 50f., see Bundestag Official Document 17/4400, Final Report of 2<sup>nd</sup> PCE, p. 736. <sup>23</sup> see Bundestag Official Document 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 735. <sup>24</sup> *ibid.*, p. 734. <sup>25</sup> *ibid.*

characteristic of the use of bikes and asked to undertake an examination of a connection between the explosives attack in Cologne and the murder of *İsmail Yaşar* in Nuremberg. The head of the EG "Sprengstoff" also asked to show the witness from Nuremberg the video sequences from Cologne.<sup>26</sup>

However it almost took a year until on May 23, 2006, the witness in the murder case of *İsmail Yaşar* was shown the recordings of the video surveillance cameras of the Cologne crime scene. The witness – following a number of showings and enlargements of the video stills – stated that she was positive that one of the perpetrators of the murder of *İsmail Yaşar* was identical to one perpetrator of the nail bomb attack ("That was him!").<sup>27</sup> However, the minutes of the witness hearing merely render this important statement of the witness in a considerably mitigated form. In contrast, the minutes of the eyewitness statement in the murder case of *Yaşar* state:

"If I compare the persons on the video to the two whom I had seen in the murder case of *İsmail Yaşar* in the Scharrerstraße, I can state, that I am rather positive, that respectively one person each from the Cologne video is identical to one bicyclist whom I saw in the Scharrerstraße."

The statement of this witness was one of the hottest leads during the entire investigation period for the murder series and the explosives attack in Cologne.<sup>28</sup> However, this lead was not pursued any further – also due to the mitigation of the witness statement. The Bavarian Parliamentary Committee of Enquiry questioned the witness among other things on her opinion why her witness statement had not been noted word-by-word by the officer who had taken the minutes. Her answer was as follows:

"I had the impression from my interrogations: 'What is not allowed cannot happen.'"<sup>29</sup>

The head of the EG "Sprengstoff" pointed out the basic similarity of the published composite sketch of the perpetrator from Nuremberg which had been published after the statements of the witness in the *İsmail Yaşar* murder case with the video stills from Cologne. However, the Operative Case Analysis units both in Cologne and Munich rejected a comparative analysis of the bomb attack in Cologne and the murder in Nuremberg, pointing out that one could not compare "apples and pears."<sup>30</sup>

Ultimately, one has to assume that the ethnicising view of the murder victims and their relatives – in conjunction with a completely wrong analysis regarding the existence of right-wing terrorism structures in Germany – blocked investigators from at least taking into account the possibility that they could be looking at a racist or neo-Nazi-motivated murder series. This is demonstrated not the least in the fact that any trail – no matter how bizarre it might be – in the realm of Organised Crime was pursued, any tip – no matter how crude it might be – by informants from the Organised Crime structures was followed up – all resulting in police officers generating separate trails and investigations.

But the assumption of some relatives of NSU murder victims who told the investigators that the murderers might be racists or neo-Nazis did not lead in one single case to a police officer generating a trail.

Finally, the fact that the approach of the BAO "Bosporus" investigators was led by ethnicising stereotypes is also shown by the fact that the BAO "Bosporus" had undercover policemen working as Döner kebab shop owners in two shops in Nuremberg and Munich for more than a year after the murder of *İsmail Yaşar*. The working premise that the murders were the results of a so-far unknown Döner-mafia's fierce price war can only be explained by the ethnicising view of the murder victims, considering the fact that only two out of nine murder victims were indeed working in a carry-out food shop.

#### dd) Excursus: Anti-ziganism

Anti-ziganism is known as historically grown and self-stabilizing prejudices and discrimination against members of the Sinti and Roma minority. Anti-ziganism is a social phenomena – similar to racism – that encompasses discriminating social structures and violent practices based on the standardized perception and portrayal of specific social groups and individuals under the "gypsy" stigma which is linked to attributions of specific deviant or negative features.<sup>31</sup>

The investigators in the case of the murder of the policewoman *Michèle Kieseewetter* and the attempted murder of her colleague very quickly focused on a group of Roma mainly from former Yugoslavia, because the members of the Roma minority belonged to a group of travelling showmen doing construction work on a funfair at the site of the murder – the Theresienwiese in the city of Heilbronn. The official notices about the "Lead Travellers" and "Lead Travelling Families" are clearly marked by ethnicising attributions expressed as open anti-ziganism.

Repeatedly the term "gypsy" is used in the minutes of Soko "Parkplatz" [Special Squad "Parking Lot" at the Police Headquarter in Heilbronn which investigated the murder of the police-woman, Editor's note] in order to describe witnesses, presumed suspects and members of the group. Two examples: In the minutes of a working meeting on June 11, 2007, it says:

"There is further information on [...] L., who supposedly acts like a man and a woman and comes from gypsy circles."<sup>32</sup>

And the Soko "Parkplatz" minutes of July 20, 2007, come to the conclusion:

<sup>26</sup> *ibid.*, p. 526f. <sup>27</sup> see Final Report of the Parliamentary Committee of Enquiry "Right-Wing Terrorism in Bavaria – NSU" (Abschlussbericht des "Untersuchungsausschuss Rechtsterrorismus in Bayern – NSU"), p. 141 ff., Official Document 16/17740, [http://www.bayern.landtag.de/images/content/NEU\\_Drs\\_16-17740\\_NSU\\_FINAL\\_18072013.pdf](http://www.bayern.landtag.de/images/content/NEU_Drs_16-17740_NSU_FINAL_18072013.pdf). <sup>28</sup> see Final Report of the Parliamentary Committee of Enquiry "Right-Wing Terrorism in Bavaria – NSU" (Abschlussbericht des "Untersuchungsausschuss Rechtsterrorismus in Bayern – NSU"), p. 141 ff., Official Document 16/17740, [http://www.bayern.landtag.de/images/content/NEU\\_Drs\\_16-17740\\_NSU\\_FINAL\\_18072013.pdf](http://www.bayern.landtag.de/images/content/NEU_Drs_16-17740_NSU_FINAL_18072013.pdf). <sup>29</sup> p. 141 *ibid.* <sup>30</sup> 7422) see Bundestag Official Document 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 580. <sup>31</sup> see *Markus End, Antiziganismus. Zum Stand der Forschung und der Gegenstrategien.* In: *Daniel Strauß/RomnoKher* – Haus für Kultur, Bildung und Antiziganismusforschung, Marburg 2013, p. 13. <sup>32</sup> 7424) MAT\_A\_BW\_2-3-17.2, p. 115.

“A car with license tags from the Netherlands and four persons, presumably gypsies, attracted attention and was subjected to a control at 11 am on the day of the crime.”<sup>33</sup>

The “lead leading to the gypsy milieu” played an important role in the Soko “Parkplatz’s” media strategy and led to stigmatizing reports, for example in the news magazine *Stern* in June 2007:

“Crime scenes such as the cities of Freiburg, Heilbronn or Worms are close to well-known bases of large Sinti and Roma clans. Many of them are using a bus company with a regular connection between Heilbronn and Romania and sometimes with stops in Austria and France. And finally: On that fatal April 25<sup>th</sup>, the day of the policewomen’s murder, several Sinti and Roma families stayed with their caravans less than a hundred meters away from the crime scene at Theresienwiese. But no one claims to have seen anything.”<sup>34</sup>

The Soko “Parkplatz” held on to this direction for their investigation even after all the reasonable grounds for suspicions against the members of the Roma group turned out to be false and unfounded. Even then, the Soko “Parkplatz” initiated further interrogations and even filed requests for information on some members of the Roma group to the BND.

#### ee) How the BKA handled the weapons trail

The parliamentary group of DIE LINKE deems it necessary to explicitly point out the responsibility of the BKA for the slow handling of the weapons trail in the Česká murder series. The investigations on the weapons and ammunitions took an unjustifiably long period of time (2004 to 2009), due to wrong decisions in the investigations and disregard of leads.

The investigations are also marked by preconceptions and limitations with regard to the presumed perpetrators of the murder series, which is a recurrent theme throughout the investigation work of the police and can be described by the key word structural racism as well.

The weapons and ammunitions trails were the only hard evidence in the context of the investigations of the racist murder series due to a lack of leads at the crime scenes. After the murder of *Enver Simşek* in September 2000, the police were already able to determine that the murder weapon in all likelihood was a Česká gun. When the same Česká weapon was used for the murder of *Abdurrahim Özüdoğru* in 2001, it became evident that this was a murder series. Police also were able to identify the ammunition that was used in the beginning. However, the weapon’s trail was only systematically pursued with the beginning of 2004 when the BKA installed a Česká Investigation Unit. In addition to the appraisals in the fact-finding part of the Final Report<sup>35</sup> and the joint appraisals and conclusions of the five parliamentary groups<sup>36</sup>, we would like to point out the following facts:

When in 2004 the BKA liaison officers in the various European countries (the BKA liaison officer in Switzerland was among them) were asked by their BKA colleagues to follow up on the special ammunition used in

the first murders and the sale of silencers, the BKA officers made specific assumptions about the perpetrators that seriously hampered the investigations. With regard to the ammunition purchases, the main focus was on “Turkish citizens.” The same was true for the sale of silencers by the Swiss company Schläfli&Zbinden – the main focus was especially on “Turkish citizen(s).”<sup>37</sup> The same BKA circular described the murders as “contract killings” and the background motive of the crimes as “drug deals.”

These restrictions regarding the investigations of the weapon’s trail are typical of the investigations on the Česká serial murders and of the BKA’s conviction – which the BKA persistently upheld – that the factual background had to be found in organised crime and within that had to come from the Turkish milieu. The BKA held on to its basic conviction even when no proof existed for this hypothesis and when it became more and more implausible with each new murder.

The second Operative Case Analysis by the Bavarian LKA in 2006 that considered a racist motive for the crimes did not have any impact on the BKA’s investigation. On the contrary, the BKA strongly rejected this investigation approach.

Witness *Jung*, who was the responsible BKA police officer within EG “Česká” for the investigations on the murder weapon, told the Committee of Enquiry that the course of the investigation wouldn’t have changed even if the EG “Česká” had considered a right-wing extremist background for the crimes. This is false considering the above-mentioned self-limitations on the investigations concerning the weapons and the silencers. And one would hope that the family ties of the Swiss Česká weapon’s buyer’s wife to East Germany<sup>38</sup> would have played a role in investigations with a crime hypothesis based on a motive of racism/right-wing terrorism.

#### c) Smooth collaboration of police and domestic secret service agencies in the areas of organised crime, “criminality of foreigners,” PKK and Turkish Hizbullah

It is wrong to claim that the collaboration of police with domestic secret service agencies [the Offices for the Protection of the Constitution of the federal states (LfVs) and the Federal Office for the Protection of the Constitution (BfV), Editor’s note] attempting to find the perpetrators of the Česká murder series went wrong in general and was hampered by communication problems. On the contrary, the collaboration on the investigations in the “Organised Crime” sector went relatively smoothly and without any problems – especially when

<sup>33</sup> 7425) MAT\_A\_BW\_2-3-17.2, p. 151. <sup>34</sup> 7426) “Die Jagd nach dem Phantom” in: *Stern*, June 29, 2007, <http://www.stern.de/politik/deutschland/polizistinnen-mord-in-heilbronn-die-jagd-nach-dem-phantom-592124.html>. <sup>35</sup> see Official Document 17/4400, Final Report on the 2<sup>nd</sup> PCE, p. 507 ff. on the investigation regarding the special ammunition and p. 611–624 on the weapon’s trail. <sup>36</sup> *ibid* p. 840f. <sup>37</sup> MAT A BKA 35a, p. 206. <sup>38</sup> see Bundestag Official Document 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 621.

it came to information that supported the hypotheses that the background for the murders could be found in nationally or internationally active drug smuggling gangs, human trafficking rings, the gambling Mafia or weapons smuggling gangs. The states Offices for the Protection of the Constitution in most of the federal states with a Česká murder crime scene and following the deadly shots on *Michèle Kiesewetter* provided the Murder Squad police investigators quickly, continuously and easily with personal-data information relating to presumed suspects or masterminds from the above-mentioned areas of criminality. This is also true for the BAO "Bosporus" hypothesis – which had been considered for some time – that the perpetrators presumably derived from PKK circles or the so-called "Turkish Hizbullah."<sup>39</sup>

In view of the above, the lack of collaboration by the LfV Bavaria with the BAO "Bosporus" is particularly grave and noticeable when the question of neo-Nazis in the city of Nuremberg arose after the second Operative Case Analysis had pointed out that possibility<sup>40</sup> and the complete absence in the analysis of the other LfVs of any mention of possible right-wing terrorist backgrounds or neo-Nazi suspects.

#### **d) Questionable handling of informers and long-term paid informers in the sectors of "organised Crime", PKK and Turkish Hizbullah by police and Offices for the Protection of the Constitution**

The police officers, but also the Offices for the Protection of the Constitution received countless tips and hints from their own long-term paid informers and informers during the investigation on the Česká murder series as well as following the bomb attack in the Keupstraße in Cologne. Those tips and hints all centred around presumed suspects from the sectors of "Organised Crime", PKK and "Turkish Hizbullah".<sup>41</sup> Even before November 4<sup>th</sup>, 2011 when the existence of the NSU came to light not one of these tips and hints had proved valid in the course of the investigations and in the search for the perpetrators. Despite that the Enquiry Committee had to conclude that the false tips – which also included severe false accusations against innocent people for example regarding the presumed perpetrators of the bomb attack in the Keupstraße – obviously did not have any consequences: Neither for informers, especially not for the long-term paid informers and the occasional informers nor for the way the police and the Offices for the Protection of the Prosecution were handling them. The head of the Murder Squad in Hamburg for example said when he was questioned on the subject in his witness statement before the Enquiry Committee, in retrospect he felt "he had been taken for a ride by some people".<sup>42</sup>

Especially with regard to the long-term paid informers and occasional informers of the police authorities and the Offices for the Protection of the Constitution in the "Organised Crime" sector one can neither discover internal nor an external controlling bodies or mecha-

nisms. And there doesn't exist any parliamentary control with regard to the recruiting, management and operational measures of the federal police and the federal states police authorities' long-term paid informers and occasional informers. As a result of the work of 2<sup>nd</sup> Parliamentary Committee of Enquiry the parliamentary group of DIE LINKE is convinced that this void urgently needs to be closed. The parliamentary group of DIE LINKE in Thuringia's state assembly for example has accordingly submitted an amendment to the Law of the Police's Duties, hoping to achieve a form of parliamentary control for the police's use of intelligence means.

#### **2. Responsibility of the intelligence services in NSU complex**

The parliamentary group of DIE LINKE is convinced that the German intelligence services, especially the Federal Office for the Protection of the Constitution (BfV) and the Thuringian Office for the Protection of the Constitution (LfV Thuringia) are carrying the main responsibility for two main aspects: that the National Socialist Underground (NSU) was able to build and establish its structure and the fact that the NSU was able to commit nine murders of migrants and one murder of a police woman within a period of over ten years without being stopped.

#### **a) The responsibility of the Federal Office for the Protection of the Constitution (BfV)**

The responsibility of the Federal Office for the Protection of the Constitution (BfV) includes both the belittlement of the neo-Nazi movement, its militant organisations and networks as well as its violent activities which lasted for two decades and it includes the support of exactly these networks by neo-Nazis paid by the BfV as long-term paid informers and including their protection from judicial prosecution. Additionally the BfV together with the LfV Thuringia and the MAD [Militärischer Abschirmdienst – Military Counterintelligence Service, Editor's note] are directly responsible for the fact that the dangerousness of the "Thüringer Heimatschutz" [Thuringian Homeland Security (THS), the neo-Nazi network in which *Uwe Mundlos*, *Uwe Böhnhardt* and *Beate Zschäpe* and the neo-Nazi "Kameradschaft Jena" were active from 1993 until 1998 when they escaped arrest, Editor's note] was not recognized: Nor was the dangerousness of the Thuringian neo-Nazi brotherhoods and its female and male activists and the dangerousness of the "Blood & Honour" network recognized – among them close female and male friends and supporters of the presumed NSU core trio. Even though numerous long-term paid informers of the BfV and a number of informers of the Offices for the Pro-

<sup>39</sup> *ibid* p. 591. <sup>40</sup> see Bundestag Official Document 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 582 ff. <sup>41</sup> see for example *Conna Neumann*, *Andreas Ulrich*, *Versteck in der Schweiz*, in: *Der Spiegel* 38/2011; <http://www.spiegel.de/spiegel/print/d-80075315.html>. <sup>42</sup> *Schwarz*, Record of Proceedings No. 19, p. 85.

tection of the Constitution of the federal states were active in the neo-Nazi movement and the above mentioned organisations and networks. These long-term paid informers and occasional informers were – as well as other close male and female supporters of the presumed NSU core trio – targets for intelligence operations including G-10 measures and operations.

#### **aa) The BfV and its failure to properly assess right-wing terrorist activities**

The Enquiry Committee was able to form a detailed view of the BfV's failure to assess and analyze right-wing terrorist activities. On the one hand for two decades the BfV's analysis did not inform the public adequately and fully about right-wing terrorist organisational attempts and activities. And on the other hand the BfV did not accord the issue of right-wing terrorism the importance that it should have had. To the contrary, the BfV did everything to dispel warnings from the police apparatus, journalists and antifascist initiatives of emerging right-wing terrorist activities. The BKA for example had informed the BfV of the importance of the strategy paper "The Way Forward" that had been disseminated within the international "Blood & Honour" network and the German neo-Nazi scene. The strategy paper proposed to build clandestine terror cells. True to the motto: Right-wing terrorism in Germany cannot exist because the BfV has everything under control. The answers by the former BfV Vice President, today's Parliamentary State Secretary in the Ministry of the Interior *Klaus-Dieter Fritsche* to questions from the Ministry of the Interior about the possible existence of a "Brown Red Army Faction" [Rote Armee Fraktion (Red Army Faction), an left wing terrorist group in Germany operating in the 1970ies until the early 1990ies, Editor's note], when the police prevented plans by the neo-Nazi organisation Kameradschaft Süd to explode a bomb in the new Synagogue in Munich in September 2003 are an especially striking example for this mixture of hubris, failure and belittlement:

*„In a comparison with the Red Army Faction (RAF) one has to at least take into account the main characteristic of these terrorist endeavors. The RAF led its armed struggle out of a life in illegality. That means, the group lived under false identities in clandestine apartments and had access to forged identity documents and forged duplicates of license plates for cars. This way of life demanded a high level of know-how and an environment of sympathizers willing to support the armed struggle out of illegality. Bank robberies were executed in order to finance this armed struggle. Intentions to lead a struggle out of illegality cannot be detected in the right-wing scene. At the moment there are also no specific indications that such a group would find an environment which would enable them to lead such a struggle. (...) The media points out that such a potential environment in the right-wing extremist scene indeed is existing. In order to prove this point the media points to three bomb builders from Thuringia who have disappeared and have been living in hiding for several years and for sure*

*must have received the support of third parties. One has to counter this example by pointing out that these persons are on the run and have – as far as one can tell – not committed any violent acts since then. The support they receive therefore cannot be compared to the support given to an armed struggle out of illegality.”<sup>43</sup>*

This analysis is surprising, not the least because at that time the BfV had been observing the continuous increase of the level of armament within the neo-Nazi scene. The parliamentary group of THE LINKE finds it absolutely necessary to point out – in addition to the joint conclusions – that due to publicly available information from journalists and antifascist media the BfV must have been informed about the involvement of German neo-Nazis in the international network of Combat 18 and "Blood & Honour" that started in the late 1990ies. Insofar the parliamentary group of DIE LINKE finds the statement of the head of the BfV's right-wing terrorism department *Dobersalzka* to be credible who assured the Enquiry Committee the department had regularly read the relevant antifascist publications.<sup>44</sup> The Enquiry Committee was able to confirm this statement having found articles from openly accessible antifascist publications being sold on the German book market in numerous BfV files stamped "Top Secret".

For example in December 2001 a neo-Nazi drop-out from the British group of Combat 18 told the British Searchlight magazine that he had been told in the end of 1998 "to travel to Germany, in order to build a few bombs and send them off."<sup>45</sup> The close connections of British neo-Nazis – for example by the lead singer of the "Blood & Honour" music group "No Remorse" – to neo-Nazis in Northern Germany and Bavaria were long known to the BfV at that point in time.<sup>46</sup> In the year 2000 neo-Nazis sent a threat-postcard from Sweden to a PDS/LINKE member of the state assembly in Brandenburg announcing "a new year of struggle". That way it became known that neo-Nazis from Brandenburg had visited activists of the militant Swedish Nationalist Front (NSF) over New Year's 1999/2000. Their members were a. o. responsible for the murders of two Swedish police officers after a bank robbery in May 1999. Additionally, the Antifascist Info Bulletin reported in the spring of 2000 about a meeting of German, Swedish, British and Norwegian neo-Nazis from the international network of Combat 18 "Blood & Honour" that took place in early November 1999 in a small town near Oslo. Main talking points of the meeting with participation of several German neo-Nazis were the coordination of international so-called anti-antifascist campaigns and clandestine terror. The Antifascist Info Bulletin wrote in conclusion:

<sup>43</sup> 40 See Bundestag Official Document 17/4400, Final Report of 2<sup>nd</sup> PCE, p. 231. <sup>44</sup> Dobersalzka, Record of Proceedings No. 72, p. 18. <sup>45</sup> Antifaschistisches Infoblatt Nr. 54/Winter 2001/2002, p. 31 "Combat 18" inside! – Nazi-Informant Darren Wells über die Terrorgruppe 'C-18', extensive article in: Searchlight international, Nr. 318/December 2001, "Why I turned my back on C18 – an exclusive interview with ex-nazi Darren Wells", p. 5. <sup>46</sup> see MAT\_A\_BY-1/6, Blatt 60 ff.; MAT\_A\_BfV-4/14-Erläuterungen (VS NfD), Nick Lowles in "White Riot" – The violent story of Combat 18, p. 113 ff., Milo Books/2001.

“The German neo-Nazis are under pressure: Following the several murders perpetrated by their Swedish comrades last year and the spectacular series of bomb attacks in London, they want to emulate their international role models. [...] A segment of this scene has obviously gotten out of the control of the state’s security authorities – who otherwise always have had their fingers in the pie when neo-Nazis prepared for organised terror.”<sup>47</sup>

One has to assume that the plans of the international neo-Nazi networks such as Combat 18 and “Blood & Honour” were also reported in corresponding reports of the friendly European partner intelligence services from Great Britain, Sweden, Denmark, Norway, Belgium and Italy to the BfV. If the BfV was not already in possession of reports from its own sources anyway. However, the BfV has presented only very few files on the issue to the Enquiry Committee.

It is part of the BfV’s pivotal failure in the field of right-wing extremism that it didn’t inform neither the state prosecution authorities nor the bearers of political responsibility nor the public in an appropriate way about the dangers for social minorities and democracy in Germany that could be deducted from published strategy papers in neo-Nazi publications and surfaced plans of small groups of neo-Nazis. Instead, the BfV’s publications reduced the activities of the international and German network of “Blood & Honour” to the production and dissemination of white power music and the organisation of white power concerts.

If one was to believe the witness statement of *Ms. Dobersalzka* who was the head of the BfV’s department for right-wing terrorism from 1998 to 2006, this department with less than ten colleagues in the decade of the years 2000 to 2011 must have been viewed within the BfV as the Office’s broom closet and store-room – whose analyses nobody wanted to take notice off, for example following the bomb attack in the Keupstraße in Cologne.<sup>48</sup>

The BfV is also responsible for the fact that the first known public reference to the existence of the NSU – in the acknowledgement to the NSU published in the neo-Nazi publication “Der Weisse Wolf” [The White Wolve, Editor’s note] in the year 2002 – had obviously been overlooked by the BfV’s analysis department, even though the BfV was in possession of an issue of “Der Weisse Wolf” and the BfV also led a long-term paid informant Q1 with contact to the “Weisse Wolf’s” publisher. Additionally, the BfV did not ask the locally responsible Office for the Protection of the Constitution of Mecklenburg-Western Pomerania whether further information existed.

In numerous sessions of the Enquiry Committee with BfV employees as witnesses it has become chillingly obvious that even after the existence of the NSU and its networks has come to light on November 4<sup>th</sup> 2011, the Federal Ministry of the Interior and the BfV as well as the Offices for the Protection of the Constitution of the federal states are still not able to admit to the existence of right-wing terrorist structures in Ger-

many. Especially, Parliamentary State Secretary of the Ministry of Interior *Fritsche* has insisted in his witness testimony that he until today believes that the question of comparability between the NSU and the Red Army Faction has not been clarified as of yet. *Fritsche* emphasized that the RAF had organised itself differently. Additionally, more people had been involved. At the moment one didn’t know how many supporters the NSU had had knowledge of the crimes of the NSU.<sup>49</sup> One can understand this statement of the Parliamentary State Secretary also as an indirect demand to the BKA’s investigators in the NSU complex that the result of their investigations at the end under no circumstances is allowed to state that the presumed NSU core trio was in possession of a network of male and female supporters.

The persistent refusal to acknowledge reality by the BfV, but also by the Offices for the Protection of the Constitution in the federal states is exemplified in the witness statement of Mr. *Egerton* who was concerned with the violence-prone neo-Nazi skinhead scene from 1994 to 2000 in the BfV. When Mr. *Egerton* was asked how the BfV’s fundamental misjudgments with regard to right-wing terrorism had developed, he answered:

“The question was: Does a brown RAF [Rote Armee Fraktion (Red Army Faction), Editor’s note] exist? And the starting point was: Did the BfV recognize structures which are similar to the RAF’s structure, for example a leadership of the commando with an environment of supporters, possibly also militant, that also commits attacks? And the BfV has not recognized such structuring. That also did not exist in the form of the [NSU] trio. That was not a cadre organization with an environment of supporters either.”<sup>50</sup>

This witness statement of Mr. *Egerton* – following the announced “reforms” within the BfV – makes it chillingly clear how strong the forces of the status quo are – and leads one to anticipate the worst for BfV’s the future analysis ability.

## **b) Extremism approach and front-line position against the Left**

In the opinion of DIE LINKE it is not sufficient to point to the BfV’s lack of ability to come up with correct analysis and the BfV’s lack of expertise to answer the question how and why the BfV – and the Offices for the Protection of the Constitution of the federal states – had been denying the existence of right-wing terrorist structures in Germany year after year – despite contrary evidence and information. Rather one has to understand that the denial of right-wing terrorist structures as politically motivated and rooted in the history of the BfV and the Offices for the Protection of the Constitution of the federal states: The intelligence services which were confronted with a rising

<sup>47</sup> „Werwolf, Waffen, Werthebach: Wer ist die Anti-Antifa? In: Antifaschistisches Infoblatt Nr. 50 1/2000, [www.antifainfoblatt.de/artikel/werwolf-waffen-werthebach-wer-ist-die-anti-antifa](http://www.antifainfoblatt.de/artikel/werwolf-waffen-werthebach-wer-ist-die-anti-antifa) <sup>48</sup> Dobersalzka, Record of Proceedings No. 72, p. 4 ff., p. 33 ff. <sup>49</sup> See Official Document 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 232. <sup>50</sup> see p. 233.

tide of right-wing and racist violence and organizing efforts in the 1990ies and 2000s were deeply rooted in a general front-line position against the extra-parliamentary and parliamentarian Left. This front-line position stems from the bloc confrontation, the West German socialization of the leading secret service officers and the National Socialist involvement and conditioning of the BfV's founding generation and its predecessor organisation, the "Gehlen Organization". One can read in the BfV's files how surprised the officers were in the early 1990ies that the neo-Nazi generation of the 1990ies did indeed tout a change of systems including a rejection of all institutions of the State of Law – and that they therefore were very different from the NPD functionaries of the old Federal German Republic with whom one could obviously have a cozy cup of coffee.

When the danger from the Right couldn't be denied any more, because neo-Nazis were throwing fire-bombs on refugee shelters on a weekly basis while the international media was watching, the BfV helped itself with the extremism theory whereby democracy would be threatened by alleged extremes on the fringes. The above mentioned letter of then BfV Vice President *Fritsche* set the guideline: A "Brown RAF" wasn't allowed in such a world-view. This perspective also shaped the analysis of those civil servants in top-level positions at the LfV Thuringia who had changed from the LfV Hesse to work in the LfV Thuringia in the 1990ies.

These guiding principles resulted – in conjunction with the predominant belittlement of the extreme Right by the police and the justice system which also existed in Thuringia in the 1990ies – in a situation where neo-Nazis in Thuringia could expect to not be held to account by the justice system even if they had committed severe violent crimes. Additionally, the public was systematically kept in the dark about the dangers emanating from neo-Nazi structures – especially from the "Thüringer Heimatschutz" (THS) and "Blood & Honour".

These guiding principle resulted in the LfV Thuringia and the Ministry of the Interior in Thuringia systematically belittling the activities of neo-Nazis in Thuringia in conjunction with explosives and weapons that came to light from the early 1990ies on – such as paramilitary trainings, weapons trading, the construction of explosive devices, failed attacks for example on a shelter for Portuguese work migrants in 1995 in the city of Stadroda, the close connections by activists of the THS's section Rudolstadt to Organized Crime, prostitution and human trafficking as well as the continuous intimidation of and threats against young antifascists, trade unionists and members of parliament of DIE LINKE. As a result these neo-Nazi structures were also not prosecuted in the police practices with the necessary vigor. The answer of the head of the LKA special Fugitive Unit, Mr. *Wunderlich*, to the question whether and how the Fugitive Unit was informed of

the discovery of 1,4 kg TNT explosives in the garage that was used by *Bönnhardt*, *Mundlos* and *Zschäpe* is characteristic for this attitude. *Wunderlich* answered to the question:

"Indeed, we had information about this. But it is also known that many youngsters are building something like that as a New Year's prank or are using it to explode a phone booth or a money machine."<sup>51</sup>

### c) Operation "Rennsteig"

Since the mid-1990ies the MAD, BfV and LfV Thuringia – for some time in cooperation with the LfV Bavaria due to the close connection between the neo-Nazi scene in Thuringia and Bavaria – had started a joint Operation "Rennsteig" whose aim it was in the opinion of parliamentary group of DIE LINKE to recruit at least two sources within all sections of the "Thüringer Heimatschutz" – both woman and men with different positions and roles within the "THS". At that time about 200 neo-Nazis were active in the "THS". The "THS" was able to mobilize a bigger potential of people, participated regularly in all mega-events of the national and international neo-Nazi scene – for example the yearly Rudolf-Heß Memorial marches, the marches on May 1st and the protests against the exhibition "Verbrechen der Wehrmacht 1941–1944" [*Crimes of the German Wehrmacht: Dimensions of a War of Annihilation 1941–1944*, Editor's note] by the Hamburg Institute for Social Research. On the basis of the sources' dispatches as well as due to the regular "skimming" of information from state prosecutors and police the MAD, LfV Thuringia and the BfV possessed detailed insights into the increasing process of radicalization, armament, explosives and violent crimes of the neo-Nazi scene in Thuringia and their plans, especially of the THS and the Thuringian B&H section. The intelligence services involved in Operation "Rennsteig" were leading several sources in the Operation Rennsteig with direct contact to the presumed NSU core trio before they went underground in January 1998 as well as contacts to *Ralf W.* and *Carsten S.* who are accused of membership in respectively support of a terrorist association at the OLG Munich at the moment.

The BfV and the LfV Thuringia were in possession of numerous information about the three fugitives and their political circles of friends – the "Kameradschaft Jena", "Thüringer Heimatschutz", activists of "Blood & Honour" and militant neo-Nazi associations in Thuringia, the cities of Chemnitz and Limbach-Oberfrohna, Mecklenburg-Western Pomerania and Bavaria – when on January 26<sup>th</sup>, 1998 about 1,4 kg TNT explosives and several pipe bombs had been seized in garage No. 5 in the city of Jena and *Uwe Mundlos*, *Uwe Bönnhardt* and *Beate Zschäpe* had evaded arrest. The BfV, LfV Thuringia and MAD also received tips that activists of the "THS" and the "Blood & Honour" net-

<sup>51</sup> *Wunderlich*, Record of Proceedings No. 51, p. 53.

work were in contact with the wanted trio. Exemplary one should remember a dispatch of the MAD dated from the end of October 2000 whereby the THS tried to thwart a feared state's ban of their organisation with the help of an "internet-campaign". The dispatch also contained hints regarding the trio. The campaign had been developed by the "THS" as a reaction to the state ban on "Blood & Honour" in order to thwart possible police measures against the "THS". The MAD dispatch said that among other *Ralf W.* and the three bomb-builders from Jena were involved in this campaign.<sup>52</sup> Further dispatches about the situation of the presumed NSU core trio came from talks during "Blood & Honour" concerts for example and clearly showed as well that relevant activists were in contact with the three.<sup>53</sup>

#### **d) Long-term paid informers as a central problem in the NSU complex**

As a consequence of the hearing of evidence the parliamentary group of DIE LINKE is convinced that the use of so-called long-term paid informers by the intelligence services has been one of the key reasons for the complete failure of these state authorities in the context of the NSU complex. There is not one single case of an operation involving long-term paid informers within the neo-Nazi scene that brought more benefit in comparison to the harm that it caused – according to the investigation by the Enquiry Committee.

The reports by long-term paid informers of the Offices for the Protection of the Constitution by the federal states and the Federal Office for the Protection of the Constitution which were presented to the Enquiry Committee have neither resulted in adequate reactions of the authorities to the radicalization and the disappearance of *Uwe Mundlos*, *Uwe Böhnhardt* and *Beate Zschäpe*. Nor did they prevent the murders of *Enver Şimşek*, *Abdurrahim Özüdoğru*, *Süleyman Taşköprü*, *Habil Kılıç*, *Yunus Turgut*, *İsmail Yaşar*, *Theodorus Boulgarides*, *Mehmet Kubaşık*, *Halit Yozgat* and *Michèle Kiesewetter*, the explosives attacks attributed to the NSU and the series of robberies.

At the moment the Federal Attorney General maintains a list of about 400 persons who are counted into the NSU environment in the broader sense. Numerous neo-Nazis are among these 400 people who were active as long-term paid informers of various Offices for the Protection of the Constitution or as informers for police authorities. In the opinion of the parliamentary group of the DIE LINKE a specific focus has to be on the five so-far known persons who were active during different points in time as long-term paid informers for the BfV, the LfV Thuringia, the LfV Bavaria and the LKA Berlin and whose names, addresses and telephone numbers were on an address list which is attributed to *Uwe Mundlos*. This address list was found on January 26<sup>th</sup> 1998 by the LKA Thuringia. The murder, explosives' attacks and robberies series attributed to the NSU was not prevented despite the existence and the activities of these long-term paid informers.

Instead the parliamentary group of DIE LINKE is convinced that the hearing of evidence by the Enquiry Committee has sufficiently proved that the majority of the long-term paid informers were instrumental in building and influencing exactly those neo-Nazi structures whose activities the intelligence services were supposed to watch. That this is an intrinsic problem of the long-term paid informers' system – which is not limited to the NSU complex either – becomes visible in a position paper that the BKA already wrote in 1997. The BKA criticizes based on ten theses and examples how neo-Nazi long-term paid informers of the BfV had essentially established nationwide neo-Nazi structures, how the BfV had undermined and prevented an effective prosecution by law enforcement authorities and how ultimately the BfV had callously accepted the continuous growth of the neo-Nazi scene in order to protect the long-term paid informers.<sup>54</sup> It is not noticeable that anything has changed at all with regard to this state of affairs since then. Furthermore this criticism by the BKA and the police authorities of the federal states of the BfV also continues in the millennium years, for example regarding law enforcement executive measures against the "Blood & Honour" network which continued to be active despite a state ban by the Federal Ministry of Interior. The LfVs and the BfV were not to be informed about these measures up-front in order not to endanger the executive measures. The activities of a long-term paid informer by the LfV Thuringia who reputedly had participated in infiltrating associations, labour unions and political parties and also in spying on elected parliamentarians of the Thuringian state assembly. He is now subject of the Parliamentary Committee of Enquiry No. 5/2 in the Thuringian state assembly.

#### **aa) The long-term paid informer system in the LfV Thuringia before, during and after the disappearance of the alleged NSU core trio**

Since the mid-1990ies the LfV Thuringia was in possession of the following, presently known long-term paid informers and occasional informers in the immediate vicinity of *Uwe Mundlos*, *Uwe Böhnhardt* and *Beate Zschäpe*:

- *VM Otto/VM 2045*, leader of the "Thüringer Heimatschutz" who provided about three dozens of hints regarding the whereabouts of the alleged NSU core trio before and after their disappearance and regarding their supporters and whose informers' reports and dispatches were presented extensively to the Enquiry Committee.<sup>55</sup>
- *VM Hagel/VM 2000* was the leader of the Thuringian "Blood & Honour" section and the treasurer of

<sup>52</sup> See Official Document 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 455. <sup>53</sup> See Schäfer, Wache, Meiborg, May 2012: "Gutachten zum Verhalten der Thüringer Behörden und Staatsanwaltschaften bei der Verfolgung des „Zwickauer Trios“", p. 158; *ibid.*, p. 196, [http://www.thueringen.de/imperia/md/content/tim/veranstaltungen/120515\\_schaefer\\_gutachten.pdf](http://www.thueringen.de/imperia/md/content/tim/veranstaltungen/120515_schaefer_gutachten.pdf). <sup>55</sup> see Bundestag Official Document No. 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 220 ff. <sup>55</sup> see Bundestag Official Document No. 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 261 ff.



the German division of "Blood & Honour". He was responsible a. o. for the fact that *Uwe Mundlos* was defended by the same lawyer who filed a complaint in court against the ban of "Blood & Honour". Even though *VM 2011* according to media reports had been regarded and paid by the LfV Thuringia as a top source similar to *Tino Brandt (VM Otto)*, the Enquiry Committee was presented with less than a handful of his informers' reports and dispatches during its investigations. And only two of these reports from 1999 are referring to the disappeared trio.<sup>56</sup> The 2<sup>nd</sup> Parliamentary Committee of Enquiry was not able to determine who the responsible person was or is for the fact that the informers' reports and dispatches of *VM 2100* cannot be retrieved anymore.<sup>57</sup>

- *Alex*: This occasional informer was already recruited before the presumed NSU core trio had disappeared and moved in the "Thüringer Heimatschutz" and "Kameradschaft Jena" in the immediate vicinity of *Mundlos*, *Bönnhardt* and *Zschäpe* as well as *Ralf W.*<sup>58</sup>
- An occasional informer close to *Ralf W.*<sup>59</sup>
- *Tristan*: The LfV Thuringia had an occasional informer in the immediate vicinity of the Jena section of the "Thüringer Heimatschutz". *Tristan* obviously was in possession of precise information on the role of *Bönnhardt*, *Mundlos* and *Zschäpe* and had close contact to *Ralf W.*<sup>60</sup>

Given these five afore mentioned sources and informers as well as other sources the LfV, BfV and MAD had been operating for example in the "Operation Rennsteig" the impression is created that the presumed NSU core trio as well as its network of supporters which *Mundlos*, *Bönnhardt* and *Zschäpe* were relying on in the phase from January 26<sup>th</sup> 1998 until the presumed moment of their move [from the city of Chemnitz in Saxony, where the trio lived in two different hideout apartments from January 26<sup>th</sup>, 1998 until presumably the summer of 2000, Editor's note] to the city of Zwickau in Saxony was virtually surrounded by a circle of long-term paid informers and occasional informers.

Dissenting from the joint appraisals and conclusions of the Enquiry Committee's spokespersons the parliamentary group of DIE LINKE finds that it is not adequately clarified which particular responsibility was carried by the lead officers for the long-term paid informers within the LfV Thuringia and their immediate superiors, especially the then Vice-President of the LfV Thuringia in the context of the search for the trio. This is especially true in light of the fact that the Enquiry Committee was only provided with the factual basis for an evaluation of the importance and the operational handling of informer *Alex* in the context of the search for the trio after his operational officer had been heard as a witness in front of the Enquiry Committee. This is also true in light of the fact that in the opinion of the parliamentary group of DIE LINKE the Enquiry Committee was not able to clarify incomplete and partially contradictory answers with regard to the operational

handling and informers' reports during the questioning of witnesses who were responsible for the operational handling and recruitment of long-term paid informers within the LfV Thuringia. A special responsibility with regard to this issue falls to the Parliamentary Committee of Enquiry of the Thuringian state assembly. A detailed evaluation of the obvious failure of the LfV Thuringia as a state administration with regard to the search for *Bönnhardt*, *Mundlos* and *Zschäpe* and the issue of Thuringian Ministry's of Interior lack of control of the LfV Thuringia as well as the political responsibility of the Thuringian Ministry of the Interior for this state administration failure also falls to the Parliamentary Committee of Enquiry of the Thuringian state assembly.

Additionally one has to emphasize again that the LfV Thuringia was handling two neo-Nazis as sources – *VM 2045* and *VM 2100* – who held central leading positions within the "THS" and respectively within "Blood & Honour" and therefore should have never been recruited as sources to begin with.

Currently it seems not possible to come up with a final and adequate evaluation of the way and accuracy with which the sources *VM 2045* and *VM 2100* and the occasional informers reported to the LfV Thuringia based on the informers' reports – or the lack of these reports. That means that in the opinion of the parliamentary group of DIE LINKE the question whether sources lied to the operational officers in the context of the search for the presumed NSU core trio respectively whether sources have purposely left their operational officers in the dark by not passing on, leaving out or concealing information cannot be adequately evaluated at the moment. This is also true with regard to a final assessment of the behavior of the operational officers and the heads of the LfV Thuringia.

Additionally it falls to the Parliamentary Committee of Enquiry of Thuringia's state assembly to determine which specific role has to be assigned to a long-term paid informer of the LfV Bavaria and further long-term paid informers of other Offices for the Protection of the Constitution as well as the BfV who according to specialist literature and the records had a substantial share in establishing, consolidating and connecting neo-Nazi associations and groups in Thuringia in the 1990ies.

#### **bb) Long-term paid informers of the BfV in the context of the search for the alleged NSU core trio**

In addition to the joint evaluation of the spokespersons the parliamentary group of DIE LINKE is of the opinion that at this point the question how far-reaching the contacts between the BfV-sources Q1 and Q3 with *Bönnhardt*, *Mundlos* and *Zschäpe* and the accused at the OLG Munich and other presumed NSU supporters have been, cannot be conclusively assessed.

<sup>56</sup> see *Schäfer, Wache, Meiborg*, May 2012: "Gutachten zum Verhalten der Thüringer Behörden und Staatsanwaltschaften bei der Verfolgung des ‚Zwickauer Trios‘", p. 185, paragraph 312. <sup>57</sup> see Official Document No. 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 727 ff. <sup>58</sup> see *ibid* p. 450. <sup>59</sup> see *ibid* p. 402. <sup>60</sup> *ibid* p. 274.

To begin with one has to state here as well that the long-term paid informers of the BfV – Q1, Q2 and Q3 – who were more closely investigated by the Enquiry Committee are exemplary for the dangers which emanate from the long-term paid informers' system: They have contributed in a decisive way to build and strengthen exactly those neo-Nazi structures whose activities the BfV was supposed to have observed in order to protect democracy and then to warn of these dangers. This is true for international neo-Nazi networks as well as for the booming business of White Noise music. The latter is rightfully called "background music for blood and thunder" by independent expert and its production and the sale of numerous indexed neo-Nazi CDs would have not been possible without the long-term paid informers. This is also true for the construction and expansion of neo-Nazi communication systems.<sup>61</sup>

Additionally, the Enquiry Committee got an insight – even though it was very limited – into the fact that Q1, Q2 and Q3 had not been the only long-term paid informers of the BfV in the investigation period who held strategic function and positions of leadership within the neo-Nazi movement in East and West Germany.

#### **cc) A long-term paid informer of the Bavarian Office for the Protection of the Constitution (LfV Bavaria)**

The Bavarian Committee of Enquiry has stated in the dissenting opinion of the parliamentary groups of the Social Democratic Party (SPD) and THE GREENS with regard to a long-term paid informer of the Bavarian Office for the Protection of the Constitution who had close contacts to the THS in the investigation period and who stood out because of numerous activities in Thuringia:

"A long-term paid informer of the Bavarian Office for the Protection of the Constitution played a more than inglorious role. He had helped to advance the national networks of the Right scene in den 1990ies through the so-called Thule Net. With the help of this system of mailbox-networks, a sort of predecessor to the internet, right-wingers communicated electronically and in that way coordinated their actions of hate. For example, names of political opponents were published with the call to come up with action against them. The long-term paid informer had a decisive part in the upkeep and the operation of the Thule Net – with knowledge and planning of the BfV. He did not only receive money for the information that he delivered, but he also received money to acquire and build the technical parts. Even though the Bavarian Office for the Protection of the Constitution had gotten access to an abundance of information, it has not become identifiable how these information were used to combat right-wing extremism."<sup>62</sup>

The parliamentary group of DIE LINKE is of the opinion that one has to complementarily add that the question has not been answered to which extent the Thule Mailbox System has been used as a means of commu-

nication by *Bönnhardt*, *Mundlos* and *Zschäpe* as well as other presumed NSU supporters and whether and when there had been direct contacts between the long-term informer of the Bavarian Office for the Protection of the Constitution and the alleged NSU core trio.

#### **dd) Long-term paid informer "Piatto" of the Brandenburg Office for the Protection of the Constitution (LfV Brandenburg)**

In the opinion of the parliamentary group of DIE LINKE two additional aspects of the activities of the long-term paid informer "Piatto" of the Brandenburg Office for the Protection of the Constitution have to be considered specifically in the investigation period in addition to the joint evaluation of the spokespersons regarding the long-term paid informer *Piatto*: *Piatto* also stood out because of his contacts in the international neo-Nazi network "Blood & Honour" – for example to neo-Nazis from Sweden. Additionally, he had been responsible for several years for publishing the neo-Nazi fanzine "United Skins" that promoted music groups affiliated with "Blood & Honour" as well as their CDs and messages.

Therefore a long-term paid informer of the Brandenburg Office for the Protection of the Constitution has considerably contributed to building and expanding the structures of "Blood & Honour" – exactly that network from which many of the presumed supporters of the NSU core trio have been recruited and which had been banned by the then Minister for the Interior Otto Schily (SPD) because of its dangerousness. In the context of the Enquiry Committee the question has remained open to which extent *Piatto* has advanced as a classic agent provocateur the buildup of the so-called "National Revolutionary Cells" (NRZ) in Berlin-Brandenburg as a buildup of right-wing terrorist structures which were then prosecuted by the law enforcement authorities. The NRZ were planning attacks against political opponents.

The fact that the Brandenburg Ministry of the Interior has paid roughly 46,000 D-Mark as a compensation to the Nigerian teacher and asylum seeker Steve Erenhi – the victim of Brandenburg's long-term paid informer *Piatto* – following the latter's uncovering can be regarded as an acknowledgement that the intelligence services have to vouch for the behavior of their long-term paid informers or occasional informers.

The Ministry of the Interior Brandenburg incurred with this payment the settlement of the (remaining) civil damages and compensation claims. The Regional Court Frankfurt (Oder) had sentenced Carsten Sz. a. o. on October 20<sup>th</sup> 1995. For years, Carsten Sz. had not made any payments, even though his inmate's money had been seized by the court since August 21<sup>st</sup> 1996 and even though he had been receiving substantial

<sup>61</sup> See Bundestag Official Document No. 17/44000, Final Report of the 2<sup>nd</sup> PCE, p. 276. <sup>62</sup> see Final Report of the "Committee of Enquiry Right-Wing terrorism in Bavaria – NSU", p. 141, Bundestag Official Document No. 17/17740, p. 156.

payments by the state of Brandenburg in this period of time. Following a dispute about the question whether Carsten Sz. had financial rights or demands against the state of Brandenburg stemming from his task for the state's Office for the Protection of the Constitution, the Ministry of the Interior then declared its willingness to pay in October 2000 – after it had become impossible to deny the extensive payments by the state of Brandenburg to Carsten Sz.<sup>63</sup>

#### ee) VP 562 of the LKA Berlin

In addition to the joint evaluation of the spokespersons and the numerous mistakes in the way the source had been handled, in the way its information on the presumed NSU core trio had been evaluated and the fact that this information had not been passed on, the parliamentary group of DIE LINKE is of the opinion that the case of VP 562<sup>64</sup> necessarily points to the lack of an adequate internal control mechanism regarding the handling of VPs by the police forces – in addition to the fact that no parliamentary control is in place for police informers. In the opinion of DIE LINKE this has to be changed urgently.

#### ff) Protection of sources considerably hampers police investigations

In addition to the joint evaluation of the Enquiry Committee the parliamentary group of DIE LINKE is of the opinion that the non-disclosure of sources has obstructed the police investigations to a grave extent. Information of sources for example by VM 2100 that Beate Zschäpe had a love affair with Thomas Starke – which therefore would have been of huge importance to the special police unit from Thuringia in their search of Mundlos, Zschäpe and Böhnhardt when they questioned Starke in February 1999, because the information pointed to a rather close relationship to the three escapees – were not passed on to the special police unit at all. In the case of further information by sources of the LfV Thuringia it is in dispute whether the special police unit of the LKA Thuringia was informed of their existence.

#### e) Excursus: Police officers close to neo-Nazis

As another result of the hearing of evidence and the files which were presented to the 2<sup>nd</sup> Parliamentary Enquiry Committee the parliamentary group of DIE LINKE determines that wherever a large, well-organized neo-Nazi scene can be found in place which is well grounded in and connected to the social settings of countryside and small-town regions – be it through membership in auxiliary fire brigades, local history or sports clubs or fitness studios, discotheques etc. – the danger is growing that there are policemen who will inform activists of neo-Nazi comradeships whom they know about police investigations and warn them of police raids for example because they know these activists due to family ties or their social environment or because they share similar political values. In the files that were presented to the 2<sup>nd</sup> PUA examples for

the above mentioned problem were found in the state of Baden-Wuerttemberg, Brandenburg and Thuringia.<sup>65</sup> In light of the material which was presented to the Parliamentary Enquiry Committee one has to presume that this problem also exists in other federal states.

For example the LKA Saxony considered this problem in its executive measures against the "Skinheads Saxonian Switzerland" (SSS) during the turn of the millennium when the police authorities decided not to inform police officers in advance of the measures who came from the region of the SSS and not to have them participate in the execution of these measures.<sup>66</sup>

In the case of police officers from Baden-Wuerttemberg who were active in the "European White Knights of the Ku-Klux-Klan" during the turn of the millennium the parliamentary group of DIE LINKE is convinced that the fact that these activities had very little consequences for the police officers has set a dangerous signal within the police apparatus: that ultimately the membership in a racist and neo-Nazi organisation is just a barely noteworthy trifle.

The parliamentary group of DIE LINKE therefore urgently recommends a transparent and publicly documented approach by superiors with police officers who are verifiably active in extremist right organisations or who verifiably pass on information about executive measures to neo-Nazis. Until now it has often been Alliances against Right-Wing Activities or grassroots initiatives or the media which made those cases public. A transparent approach is urgently needed in order to restore confidence in the police work and to curb conspiracy theories.

#### f) Supplementary findings on the failure of the LKA Thuringia in the search for the trio in hiding

In addition to the joint conclusions of the spokespersons of the 2<sup>nd</sup> PCE in regard to the numerous mistakes by the special police unit of the LKA Thuringia<sup>67</sup>, the parliamentary group of DIE LINKE believes that the LKA Thuringia has made two more major mistakes:

#### aa) Incomplete notification of the pipe-bombs found in garage No. 5 on 26<sup>th</sup> January 1998 to the BKA's Crime Device Notification Service – obstructing the search for perpetrators of the bomb attack in Keupstraße in Cologne

According to the list of court exhibits of the LKA Thuringia, the police officers who raided the Garage No. 5 in Jena on January 26<sup>th</sup>, 1998 determined that one of the three pipe-bombs was not only filled with TNT explosives but also with hexagon nuts and other pieces

<sup>63</sup> See "Der Führer der Meute"/"The leader of the pack" in: Der Spiegel 28/2000 dated July 10<sup>th</sup>, 2000, <http://www.spiegel.de/spiegel/print/d-16860762.html>. <sup>64</sup> See Bundestag Official Document 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 299. <sup>65</sup> See Bundestag Official Document No. 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 436, *ibid.*, p. 659. <sup>66</sup> See "Die SSS: Image ist alles" vom 11. April 2008: <http://www.netz-gegen-nazis.de/artikel/die-sss-image-ist-alles>. <sup>67</sup> See Bundestag Official Document No. 17/4400, Final Report of the 2<sup>nd</sup> PCE, Chapter C, Das Scheitern der Suche nach Böhnhardt, Mundlos und Zschäpe//The failure of the search für Böhnhardt, Mundlos and Zschäpe.

of metal.<sup>68</sup> The LKA analysts noted explicitly that the explosive effect of the pipe-bomb was meant to be enhanced with the help of the pieces of metal.

However, the fact that one of the pipe-bombs had been filled with hexagon nuts was not passed on in the LKA's notification of the discovery to the BKA's Crime Device Notification System for reasons that the Enquiry Committee was not able to determine. That meant that a key characteristic of the pipe-bombs was lacking the Crime Device Notification System – and therefore was not available at all when other LKA or the BKA were filing requests for information to the Crime Device Notification System following explosive attacks such as the bomb attack in the Keupstraße. The LKA Thuringia has left an important investigation option for the perpetrators of the devastating bomb attack in the Keupstraße unused because of the omission to pass on the information to the Crime Device Notification System.

#### **bb) Initial leads that Böhnhardt, Mundlos and Zschäpe might be in Zwickau ignored**

On May 27<sup>th</sup>, 1999 *Jürgen H.* was questioned by police officers from the special investigation unit of the LKA Thuringia at his army post, the army barracks of Mellrichstadt, regarding the whereabouts of the trio.<sup>69</sup> *H.* not only admitted to have helped the trio in the early phase of their escape and gave the assessment that the three were moving on the level of "right-wing terrorism" and were reckoning with a degree of penalty of at least ten years imprisonment. He also said that in one of his courier rides he followed the instructions by *Ralf W.* and passed on the demanded things in Zwickau to a neo-Nazi. In the files of the special investigation unit of the LKA Thuringia that were presented to the Enquiry Committee one cannot find anywhere a "lead Zwickau" or at least a hint that because of this witness statement neo-Nazis in Zwickau had been considered as possible supporters or that according measures had been brought on the way. This did not change either when the LKA Saxony handed a very precise assessment of potential supporters of the NSU core trio from the region of Chemnitz and Zwickau to the special investigation unit of the LKA Thuringia.<sup>70</sup>

A key opportunity was missed here for further investigation options in the unsuccessful search for the trio in Chemnitz.

#### **g) Critique-worthy behavior of Ministers of the Interior of the federal states and the Federal Ministry of the Interior in respect of records delivered from Thuringia in autumn 2012**

The parliamentary group of DIE LINKE is explicitly criticizing the behavior of the Ministers of the Interior of the federal states and the Federal Ministry of the Interior who initially had attempted to stop the delivery of about 800 records on the phenomena of right-wing extremism from the Ministry of the Interior of the state of Thuringia to the Parliamentary Enquiry Committee at the end of September 2012. According to media

reports the federal states' Ministers of the Interior had initially even considered to prevent the delivery of the records by stopping the delivery vans on the highway. These records that the Thuringian Minister of the Interior had sent to the Parliamentary Enquiry Committee in fulfillment of the evidence decisions by the 2<sup>nd</sup> PCE did in the end reach the Parliamentary Committee of Enquiry. The plans of the states' Ministers of the Interior however have raised the impression that the Ministers of the Interior of the federal states and their subordinate authorities had had a special interest, to prevent the delivery of these files and to block the work of the Parliamentary Committee of Enquiry.

#### **V. LEGAL APPRAISAL**

In the view of the DIE LINKE parliamentary group, the taking of evidence has shown unambiguously: with reference to the

"mistakes and omissions by federal authorities also in their interactions with the authorities of the federal states, which have fostered the formation and actions of the terrorist group [...] or have made it more difficult to elucidate and prosecute the crimes committed by the terrorist group and their network of supporters"<sup>71</sup>,

it is frequently not simply a question of individual misconduct, organisational shortcomings and structural omissions. Frequently, as shall be demonstrated below, statutory provisions were also violated.

The DIE LINKE parliamentary group is convinced that statutory violations of this kind did not occur only on the working level of the security agencies at the national and federal state level. Grave legal violations can also be identified on the level of political responsibility. Clear identification of these legal violations is a prerequisite to ensuring that the profound structural reforms required to avoid this kind of statutory violation are pursued with the requisite political resolve. The remit for the Committee of Enquiry stated that the Committee would be scrutinising, inter alia, the conclusions that must be drawn, in the light of right-wing extremism, for the structure and organisation of the Federation's security agencies and investigative authorities, for cooperation between security agencies and investigative authorities at the national and federal state level and for the collection and exchange of information by the security and investigative authorities of the Federation and the federal states<sup>72</sup>; in the light of this, the parliamentary group DIE LINKE therefore is of the opinion that it has a responsibility, over and above the joint appraisals by all parliamentary groups, to clearly indicate the points where the taking of evidence provided clear indications or evidence of legal violations. This is the only way to establish a basis for drawing conclusions relating to re-structuring of organisation, cooperation and

<sup>68</sup> MAT\_A\_TH\_1-24, p. 29. <sup>69</sup> See Bundestag Official Document No. 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 343. <sup>70</sup> See Bundestag Official Document No. 17/4400, Final Report of the 2<sup>nd</sup> PCE, p. 350. <sup>71</sup> Mandate of Committee of Enquiry, Bundestag Official Document (BT-Drs.) 17/8453, Point B. II. 1., p. 2. <sup>72</sup> Ibid., p. 3.

legal and technical oversight of the Federation's security agencies and on their cooperation with the security authorities at the federal state level, and thus to devise proposals on these points accordingly (more information on this in Section VI.).

### **1. Legal violations on various levels in the NSU context prior to 4.11.2011**

There are indications and evidence of individual errors, omissions and structural shortcomings, in particular organisational failings and flaws in oversight, which occurred during the period covered by the enquiry and which constitute violation of legal provisions; these can be found at working level, in the organisation of the security agencies' work by the senior managerial level of those agencies and in oversight of the agencies by the superordinate authorities and those holding political responsibility.

#### **a) Intelligence agencies violations of statutory obligations to transmit information**

The parliamentary group DIE LINKE is convinced that the evidence heard has shown that the failure of the domestic security agencies at national and federal state level to communicate information to the Office of the Public Prosecutor and to the police forces at the national and federal state level repeatedly breached the relevant statutory provisions on communication of information as stipulated in the Federal Bill on Protection of the Constitution of the Federation and the corresponding legislation of the federal states. § 19, Sub-section 1 of the Bill on Cooperation between the Federation and the Federal States in Matters Pertaining to Protection of the Constitution and on the Federal Office for Protection of the Constitution (*Bundesverfassungsschutzgesetz – BVerfSchG*):

“The Federal Office for Protection of the Constitution may communicate personally identifiable information to domestic public bodies if this is necessary to fulfil its mission or if the recipient requires the data in order to protect the free democratic order of the state or for other purposes pertaining to public security interests.”

As failure to report planned criminal acts constitutes a crime, this gives rise to an obligation to transmit to the investigating authorities any information that would give rise to reasonable suspicion of failure to report planned criminal acts if it were not transmitted. The discretionary scope afforded to the security agencies (“may”) is reduced “to zero” in such cases i. e. not passing on information of this nature incontrovertibly violates this provision. Nonetheless on several occasions such information was not passed on, although it would have been imperative to do so. This led to a threat to life and limb, for the individuals subsequently murdered and also for staff and clients in the banks and supermarkets allegedly attacked by NSU members and for the police officers who attempted to find and detain the fugitives within the context of a targeted search.<sup>73</sup>

According to the statements from the investigating police officers, they did not receive the key information obtained from a source – namely from the long-term paid informer “Piatto”, run by the Office for the Protection of the Constitution (LfV) in the federal state of Brandenburg – that referred to obtaining weapons, carrying out “another attack” and then escaping abroad. The statements made in this respect by the responsible persons in the Thuringian Office for the Protection of the Constitution and the Thuringian Criminal Police Office (TLfV and TLKA) are contradictory. Whereas witnesses *Nocken* and *Schrader* from TLfV assert that they informed *Luthardt*, then President of the TLKA, orally, the latter denies having conducted such a conversation with members of the TLfV. As there is no written record of transmission of this key information, establishing the veracity of these statements unequivocally is not possible. This example does however illustrate the consequences of adopting protection of sources as an absolute principle and highlights the need for information to be forwarded in written form.<sup>74</sup>

#### **b) Deployment of long-term paid informers structurally anti-constitutional**

In the view of the DIE LINKE parliamentary group, there are structural reasons for the failure of Offices for Protection of the Constitution at national and federal state level to forward information obtained from long-term paid informers and *Gewährspersonen*, an omission which constitutes and illegal act; these reasons stem from the instrument of secret procurement of information: deploying long-term paid informers (and sporadic informers known as *Gewährspersonen*) is unavoidably linked to providing assurances of confidentiality, and in the form of so-called “protection of sources” of necessity stands in the way of effectively preventing and solving crimes. Deploying long-term paid informers and sporadic informers is thus intrinsically not compatible with the elementary constitutional principle of the proportionality of the administration's actions: in order to justify the failure to transmit indications of imminent crimes, witnesses from the domestic security agencies, who were questioned during the hearing of evidence, repeatedly referred to the notion of “protection of sources”. The legal basis cited was § 15, Sub-section. 2, No. 1, Act on the Federal Office for Protection of the Constitution (BVerfSchG), which is actually intended to govern only the provision of information to those directly affected. Pursuant to this provision, there is to be no

“provision of information to the extent that [...] 2. Sources could be endangered through the provision of information”. Protecting a source who would have committed a criminal act by not transmitting the information in question, pursuant to § 138, Criminal Code (StGB) due to non-re-

<sup>73</sup> C.f. Wunderlich, Record of Proceedings No. 51, p. 21 ff. <sup>74</sup> C.f. Luthardt, Record of Proceedings No. 51, p. 109, and Nocken, Record of Proceedings No. 53, p. 3f., Schrader *ibid.*, pp. 124 ff.

porting of planned criminal acts, does not however provide justification for a domestic security agency that is running this source as a long-term paid informer or a sporadic informer to fail to circulate the information in question in the interest of protecting the source. On the contrary: the employees from the domestic security agency running the source in question incur criminal liability if this information is not transmitted immediately to the investigating authorities – for example, when information from the Brandenburg long-term paid informer, Piatto, indicating that the three NSU members on the run were obtaining weapons to commit a further attack, was not forwarded. It is solely because of the statute of limitations that criminal law prosecution of these violations was not possible in the case of the NSU.

The results of the hearing of evidence in the Committee of Enquiry also demonstrates that deploying long-term paid informers and sporadic informers of necessity entails a perpetual abstract risk of these paid long-term paid informers and sporadic informers becoming chummy with employees of the domestic security agencies. In order to protect themselves from investigations pertaining to non-reporting of planned crimes and/or to criminal complicity in criminal acts committed by informers, “handlers” of long-term paid informers always have an incentive to warn the human sources they run about investigative measures.<sup>75</sup>

In this vein, the Federal Criminal Police Office (BKA) complained in a 1997 position paper about the massive obstruction of executive measures against the neo-Nazi scene by the domestic security agencies through their dealings with long-term informers. The paper asserted that long-term paid informers were inciting the right-wing scene to engage in certain activities, and that long-term paid informers were repeatedly informed about planned executive measures such as house searches, which subsequently came to naught. The position paper also found that the scene’s activities were promoted by financial support made available to the long-term paid informers by the domestic intelligence agencies.<sup>76</sup>

The Committee of Enquiry has found numerous examples of impunity for long-term paid informers even when such informers are accused of serious crimes. This applies inter alia to investigative proceedings initiated in 1995 by the Gera State Prosecutor pursuant to § 129 StGB against more than a dozen activists of “Thüringer Heimatschutz”, and which were directed inter alia against the long-term paid informer *Tino Brandt* and against another long-term paid informer run by the domestic security agency of another federal state. After two years of extensive investigations, the proceedings were suspended “due to insufficient grounds for suspicion”, pursuant to § 170, Sub-section 2, Code of Criminal Procedure (StPO), although numerous other relevant investigative proceedings concerning the accused were underway during the period of the investigations. Investigative proceedings pursuant to § 129a StGB, conducted by the Fed-

eral Attorney General against the alleged operator of the neo-Nazi Thule mailbox system, were ultimately stayed, pursuant to § 170 Sub-section, StPO.

However, if sources from the scene under surveillance cannot be “run” without a permanent, at least abstract, danger of the case officers for these informers committing criminal acts by failing to convey information that is relevant to criminal investigations or by warning the sources they “run” about law enforcement measures, this should not lead to the conclusion that, for example, legislation should be amended to ensure sources and their case officers enjoy impunity from criminal prosecution. Proposals to that effect from the Head of the Expert Review Group (*Fachprüfgruppe*) of the Federal Office for the Protection of the Constitution, *Gabaldo*, testify to a highly questionable understanding of the rule of law, which incidentally appears to be representative of views in the Federal Office for the Protection of the Constitution. Instead, the only logical conclusion that can be drawn from the dilemma that inevitably occurs when long-term paid informers and sporadic informers are deployed is that there must be a complete and irrevocable end to use of this instrument for secret information-gathering. We contend that the Basic Law provides no scope whatsoever for a state authority carrying out its mission in accordance with the constitution to deploy long-term paid informers and sporadic informers. Accordingly, the parliamentary group DIE LINKE calls for an immediate and complete suspension of contacts with all long-term paid informers and sporadic informers of the domestic security agencies and of the state security departments of the police forces in the Federation and the federal states, and for a statutory prohibition on deployment of such informers.

**c) Lack of due care in handling, instruction and oversight of long-term paid informers, the reliability of information provided by them and their behaviour vis-à-vis the domestic security agencies**

In the view of the parliamentary group DIE LINKE, in structural terms this instrument for the secret information-gathering per se gives rise not only to the permanent, at least abstract danger that information provided by long-term paid informers and sporadic informers to domestic security agencies may not be passed on to the investigative authorities. Furthermore, information acquired by long-term paid informers and sporadic informers in the course of their remit that is not passed on to the domestic security agency for which they are acting, and the way in which informers behave as they fulfil their remit can be assumed in legal terms to constitute as information available to or behaviour on behalf of state bodies of the Federal Republic of Germany.<sup>77</sup>

<sup>75</sup> Gabaldo, Record of Proceedings No. 68. <sup>76</sup> C.f. Bundestag Official Document (BT-Drs). 17/4400, Final Report of 2<sup>nd</sup> PCE, p. 220. <sup>77</sup> Also Gusy, Rechtsstellung und Betätigung von V-Leuten der Nachrichtendienste, in: Recht im Amt – Zeitschrift für den öffentlichen Dienst 1982, p. 101, 102 with further references.

Both nationally and in the federal states, the domestic security agencies must consider all actions of their long-term paid informers and sporadic informers in the course of fulfilling their official remit as constituting the behaviour of those agencies, and all of the information thus obtained as being their own (i. e. that of the intelligence agencies). This does not apply only to actions of long-term paid informers within the bounds of the law and to the information thus acquired. According to the principle of liability for violation of official duties, which has constitutional status and is laid out in Art. 34 of the Basic Law, this principle also applies when “any person in the exercise of a public office entrusted to him violates his official duty to a third party”. In this case too, pursuant to Art. 34, Sentence 1, Basic Law “liability shall rest principally with the state or public body that employs him”.

If

“the state has an activity that is conferred upon it carried out by [...] persons [...] who are not officials or employees of the state, these persons do not carry out state activities at their own initiative but are called upon by the state itself to do so. [...] Correspondingly, the third parties do not carry out these activities as their own activities but always as activities derived from the state, conducted on behalf of the state. They consequently do not act as private individuals but on behalf of and in the name of the state. This is irrespective of whether the activity in question is carried out openly or covertly. [...] These principles apply irrespective of whom the state confers the task to be performed upon. [...] If [...] fulfilment of a task is delegated to an unsuitable private individual, the state is obliged to take responsibility for this. The state cannot limit either the extent to which it is bound by the law or its liability by drawing on unsuitable individuals. [...] It is precisely in cases in which the state transfers conduct of certain activities to inappropriate or unreliable persons that it is responsible for the possibility of legal violations that is thus created. This applies to an even greater extent in as much as the state at the same time has a right and a duty to ensure sufficient training, management, instruction and monitoring of such persons. Consequently, surveillance for the purpose of protection of the constitution is always a state activity, irrespective of the form of legal relationship that exists between the natural persons who conduct such activity and the state.”<sup>78</sup>

Long-term paid informers and sporadic informers of the security services are admittedly not “commissioned”<sup>79</sup>, and therefore do not carry out the tasks incumbent on the administration in their own name.<sup>80</sup> Their working relationship with the security services is governed by private law. The fact that this relationship is based on labour law provisions is however not significant for the question of the activities that security services, in particular the domestic security agencies, must consider as being imputable to these agencies when they deploy long-term paid informers and sporadic informers as a means of secret information-gathering secretly. The sole decisive element is thus that the domestic intelligence agencies’ deployment of

such informers occurred on the basis of a *Bestellung* to cooperation and a pledge of confidentiality pursuant to the Federal Bill on Engaging Individuals Other than Public Officials (*Verpflichtungsgesetz*)<sup>81</sup>, in other words by public order, to carry out a state task. The statutory activity governed by § 2 BVerfSchG, which long-term paid informers contribute to carrying out by means of the information generated by them, is indubitably a state task.<sup>82</sup>

Deployment of long-term and short-term informers is cited in § 8, Sub-section 2, BVerfSchG in conjunction with other objects, methods and instruments of secret acquisition of knowledge that constitute sovereign powers. However, if the other intelligence instruments and methods cited in § 8, Sub-section, BVerfSchG such as surveillance, video and audio recordings, false ID papers and false vehicle number plates are unambiguously sovereign powers to carry out the tasks incumbent on the state, deployment of long-term paid informers and sporadic informers would have to be significantly different from such instruments and measures if it were to be excluded from classification as a sovereign measure in the framework of and for the purpose of fulfilment of public tasks. As the function and *modus operandi* of deployment of long-term paid informers and sporadic informers combines the features of a surveillance operation with those of phone-tapping measures, this would tend to argue against such deployment constituting a substantially different type of measure.

Deployment of long-term paid informers and sporadic informers can therefore be seen as a kind of surveillance/phone-tapping measure in human form. As such a measure impinges on the fundamental rights of the citizens affected to just as great an extent as the other intelligence gathering instruments and methods cited in § 8 Sub-section 2, BVerfSchG<sup>83</sup>, the domestic security agencies must accept responsibility for the long-term paid informers with whom they have concluded cooperation and confidentiality agreement in terms of the knowledge obtained by these informers and the way in which such informers behave in the course of secret information-gathering; the security agencies must unreservedly accept not just the information thus attained but also the violations of legal rights associated with phone-tapping measures and surveillance operations.

In the instances identified by the committee in which unsuitable, inappropriate or unreliable persons were recruited as long-term paid informers, the domestic security agencies have violated their obligation to work

<sup>78</sup> Gusy, loc. cit., p. 102. <sup>79</sup> BVerwG 6 A 5/09 v. 26.05.2010, DVBl 2010, 1037 f. <sup>80</sup> Gusy, loc. cit., p. 101, 102. <sup>81</sup> C.f. Wissenschaftliche Dienste des Deutschen Bundestages, Ausarbeitung “zum Einsatz von V-Leuten beim Verfassungsschutz und der Polizei”, Reg.-Nr. WF III-174/93, p. 14: “In contrast to practice in the police, confidentiality and cooperation of long-term informers for the domestic intelligence services was apparently regularly ensured via the provisions of the Bill on Engaging Individuals Other than Public Officials (*Verpflichtungsgesetz*).” <sup>82</sup> Gusy, loc. cit., p. 101, 102 with further references. <sup>83</sup> C.f. Schlink, Das nachrichtendienstliche Mittel, NJW 1980, 552 ff.

solely with appropriate persons; in addition, in cases of illegal actions by long-term paid informers, the domestic security agencies have also violated their obligation to ensure careful management, instruction and oversight of such persons.<sup>84</sup>

**d) Infringement of mutual obligations to notify and transfer information pursuant to BVerfSchG and MAD-G**

The parliamentary group DIE LINKE considers that in a large number of cases, particularly in the Federal State Office for Protection of the Constitution of the Free State of Thuringia, there has been a failure to comply with obligations to inform and provide information as stipulated in the “Bill on Cooperation of the Federation and the Federal States in matters pertaining to Protection of the Constitution and on the Federal Office for Protection of the Constitution” (BVerfSchG). This also applies to the Brandenburg Office for Protection of the Constitution in connection with the information obtained from the long-term paid informer “Piatto”. § 1, Sub-section 2, tBVerfSchG establishes a general obligation for the domestic security authorities of the Federation and of the federal states “to cooperate in matters pertaining to protection of the constitution. The cooperation also comprises [pursuant to § 1 Sub-Section 3] mutual support and assistance”. This duty to provide mutual support and assistance gives rise to concrete obligations for domestic security agencies at both national and federal state level to notify and transfer information in accordance with § 5 BVerfSchG. All the authorities at the federal state level involved in protection of the constitution are obliged, pursuant to § 5 BVerfSchG, to make the data, information, messages and documents collected by them in the course of fulfilling their mandate available to the Federal Office for Protection of the Constitution and to the authorities responsible for protection of the constitution at the federal state level in as much as this is necessary to enable them to fulfil their mandate (Sub-section 1). A coordination guideline provides concrete details of the obligations within the administration.<sup>85</sup>

In the case of the Military Counterintelligence Service (MAD), similar provisions in the MAD Bill (MAD-G) detail the obligation to cooperate with the agencies responsible for protection of the constitution. Similarly, § 3, Sub-section 1, Sentence 2, MAD-G stipulates that “cooperation (...) also (entails) mutual support and assistance”. § 11 MAD-G refers to the rules and obligations stipulated in the Federal Act on Protection of the Constitution (BVerfSchG) on transfer of information to the Directors of Public Prosecutions and to the police, which also apply to the Military Counterintelligence Service (MAD). Within the framework of Operation Rennsteig, MAD also received notifications from sources relating to serious crimes, for example dangerous bodily harm inflicted on the homeless, punks and migrants. However, the MAD does not in any case

inform the competent law enforcement authorities. When questioned on this in the Committee of Enquiry, witness Huth from the MAD asserted that transfer of information to the LfV Thuringia and the BfV had been agreed in the framework of the Operation Rennsteig, but that the MAD only contacted the police and the Director of Public Prosecutions in extremely rare cases.<sup>86</sup>

**e) Neglect of oversight duties of the Federation pursuant to Art. 84, Sub-section 3 and Sub-section 4, Basic Law in implementation of the Federal Act on Protection of the Constitution**

In the light of the obvious structural shortcomings concerning notification and information-sharing obligations within the alliance of Federation and federal state bodies involved in protection of the constitution, the parliamentary group DIE LINKE emphasises that it should furthermore be noted that the Federal Government has neglected its obligation, which is laid out in Art. 84, Sub-section 3, Sentence 1, Basic Law to “exercise oversight to ensure that the federal states execute federal laws in accordance with the law”. The Federal Government did not avail itself of the possibilities accorded to it in the Basic Law in Article 84, Sub-section 3, Sentence 2, Basic Law

(“For this purpose the Federal Government may send commissioners to the highest federal state authorities and with their consent or, where such consent is refused, with the consent of the Bundesrat, also to subordinate authorities”) and in Sub-sections 4 und 5<sup>87</sup>, in order to ensure that the authorities in the federal states involved in protection of the constitution work in accordance with the law. This occurred despite the fact that politicians at the national and federal state level must have been aware at the time of the glaring shortcomings in at least one particular Federal State Office for Protection of the Constitution. The Conference of Ministers of the Interior (IMK) was also certainly aware, as evidenced by the statement from *Dr. Günter Beckstein*, former Bavarian Minister of the Interior: in response to a question on how cooperation with the Thuringian Office for Protection of the Constitution had been viewed during his time as Bavarian Minister of the Interior, the witness *Dr. Günther Beckstein* replied:

“with great reticence [...], that [they] had not viewed Thuringia as market leader in terms of the quality of its administrative work”. “However, was extremely restrained about this, if any criticism was voiced it was only in informal conversations, however; as a rule – Normally however actual

<sup>84</sup> Gusy, loc. cit., p. 101, 102 with further references. <sup>85</sup> Guideline on Cooperation between the Federal Office for Protection of the Constitution and the federal state authorities for protection of the constitution pursuant to the decision of the Conference of Ministers of the Interior of 26<sup>th</sup> November 1993 (Coordination Directive KR). Last amended by a decision adopted by the Conference of Ministers of the Interior using the written procedure on 06.12.2011. <sup>86</sup> Huth, Record of Proceedings 39, p. 33f.

<sup>87</sup> These two sub-sections heighten scope for the Federal Government to identify infringements of the law in a federal state (Sub-section 4) and if necessary even to direct individual instructions to the supreme authorities in a federal state on the basis of Federal legislation and in urgent cases to issue such instructions directly. <sup>88</sup> Dr. Beckstein, Record of Proceedings 17, p. 138.



objective cooperation should not suffer as a result.”<sup>88</sup>

## **2. Illegal treatment of documents on right-wing extremism by national and federal state authorities after 4.11.2011**

In the view of the parliamentary group DIE LINKE, the way in which certain security agencies at the level of the Federation and the federal states dealt with files pertaining to right-wing extremism after 4.11.2011 is illegal and/or anti-constitutional. This applies specifically to the Federal Office for Protection of the Constitution (BfV), the Military Counterintelligence Service (MAD) and to Berlin’s federal state authorities.

### **a) Illegal destruction of documents after 4.11.2011 in the BfV and shortcomings in the exercise of oversight by the Federal Ministry of the Interior (BMI) in this respect**

The parliamentary group DIE LINKE is convinced that the manner in which the Federal Office for Protection of the Constitution (BfV) dealt with documents containing personal data was not only “unsound”<sup>89</sup> and “lamentable”<sup>90</sup>, but was also illegal.

#### **aa) No certainty that documents destroyed after 4.11.2011 at the BfV were not linked to the NSU, and motivation for destruction of these documents**

It should first be emphasised that the BMI’s initial portrayal of the situation, stating that it had been possible to reconstruct the contents of the destroyed information-gathering files for “Operation Rennsteig” and further files on right-wing extremism to a sufficient degree to ensure that a connection with the NSU affair could, to a very high degree, be excluded, is not actually accurate. The BMI Special Representative, Assistant Director *Engelke*, had to admit himself that it was only possible to reconstruct part of the files on persons and material relating to information-gathering for “Operation Rennsteig” and further cases – and that in certain cases this was also only a partial reconstruction. In the light of this, it is not possible to determine with absolute certainty whether those BfV files that can no longer be reconstructed and that were destroyed after 4.11.2011 may have contained references to the NSU. This assertion is also based on the finding that certain of the files destroyed related to long-term paid informers; these were predominantly members of “Thüringer Heimatschutz”, who in some cases had participated in militant actions and, at least in the person of the long-term paid informer *Tarif*, had good contacts to the neo-Nazi scene across Germany.

The parliamentary group DIE LINKE also expressly refutes the depiction of the situation put forward by the BfV<sup>91</sup>, which claimed that the orders to destroy the files reveal that no information linked to the NSU was affected. BMI Special Representative, Assistant Director *Engelke*, has conceded that several of the files on G 10 measures destroyed after 4.11.2011 related to G 10 measures concerning individuals from NSU cir-

cles. This was indubitably the case for measures AO 774 and AO 775. In response to public speculation that the files on G 10 measures might have been purposely destroyed as part of a subsequent cover-up of concrete indications pointing to the NSU overlooked at the time, the BMI presented the counter-argument that the substantiations given for the requests to conduct further such measures refute such speculation. This line of argument is not convincing: the material presented as evidence and appended as an annex to the substantiation of requests to conduct G 10 measures might have contained information relevant to the investigations conducted by the security agencies after 4.11.2011, even if its relevance had however not been recognised at the time. In that case, comments on the relevance of this information would naturally not have appeared in substantiations of requests for authorisation of G 10 measures. A fact cited in the substantiation of an application may be indicated as such, because the applicant held that it served to demonstrate that the requirements for authorisation of a G 10 measure were met, but could also have taken on significance for the NSU affair in the light of what is now known. Against the backdrop of such considerations, it is not acceptable to simply extrapolate from the content of extant substantiations of applications for G 10 measures and this cannot serve to justify assumptions about the content of evidentiary material that was still being destroyed even after the NSU’ action came to light; it is also impossible to determine the motives of those involved in destruction of such material.

#### **bb) Files on applications for G 10 measures**

In 26 cases in which the files in question contained personal data gathered in the context of right-wing extremism, the files on BfV applications for authorisation of G 10 measures should have been destroyed long before 4.11.2011, as the prerequisites for continuing to retain such data no longer existed; a BMI collective ordinance to this effect had already been issued years earlier. On the contrary however, such destruction of documents should definitely not have occurred after the NSU affair came to light due to the entirely altered material and legal situation. After the NSU affair came to light, the existing requirement incumbent upon the BfV as the body storing the files (namely the requirement to destroy the remaining files on G 10 measures where these were no longer necessary for the purposes of the service) should have been countermanded for all G 10 files on events and individuals with a potential link to the NSU: rather than continuing to be legally required and de facto overdue, destruction of these files on G 10 measures became illegal at this point pursuant to § 4, Bill on G 10 Measures (whereby further retention of data collected pursuant to the

<sup>89</sup> Engelke, Protokoll-Nr. 34, S. 101. <sup>90</sup> Ebd., S. 101. <sup>91</sup> BfV report of 16<sup>th</sup> July 2012, MAT B BfV-4 (Tgb.-Nr. 44/12 – GEHEIM), here communication p. 1 (open access).

G 10 Bill must be guaranteed if this data is required for transmission to other bodies), for at this point in time it became clear that the Federal Attorney General (GBA) and the BKA have a justified interest in transmission of such data. The superiors of BfV employees tasked with destruction of files were obliged to draw their staff's attention to this situation, and to provide corresponding instruction and leadership. The parliamentary group DIE LINKE views the failure to do this as being more widely significant than a failure to fulfil official duties on the part of the superiors of staff tasked with destruction of the files; it is above all an organisational failure for which the BfV is to blame: as soon as the NSU affair came to light, senior officials at the BfV should have consistently ensured that files scheduled for destruction relating to right-wing extremism were in each case reviewed prior to destruction to determine whether their contents might be relevant to the investigations into the NSU. The approach adopted by the BKA demonstrates that this would have been feasible. The BKA apparently introduced precisely such a moratorium on destruction of files in February 2012.

The circumstances and the time frame of destruction by the BfV after 4.11.2011 of files relating to applications to the BMI for authorisation of G 10 measures, together with the statements made by witness *Engelke* on how the provisions of the G 10 Bill on destruction of documents were handled, also demonstrate that for years the BMI had neglected its responsibility to exercise oversight of the BfV's retention and destruction of documents. Documents were destroyed on the basis of BMI decrees which in some cases pre-dated the destruction date by years. Pursuant to the BMI decrees based on the G 10 Bill, the documents should have been destroyed long before 4.11.2011. The witness *Engelke* stated that the long time period that apparently regularly elapsed between BMI instructions on destroying documents and BfV enforcement of such instructions arose because the BfV would have needed to wait for confirmation that other agencies involved in protection of the constitution had destroyed any findings from the G 10 measures in question that had been made available to them; this explanation is however not convincing. Even in cases in which such confirmation had long been available, the documents had frequently not been destroyed as they should have been. Several years that often elapsed after instructions were issued before documents relating to G 10 measures were destroyed, which testifies to a structural deficit in enforcement of BMI instructions to the subordinate agency, namely the BfV. In turn, the BMI omitted for years to ensure that its instructions were enforced consistently.

### cc) Information-gathering files on "Operation Rennsteig" and other matters

The parliamentary group DIE LINKE considers that the destruction of BfV information-gathering files on Operation Rennsteig after 4.11.2011 was not only lamentable but also illegal. The Federal Commissioner for

Data Protection and Freedom of Information (Bdfl) *Schaar* has long criticised the lack of a clear and sufficiently definite statutory legal basis for the destruction of documents: while § 12, BVerfSchG governs only the arrangements for dealing with "data in files", § 13, BVerfSchG, intended by the legislator to provide definitive provisions on dealing with personally identifiable information in documents, explicitly does not contain any provisions on the prerequisites and the procedure for destroying documents containing personally identifiable information. If the BfV determines in a particular case that documents contain personally identifiable information that are no longer required for the BfV to fulfil its official mandate in future, pursuant to § 13, Sub-section 2, Sentence 1 BVerfSchG these documents are not to be destroyed but instead placed under an access restriction order as interests warranting protection of the persons in question would be affected without such restriction of access. While § 13, BVerfSchG solely envisages access restriction orders as an instrument of data protection, this provision cannot however, according to the Federal Commissioner for Data Protection, serve as a statutory legal basis such as is required to establish the lawfulness of destroying the contents of a document containing personally identifiable information. Analogous utilisation of this provision for destruction of documents fails due to the fact that an access restriction order on a file is less serious than its destruction. Whereas an access restriction order affords the possibility of subsequently authorising access (c.f. § 12 Sub-section 2 Sentence 3 BVerfSchG), destruction of a document is inherently definitive.<sup>92</sup> In as much as the BMI and BfV consider the existing legal basis to be sufficient, also in the light of supplementary internal regulations (DV), it should be noted to counter this position that the document destructions identified as problematic by the Committee also impinge on procedurally relevant fundamental rights of those damaged by these acts and of their family members. As fundamental rights are affected, clear, well-defined statutory regulation of this matter is an indispensable pre-requisite for the lawfulness of document destructions – internal regulations with subordinate legal status to legislation cannot compensate for the lack of such statutory regulation.

With reference to the manner in which documents were dealt with in general in the BfV and to the destruc-

<sup>92</sup> Furthermore the destructions of documents relating to Operation Rennsteig carried out at the BfV after 4.11.2011 would have been illegal even if § 12 Sub-section 2 Sentence 1 BVerfSchG could be applied by analogy to the destruction of personally identifiable information in documents, as the prerequisites for that provision were not satisfied in this case; as BfV senior management had issued instructions immediately after 4.11.2011 stating that all the available information on the NSU should be collated, documents where it cannot from the outset be excluded that their content might have a substantive/objective connection to the investigations into the NSU and its deeds, there is an objective basis for stating that such documents are once again required by the BfV to fulfill its mandate. After this point in time, whenever staff engaged in document storage and management had or should have had doubts as to whether documents on right-wing extremism should be destroyed, until further notice these documents should not have been destroyed, pursuant inter alia to § 12 Sub-section 2 Satz 1 BVerfSchG in conjunction with instructions from BfV senior management.

tion of documents after 4.11.2011, criticism should be directed in particular to the BMI for grave omissions in exercising of its oversight responsibility in respect of the BfV. Given the lack of unambiguous statutory regulation of the pre-requisites and proceedings whereby destruction documents with personally identifiable information was authorised and essential, the BMI should, long before 4.11.2011, have adopted appropriate precautions and measures in keeping with its position as oversight authority, in order to mitigate the constant threat of misunderstandings and errors relating to document storage, management and destruction. The BMI did not take such steps although the controversial debate with the Federal Commissioner for Data Protection and Freedom of Information *Schaar* meant there had long been an awareness in the BMI that there must have been uncertainty among BfV staff as to when and under which conditions they were authorised to destroy documents, as a result of the lack of a clear and unambiguous legal basis for the destruction of documents.

In November 2011, the BMI initially merely issued instructions that all documentation relevant to the NSU affair should be collated. The BMI did not issue its own distinct moratorium on destruction of all documents relating to dossiers and individuals in the sphere of right-wing extremism until 18<sup>th</sup> July 2012 – and therefore only after the subordinate body, BfV, had of its own accord already ordered on 4<sup>th</sup> July 2012 that destruction of such documents be suspended. This testifies to a further shortcoming in the BMI's oversight of the BfV, evidenced by the BMI oversight measure being adopted only months after the circumstances necessitating such a moratorium arose, and furthermore after instructions to this end had already been adopted by the subordinate administration.

Finally, the BMI also failed to respect constitutional obligations of the Federal Government vis-à-vis the Committee of Enquiry as laid out in Art. 44, Basic Law in conjunction with § 18 PUAG, as a result of its belated instructions to cease destruction of the documents in question and its delays in providing information about the BfV's destruction of documents on right-wing extremism after 4.11.2011: at the very latest when the Committee of Enquiry was set up in late January 2012, the BMI should have used all means at its disposal to ensure that material within its sphere of responsibility which could potentially be relevant to the Committee of Enquiry should not be excluded from the scope of evidence taken by the Committee as a result of deletion or destruction of such material. In addition, the BMI ought to have informed the Committee of Enquiry immediately about the loss of documents relevant to the committee's mandate. However, the BMI did not inform the committee until 16. 7.2012 about the destruction of the files containing applications for authorisation of G 10 measures. By that point in time months had passed since the comprehensive destruction of documents with potential links to the committee's mandate of enquiry. Against this backdrop, it is not possible to

talk about unfettered elucidation of events and support for the Committee of Enquiry from the Federal Government, as pledged by Federal Chancellor *Dr. Merkel*.

#### **b) Destruction of documents in the Military Counterintelligence Service (MAD)**

For too long, a lack of factual knowledge about the circles in which the NSU core trio and their associates moved determined how the Military Counterintelligence Service (MAD) dealt with data and documents from the area of right-wing extremism was characterised. The Federal Ministry of Defence (BMVg) long failed to make the MAD aware that once the Committee of Enquiry had been established pursuant to Art. 44 Basic Law in conjunction with § 18 PUAG an increased duty of care applied to storage and destruction of documents on right-wing extremism: at the latest after the Committee of Enquiry was established at the end of January 2012, MAD and BMVg were obliged to stay informed as to whether and to what extent the course of investigations on NSU might make it necessary to extend the spectrum of substantive matters and individuals for a link to the NSU affair might exist. They did not do so, as is evidenced by the destruction of documents on right-wing extremism for which links to the NSU affair could not be excluded, and this was still happening in spring 2012 in the MAD. A general moratorium on destruction of any documents pertaining to right-wing extremism was not issued until the Chairman of the Committee of Enquiry explicitly demanded such a moratorium on 19.7.2012.

#### **c) Destruction of documents in authorities in Berlin**

The parliamentary group DIE LINKE takes the view that comparable criticism can be directed at the Berlin Senate. In the view of the parliamentary group DIE LINKE, the data and documents that might be relevant for investigations into the NSU affair were destroyed after 4.11.2011 because, as was also the case elsewhere, the competent Berlin authorities had not engaged sufficiently intensively with the subject-matter covered by the Committee of Enquiry's remit, even well into 2012. As a consequence, there was an entirely unacceptable lack of awareness of the kind of circles in which the NSU core trio and its associates moved. When the Committee of Enquiry's mandate was granted the Berlin Senate apparently also failed to fulfil its obligations and did not act sufficiently promptly to raise Berlin authorities' awareness concerning increased duties of care arising from Art. 44 Basic Law in conjunction with § 18 PUAG for storage and destruction of documents; it also failed to instruct these authorities to ensure they remained informed, on an ongoing basis, on the progress of investigations into the NSU affair. This appears to be the only possible explanation of how documents relating to the NSU affair could be destroyed in Berlin at the end of June 2012, with vigorous assistance from the head of department dealing with issues related to

right-wing extremism.

## VI. CONCLUSIONS AND REFORM PROPOSALS OF THE PARLIAMENTARY GROUP DIE LINKE FOR SECURITY ARCHITECTURE AFTER THE NSU UNMASKED ITSELF

### 1. Firstly: the reactions and measures adopted by the security authorities and the competent politicians in the field of Internal Affairs after 4.11.2011: Sending out the wrong signals at the wrong time

There has probably never been such a comprehensive, detailed and critical examination of the German security agencies by any previous parliamentary Committee of Enquiry in the German Bundestag as in the case of the 2<sup>nd</sup> Parliamentary Committee of Enquiry on the "National Socialist Underground". It is however equally correct to state that immediate measures unrelated to the course of the investigations never before been adopted so resolutely by the government and the authorities in question before an enquiry was concluded in order to pre-determine a narrow framework for conclusions arising from the intensive enquiries. In this context even the speed with which, from November 2011 catalogues of measures were presented and partly implemented shows that in essence these could not be conclusions arising from working through and analysing the NSU debacle of the security agencies. Ultimately, this process of working through the issues only began systematically in February 2012 with the establishment of the Committee of Enquiry. This approach that politicians responsible for Internal Affairs and the secret services' and BKA's upper echelons adopted to the Committee of Enquiry's work and conclusions meant that the focus was not primarily on concrete analysis of the reasons for possible violation, circumvention or misinterpretation of existing applicable legislation and guidelines, or correct but unsuccessful application of such provisions; instead it was asserted that the reason for the security policy debacle lay in a general lack of the statutory and technical-organisational preconditions needed for information exchanges and cooperation between the security agencies.<sup>93</sup>

During the Committee of Enquiry, a compilation was never provided of all of the valid statutory provisions, regulations and guidelines on mutual information by the police and the security services at the Federation and federal state level, this would have made it possible to examine the agencies' practice and interactions during the period covered by the enquiry. There was no analysis of the fact that a whole series of fora for cooperation<sup>94</sup> between the security agencies existed during the period considered by the enquiry, along with joint databases and files<sup>95</sup> and inter-agency projects in the policy area of right-wing extremism, nor of the fact that obviously either none of these structures grasped decisive points about this development, despite the extensive information available, or they made errors in evaluating and interpreting the information. Even as late

as 2012 the Federal Government refused to present a public depiction of the modus operandi and activities of one of the central bodies called into being to combat right-wing extremism and terrorism – the "Information Group to observe and combat right-wing extremist/terrorist, in particular xenophobic, violence" (IGR)<sup>96</sup> – with reference to the "evident need for confidentiality". This information could not even be deposited in the restricted access room for classified information.<sup>97</sup>

Impressive though the results of the Committee of Enquiry's work is, on the one hand, the Committee was not able to work with a view to producing open-ended results. Scope to focus on systematic or structural causes of the problems in the security agencies was restricted before the committee's work began by the BMI and the security agencies themselves, limiting the focus to the issue of reinforcing headcount, increasing resources and affording greater powers to the essentially untouchable existing agencies. In a nutshell, even before a single sheet of paper was examined in the Committee of Enquiry, the usual security policy discourse about more exchange of information, storing data at an earlier stage and for longer periods,

<sup>93</sup> By way of example, consider the statement made by Federal Minister of the Interior Friedrich to the news magazine Der Spiegel im November 2011: "In order to draw conclusions (from the fact that there had only been 13 judicial inquiries in the last ten years into right-wing terrorism but 700 into left-wing terrorism), we must of course analyse where any kind of shortcoming was to be found. In my view however the decisive question is: What happens now? And on that point, I would say: we need greater networking of information, making use of all the modern technical possibilities and in addition, we need to extend the scope of provisions that make us more efficient in combating the right-wing extremist and right-wing terrorist scene..." In: Der Spiegel, 21.11.2011, p. 47. <sup>94</sup> By way of example: the "Information Group to observe and combat right-wing extremist/terrorist, in particular xenophobic, violence (IGR)". It was set up in 1992, was in existence until 2007 and was then absorbed into the "Coordination Group on Politically Motivated Criminality – Right-wing" (KG PMK-rechts) of the Conference of Ministers of the Interior. All the security agencies of the Federation and federal states, the Federal Attorney General, the Federal Ministry of the Interior and the Federal Ministry of Justice were represented in this body. During the entire period from 1992 to 2007, the group's remit was "inter alia to address the following topics:

- Fundamental conceptual issues in cooperation,
- Harmonised criteria for recording information and definition of terms relating to violent right-wing extremism,
- Intensifying knowledge exchange between domestic intelligence agencies, police and the judiciary,
- Analyses on the security situation,
- Instruments for observing and combating the phenomenon,
- Regional priorities for observing and combating the phenomenon in terms of specific relevant individuals and subject-matter,
- Tactical and operational questions,
- Pooling of resources to combat extremism,
- Continuation of existing concepts and development of new concepts for observing and combating extremism." See Minor Interpellations of the parliamentary group DIE LINKE and/or PDS-Linke list in Bundestag Official Document (BT-Drucksachen) 12/7008 (1994), 16/11545 (2009), 17/7902 (2011), 17/8535 (2012).

<sup>95</sup> By way of example, "Rechtsextremistische Kameradschaften", a joint project file of the BKA and BfV, see Bundestag Official Document (BT-Drs.) 17/9002 or the "Working Group on Operational Exchanges of Information on Right-wing Extremism" (AG OIREX): the AG OIREX is a forum under the aegis of the BKA, and the GBA has also been a member since 2007 along with the BKA, BfV, and MAD. In September 2003 the Federal Ministry of the Interior requested the BKA to establish an "operational information and analysis board on *Kameradschaften* (informally organised Nazi groups)", which was initially known as AG OIK, and was subsequently renamed AG OIREX. The role of AG OIREX inter alia involves evaluating all the information accessible with the concrete goal of implementing the insights gleaned in the form of executive measures. By adopting this approach, the structures identified were to be nipped in the bud. In this context, these groups' violent leanings, propensity to weapons and explosives and above all the tie to common criminals were to be taken into account. With the BKA acting to manage the forum, oversight was exercised by the Federal Ministry of the Interior. Its work to date is appraised positively in terms of its contribution to reinforcing inter-agency cooperation. Meetings of AG OIREX are held more or less frequently depending on the situation, but at least once a month. Bundestag Official Document (BT-Drs.) 17/8535. <sup>96</sup> See footnote 92. <sup>97</sup> Bundestag Official Document (BT-Drs.) 17/8535.

strengthening the central authorities and introducing new areas of responsibility, was developed and essential aspects of this approach were implemented before the Committee of Enquiry had concluded its work.

#### a) Central measures after 4.11.2011

With a view to making this criticism and the conclusions more readily understandable, the main immediate measures introduced by the security agencies will be presented below. Just a few days after the alleged suicide of the NSU leaders *Mundlos* and *Bönnhardt* on 4<sup>th</sup> November 2011, a 10 Point Programme from the Federal Ministry of the Interior was tabled.<sup>98</sup> It was circulated internally as a highly urgent document (“Please address the tasks to be tackled immediately”) on 21st November 2011 and, according to an in-house “Plan for Implementation of Measures”, initial results and an indication of further concrete steps for implementation were already available by 12<sup>th</sup> December 2011.<sup>99</sup>

This paper from the Federal Ministry of the Interior (BMI) was based on the following assumptions:

- It is not possible to do without long-term paid informers; they remain an indispensable source of information.<sup>100</sup>
- There had been a lack of information; in general, the information flow between the security agencies, in other words between the police and the secret services on the one hand and between agencies at Federation and at federal state level on the other hand, was and remained insufficiently regulated.<sup>101</sup>
- The central authorities, i. e. the Federal Criminal Police Office (BKA) and above all the Federal Office for Protection of the Constitution (BfV) are too weak within the overall structure of security architecture and should be strengthened.
- The spheres of competence of the Federal Attorney General (GBA) and its scope to assume responsibility for particular legal proceedings are too limited.
- Instruments similar to those deployed in addressing so-called Islamist international terrorism should also be deployed to combat right-wing extremism, in other words an Anti-Extremism Centre and a Shared File based on the role model of the Joint Anti-Terrorism Centre (GTAZ) and the Anti-Terror File.

As early as 16<sup>th</sup> December 2011, based on the model of the Joint Anti-Terrorism Centre (GTAZ), in which all 40 security agencies at the level of the Federation and the federal states work together to combat Islamist extremism, a joint Anti-Right-Wing-Extremism Centre (GAR) was set up. Just a few weeks later, in autumn 2012 this Anti-Right-Wing-Extremism Centre (GAR), which had not existed for even a year, was absorbed into a Joint Anti-Extremism and Anti-Terrorism Centre (GETZ) – entirely in keeping with the approach to tackling extremism proposed by the CDU-FDP government coalition.

On 6<sup>th</sup> December 2011 the Federal Criminal Police Office also seized its opportunity and successfully used the NSU shock to accelerate implementation of

a project that had been bogged down for years due to technical difficulties and problems with the project design. This project related to introduction of the Police Information and Analysis Alliance (PIAV). “In the light of the investigative proceedings against the terror group ‘Nationalsozialistischer Untergrund’ (NSU)”, the motion for a decision submitted to the Conference of Ministers of the Interior in December 2011 states that “expedited introduction is advisable”.<sup>102</sup> There was no further examination of the project – which meant that the measure, which was already planned, could be implemented more rapidly.

Similarly, in late 2011 the “Directive on Cooperation between the Federal Office for Protection of the Constitution and the federal state authorities for protection of the constitution (Coordination Directive)” was extended, with Section 6b added, introducing an initial reinforcement of the BfV’s position vis-à-vis the federal states.

Picking up on the model of the Anti-Terrorism File, a shared Anti-Right-Wing-Extremism File (RED) was also introduced. It is part of the 10 Point Plan, went through the parliamentary procedures in the course of 2012 and became operational on 18<sup>th</sup> September 2012.

In parallel to the increasingly shocking insights emerging in the Committee of Enquiry concerning the extent of the failings and the security policy catastrophe on all levels of security architecture, yet ultimately entirely unaffected by this increased knowledge and insight<sup>103</sup>, the framework for the committee’s conclusions was narrowed still further.

In autumn 2012, Working Group IV of the Conference of Ministers and Senators of the Interior of the federal states (IMK) presented a decision on a new orientation for the domestic security agencies. Working Group IV on “Protection of the Constitution” called for uniform standards across the country for “running” long-term informers. Not a single word is said here on the question of protection of sources, the issue that repeatedly emerged in the Committee of Enquiry’s work as the decisive problem area. This topic was however addressed by the Federation-Federal States Com-

<sup>98</sup> MAT\_A\_BMI5-0057, p.000007. <sup>99</sup> Ibid. p.000012. <sup>100</sup> Interview with Federal Minister of the Interior Friedrich in: *Der Spiegel*, 21.11.2011 (47), pp. 29ff. <sup>101</sup> The Committee of Enquiry heard a series of examples that demonstrate that the existing statutory and sub-statutory provisions were not taken into account or that the scope for discretionary decisions afforded by such provisions was regularly interpreted to determine that information would not be forwarded. Hans-Jörg Geiger, former President of the BND, also pointed this out: “The Federal Bill on Protection of the Constitution and analogous bills at the federal state level do not simply stipulate how the various offices for protection of the constitution must share information. This legislation regulates the extent to which the police authorities should be included in such information-sharing. The problem ... was not that these provisions did not suffice. The problem was that information was not passed on, due to secretiveness, sloppiness and for other reasons.” (*Süddeutsche Zeitung* of 25.04.2013). <sup>102</sup> Motion for a resolution for the 193rd session of the Permanent Conference of the Ministers of the Interior of the federal states on 08./09.12.2011 (Version: 06.12.11) <sup>103</sup> The resignations of various heads of agency or local agency heads – on 2<sup>nd</sup> July 2012 BfV-President Heinz Fromm; on 3rd July Thomas Sippel, President of the LfV Thuringia; on 11<sup>th</sup> July 2012 Reinhard Boos, President of the LfV Saxony; on 13<sup>th</sup> September 2012 Volker Limburg, President of the LfV Saxony-Anhalt and on 14<sup>th</sup> November 2012 the Head of the LfV Berlin, Claudia Schmid – in the course of 2012 should not be viewed as contradicting this assertion. Instead, these resignations underscore the impression that individuals have made mistakes rather than focusing attention on the structural reasons for the failure. <sup>104</sup> Bund-Länder-Expertenkommission (11/2012): p. 16f., 21f.

mission on Right-Wing Extremism (BLKR),<sup>104</sup> which submitted a second interim report with proposals on lessons to be learnt in autumn 2012. The responses are however more than unsatisfactory. The commission writes:

“Enforcing demands to protect sources from disclosure of their identity to law enforcement and security agencies is on the one hand contrary to the obligation to provide effective administration of justice, which is rooted in the principle of the rule of law. On the other hand, the same fundamental rights that oblige the state to protect its human sources also require measures to be taken to protect the populace from threats to physical integrity, threats to health etc. Protection of sources may therefore not be pursued as an end in itself.”<sup>105</sup>

This statement merely confirms the provisions stipulated in the relevant legislation. On the other hand, the BLKR continues, the existing

“standards relating to prohibitions on forwarding of information, as laid out in the Bills on Protection of the Constitution of the Federation and the federal states, could be maintained, if appropriate in harmonised form.”<sup>106</sup>

The prohibitions on forwarding information that are referred to here mean the prohibition the domestic security agencies from disclosing information about their sources and/or revealing a source to the law enforcement authorities and thus enabling the law enforcement authorities to use this information or this source. While the BLKR now seeks to limit this prohibition on forwarding information, at the same time it proposes extensive exceptions:

“An exception to the prohibitions on forwarding information can only be considered in cases in which there is a substantiated concern that such transfer of information could pose a threat to the physical integrity or the freedom of persons or the could render the tasks incumbent on the domestic security agencies [...] considerably more difficult or impossible and when this could not be averted by appropriate measures.”<sup>107</sup>

The argument submitted to the Committee of Enquiry by advocates of the deployment of the Brandenburg long-term paid informer and the long list of other long-term paid informers was along exactly these lines. In the light of the proposed amendment, there is no reason to believe that any domestic security agency at Federation or federal state level will proceed differently in future than was the case during the entire period of enquiry addressed by the committee.

Along with the question of protection of sources, the BLKR also seeks, in a similarly superficial and equally dangerous manner, to resolve another fundamental problem pertaining to the question of the rule of law, which is fundamentally linked to the use of long-term paid informers and played a very particular role during the NSU investigations. That is the problem of impunity from criminal prosecution for long-term paid informers.

In its “outline of the problem”<sup>108</sup> the BLKR enumerates the less harmful criminal acts that long-term paid informers may commit: organisation-related

crimes, propaganda-related crimes and fraud relating to non-disclosure of the fees paid when applying for student funding (BAföG) or funding pursuant to SGBII (Social Security Code Vol II). According to the BLKR’s analysis, those “running” the long-term paid informers may also be guilty of aiding and abetting the aforementioned criminal acts. In the case of the long-term paid informers addressed by the Committee of Enquiry, further crimes must be added to the list – as for example in the case of the BfV’s source “Strontium” – namely violent crime and weapons-related offences. Based on this presentation of the issues, the BLKR, concludes that “the work of the security agencies is constricted (...) as a consequence of the danger that acts constituting criminal offences will be carried out.”<sup>109</sup> The BLKR’s appraisal continues: if “human sources are subject to criminal prosecution for their acts, the security agencies will no longer be able to find long-term paid informers or other informers. As a consequence, the security agencies would not be able to deploy human sources in prohibited, criminal or terrorist organisations and groups.”<sup>110</sup>

The current legal position clearly does not provide any justification and the BLKR itself admits that attempts to construct a justification based on the notion of acting under the aegis of service regulations or an official authorisation are rendered void by a ruling from the Düsseldorf Higher Regional Court on 06.9.2011<sup>111</sup>. The court found a long-term paid BND informer in a Turkish terrorist organisation guilty of membership of a terrorist organisation although his lawyers had argued that he was acting so to speak on behalf of the public sector body. In the case of work in terrorist organisations, the Higher Regional Court (OLG) refers to an “‘almost logically necessary’ realisation of the elements constituting a crime such as §§ 129 ff, Criminal Code (StGB).”<sup>112</sup> There is simply no legal basis for authorisation to commit criminal offences with impunity when acting in the service of the security agencies or police.

The BLKR does not conclude that the authorities should refrain from deploying long-term paid informers in the light of this legal situation – on the contrary, it calls for such deployment to be encouraged.

It proposed a procedure that completely contradicts and reverses the findings of the Committee of Enquiry. In contrast to the approach adopted by certain federal states, which envisages reasons justifying certain criminal offences and provides for impunity for such cases – the Bills on Protection of the Constitution from Brandenburg, Lower Saxony and North-Rhine Westphalia are cited – the BLKR Commission chooses a procedure that opens the door wide to arbitrary decisions:

“It should be up to the Directors of Public Prosecution to

<sup>105</sup> Ibid., p. 17. <sup>106</sup> Ibid., p. 18. <sup>107</sup> Ibid., p. 20. <sup>108</sup> Abschlussbericht der Bund-Länder-Kommission Rechtsterrorismus vom 30. April 2013, p. 292. <sup>109</sup> Ibid., p. 293. <sup>110</sup> Ibid. <sup>111</sup> Az. III-5 StS 5/10 quoted in: Abschlussbericht der Bund-Länder Kommission Rechtsterrorismus, p. 295. <sup>112</sup> Ibid. p. 293

determine whether potentially criminal acts by long-term paid informers and “handlers” of long-term paid informers in connection with security agency activities are to be prosecuted and to refrain if appropriate from criminal prosecution in accordance with the principle of discretionary prosecution (for lesser offences).<sup>113</sup>

In conjunction with the proposed provisions and processes for considering the costs and benefits of protecting sources, this would lead directly to legalising retroactively to address practices which the Committee of Enquiry was astonished and horrified to discover in connection with the long list of long-term paid informers and their criminal lifestyles.

In April 2013 the Federal Government produced a summary report with contributions from the four ministries involved – Federal Ministry of the Interior, Federal Ministry of Justice, Federal Ministry of Defence and Federal Ministry for Families, Senior Citizens, Women and Young People – “on measures adopted after 4<sup>th</sup> November 2011 as a consequence of the NSU terror group’s unmasking and the errors and omissions that subsequently became apparent.”<sup>114</sup>

In May 2013 the IMK took note, under the heading “New Orientation of the Domestic Security Agencies” of four reports from Working Group IV of the IMK; it had been decided that the results of these reports would be implemented at Federation and federal state level. The focus here is on:

A new philosophy, concentrating not only on the traditional role as a security agency but also in taking up a position as an active partner and service provider at the heart of society, which should help to strengthen public confidence in the domestic security agencies.<sup>115</sup>

It also focused on:

- Closer exchanges with academic institutions and further development of the School for Protection of the Constitution to enable it to attain academy status; joint additional training for new staff from other agencies and from the private sector with an academic background;
- joint standards for recruitment and deployment of paid long-term informers (VP) and standardisation of such provisions in internal regulations;
- central file on long-term paid informers at the BfV;
- Coordination of Internet reconnaissance, establishment of a data base of “blacklisted” works/sites and of a media file;
- Establishment of a Competence Centre for operational security on the Internet.

The aforementioned points were also the subject of the publicity campaign conducted from early 2013 on by the Federal Office for Protection of the Constitution on the new orientation for its activities,<sup>116</sup> which by its own account was set in motion on 3rd September 2012.

#### **b) Old wine in new in new skins: Window-dressing rather than reform in the domestic security agencies**

The report from the BMI to the Committee on Internal

Affairs on 3rd July 2013 provides insights into progress on ideas about reform of the domestic security agencies. The report was presented to the Committee of Enquiry under the title MAT B BMI 4.<sup>117</sup> According to this report, the fundamental reform of the organisation and structures initially announced by Federal Minister of the Interior *Friedrich* must be considered to have failed. All that remains are efforts to pursue “internal reform” of the BfV, whereby “principally”, “prioritisation of the essential aspects”, “optimisation of work processes”, an “increase in transparency”, “reinforcement of cyber- and IT-skills” and “intensified cooperation” are to be targeted as “strategic goals”. Guided by these strategic goals, one of the core measures envisaged by the “new concept” is a prioritisation process, which would mean that in future

“(…) deployment of secret intelligence-gathering methods will occur, irrespective of the level of danger/propensity to violence of the phenomenon in question, in a graduated form: secret intelligence-gathering methods may be deployed more intensively as a function of the propensity to violence of a subject under surveillance.”

The parliamentary group DIE LINKE considers that emphasising this aspect as a core measure in a new concept does not express a fundamentally new direction. Opting in future to determine the extent to which secret intelligence-gathering methods are deployed as a function of the degree of threat posed by the subject under surveillance would instead merely reiterate a constitutional consideration that stems as a matter of course from respect for the rule of law: the constitutional principle of proportionality, which is constitutive for the liberal-democratic fundamental order, is the direct basis for the firm guiding principle underpinning any deployment of secret intelligence-gathering methods. Correspondingly, § 9 Sub-section 3 BVerfSchG had already envisioned previously that secret intelligence-gathering methods may only be deployed proportionately to the degree of threat/propensity to violence of each respective phenomenon and that the utilisation of any particular instrument “should not be recognisably disproportionate to the subject matter to be investigated.” If this is nonetheless presented as the “core measure” of the new concept, this merely proves that in its previous operational work the BfV had, in its own estimation, disregarded the proportionality principle both structurally and conceptually. Pursuing the BfV’s statutory remit, namely protecting the free, democratic fundamental order of the Basic Law, has thus paradoxically to date occurred outside of the constitutional parameters which the Basic Law itself stipulates

<sup>113</sup> Abschlussbericht der Bund-Länder-Kommission Rechtsextremismus, Zusammenfassung der Empfehlungen, p. 9. <sup>114</sup> Official Document, Committee on Internal Affairs, (Innenausschussdrucksache) 17(4)749. <sup>115</sup> Record of decisions from the 85<sup>th</sup> session of Working Group IV “Verfassungsschutz” of the Permanent Conference of the Ministers and Senators of the Federal States on 12./13.11.12 in Hilden. <sup>116</sup> MAT\_B\_BfV-9 (Presentation on “Reform of the domestic intelligence agencies” dated 27<sup>th</sup> February 2013), which in turn is merely a more detailed presentation of a press release from the BfV on the reform project, Version: 22<sup>nd</sup> February 2013. <sup>117</sup> MAT\_B\_BMI-4.

for any form of sovereign activity.

That however is not all: so far, the way in which the BfV's operational work is organised, the BfV's organisational arrangements, statutory tasks and powers do not correspond to constitutional provisions. Even full implementation of the internal reforms initiated in the BfV would not be able to change this. That is because these internal reforms do not tackle the structural reasons for the failure to identify the NSU's right-wing terrorism at an early stage (i.e. the current organisational arrangements and the way in which competences are divided within the various parts of the domestic security agencies), but instead right from the outset solely address individual symptoms of these structural causes. Essential constitutional standards thus continue to be disregarded. The parliamentary group DIE LINKE is convinced that taking such standards into account could improve the analytical capacity of institutional protection of the constitution, whilst simultaneously minimising fundamental rights' infringements associated with these activities.

None of the "reform" proposals presented and in part already implemented by the BfV, by the IMK's Working Group IV "Protection of the Constitution" and by the Federation-Federal State Commission on Right-Wing Extremism, relates in the slightest to measures or instruments that were involved in the NSU's unveiling or have been developed as a targeted reaction to it – even if the titles of the decisions, reports and projects suggest on occasion that this is the case. In the first instance, and in general terms, this does not mean that these measures and instruments might not be reasonable to improve activities in this area in general, which is of course always needed – restructuring for example of the file systems used by police forces at the national and federal state level would certainly make sense and indeed is urgently necessary. The same holds true for certain measures adopted in the field of the domestic security agency structure – if we take on board for a moment the notion that it is vitally necessary for this structure to continue to exist in essentially unaltered form. However, these measures and instruments have not even begun to address the security architecture problems that emerged in the NSU context.

It is however precisely this outcome that is concealed by the unreflective flurry of activity on the part of the security agencies since November 2011. In particular with reference to the Federal Office for Protection of the Constitution, it is imperative to note in the most forthright terms possible that since the end of November 2011 it is actually always the same measures, in ever-new constellations, that have been presented to the public as a means of resolving the shortcomings that have emerged. That is not all either: there is a clear cross-party conviction amongst the Committee of Enquiry's members that the BfV is the domestic security agency that failed entirely in the NSU context, yet it is the BfV that actually benefits from the NSU affair – without any hint of a suggestion that the BfV might engage in any kind of in-depth change or reform, let alone actual

implementation of such change or reform. The BfV's budget was thus increased in 2013 to the new record level of 206 million Euro, 17.6 million more than the budget for the previous year, which was approximately 190 million (2011: target: 174 million., actual: 187 million); headcount was also generously increased – with the ready consent of the Federation-Federal State Commission on Right-Wing Extremism, as demonstrated by the conclusions in the BLKR's report on the Federal Office for Protection of the Constitution and its responsibility. The number of posts filled at the BfV increased from 2701 to 2752 in the period from 2011 to 2012.

### **c) Authorities and politicians dealing with home affairs create irreversible faits accomplis, thus relativising the results from the Committee of Enquiry**

The "reforms" implemented to date in the BfV and BKA and the further considerations and plans of the IMK's AKIV and of the Federation-Federal States Commission, are not based on facts but fall into line with a discourse on security policy that has been at a standstill for decades; furthermore, they also constrain the scope of the investigation and results of the 2<sup>nd</sup> Parliamentary Committee of Enquiry, just as they determined (and indeed continue to determine) the statutory, organisational and structural conclusions that could be drawn before the Committee of Enquiry had concluded its work. All of this relativises the positive detailed results from the Committee of Enquiry in decisive respects. In a certain sense, these "reforms" even pose a threat of counteracting these results. One example of this is the development of the Joint Anti-Right-Wing-Extremism Centre (GAR), which less than one year after its hasty genesis was rapidly transformed into a Joint Anti-Extremism and Anti-Terrorism Centre (GETZ).<sup>118</sup>

### **d) Extremism doctrine in the NSU context**

A few days after the first anniversary of the NSU's unmasking and the largest series of right-wing extremist murders ever, the extremism doctrine was institutionalised on 15<sup>th</sup> November 2012, in the form of the GETZ. This has proved fatal in at least three respects for an effective socio-political examination of racism, anti-Semitism and right-wing extremism:

The extremism doctrine excludes many civil society initiatives from the realm of what is allegedly politically admissible. This has inter alia led to anti-fascist compilations of material and media not being used by the authorities as a valuable source of information, but instead being categorised as oppositional material, which has meant that the information contained within it was entirely devalued.

The extremism doctrine stigmatises and defames, and as a result it becomes more difficult for anti-racist and anti-fascist initiatives and media, which in many regions are in any event working under extremely diffi-

<sup>118</sup> <http://www.verfassungsschutz.de/de/das-bfv/getz>.



cult circumstances, to pursue their work.

The extremism doctrine relativises and trivialises the particular political, social and security policy responsibilities of a democracy in combating manifestations of racist and right-wing extremist ideas. The best example of this is the policy of the security and law enforcement authorities in Thuringia in the 1990s, which even criminalised and stigmatised anti-fascist initiatives organised by school pupils, with a persistence that breached all statutory limits, while at the same time hundreds of investigative proceedings directed against neo-Nazis were dropped. It is precisely this relativising and trivialisation, which has been reflected again and again in the structure of federal authorities – for example in the closure of the BfV department dealing with right-wing extremism and the termination and non-evaluation of joint file projects run by the BKA and BfV – that is now assuming a quasi-office form at the centre of home affairs policy.

Over and above the fact that the measures implemented long before the Committee of Enquiry presented its results do not do justice to the societal and security policy implications of the events, or to the principal results of the Committee of Enquiry's assessment of the situation, these measures also contribute to trivialising these events and findings. In the wake of almost twenty years of intensive work against right-wing extremism, which had been presented as having worked successfully until the NSU's existence and the series of racist murders and attacks came to light, the security agencies were faced with the ruined rubble of their work in November 2011, but have nonetheless returned to their former routines. The NSU's existence is treated as a kind of occupational hazard never envisaged in the BfV and BKA's scenarios, and, now that it has been handed over to the judiciary, it is viewed as being a one-off incident, with no risk of reoccurrence, to such an extent that it is not held to have tarnished the reputation or called into question the way in which the BfV, the Federal State Offices for Protection of the Constitution or the police conduct their work. Like advocates of nuclear energy, who also never believed that the nuclear MCA in Fukushima could be possible, and now want to get the nuclear reactors currently offline brought back into operation as rapidly as possible, the main players within German security architecture act as if the NSU affair were a MCA that could never be repeated – if everyone just returns to business as usual as quickly as possible, which also includes greater responsibilities for the BfV, which will be followed by new powers.

This stance is adopted even although it became clear in the Committee of Enquiry that the domestic security policy pursued to date and the authorities involved were entirely unsuited to tackling the struggle to combat the menacing development of right-wing extremism. Taking the inviolability of these structures as the point of departure for further considerations does not merely fail to address the full scope of the issue; it also

increases the threat that the situation will recur.

## **2. The existing Federal Office for the Protection of the Constitution must be replaced by a Federal Coordination Agency and a Federal Foundation on "Group-focused Enmity"**

In the light of the structural shortcomings and statutory violations identified, it is vital, from both a political and legal perspective, that bodies functioning as security agencies and involved in protection of the constitution nationally and at federal state level in the Federal Republic of Germany be disbanded. In the view of the parliamentary group DIE LINKE, the measures initiated and planned so far by the Federal Minister of the Interior and the Ministers of the Interior at federal state level do not in any way take sufficient account of this, but instead, after the most serious crisis of these security agencies, these measures serve precisely to consolidate essential components of these agencies. The parliamentary group DIE LINKE therefore proposes a radically different approach.

### **a) The BfV in its current form diverges considerably from the provisions of the Basic Law.**

Pursuant to Article 87, Sub-section 1, Sentence 2, Basic Law, a federal law "may" establish a "central office (...) for the compilation of data for purposes of protection of the constitution". A constitutional obligation to establish an office with the competences of the existing Federal Office for Protection of the Constitution (BfV) does not arise from this provision. Instead, the provisions of Art. 73, Sub-section 1, No. 10b and Art. 87, Sub-section 1, Sentence 2, Basic Law express a concession accorded by the military governors of the three Western allies to the Federal Government in April 1949.<sup>119</sup>

The organisation, remit and powers of the BfV, in the form in which it currently exists, deviate from these provisions on organisational matters and competences as stipulated in the Basic Law, as well as deviating significantly from the legal and organisational provisions laid out in the BVerfSchG pertaining to the BfV's cooperation with the authorities tasked with protection of the constitution in the federal states: pursuant to § 8 BVerfSchG, the BfV has powers to gather information independently,<sup>120</sup> which contradicts the remit stipulated in the constitution, i. e. solely to compile and disseminate documents; furthermore, in exercising such powers, the BfV may in addition make use of "methods, objects and instruments for secret gathering of information, such as use of long-term paid informers and sporadic informers, surveillance operations, image and audio record-

<sup>119</sup> The "police letter" (communication of the military governors concerning the powers accorded to the federal government with reference to police matters) states in point 2: "The federal government is also authorised to establish an office to collect and disseminate information about insurgent activities directed against the Federal Republic of Germany. This office shall not have any police powers." <sup>120</sup> Critical comments on this for example Gusy, Die Zentralstellenkompetenz des Bundes, in: DVBl 1993, p. 1117, 1122 ff. <sup>121</sup> C.f. Schatzschneider, Ermittlungstätigkeit der Ämter für Verfassungsschutz und Grundrechte, 1979, pp. 55 ff., according to which information-gathering is to be understood as passive receipt and registration of information provided by third parties, but not as this body's own "active acquisition of documentation using intelligence instruments".

ings, false ID papers and false vehicle number plates.”<sup>121</sup> The responsibilities and powers allocated to the BfV by the federal legislator should however rightly not extend beyond the federal legislator’s competence for protection of the constitution. Pursuant to Art. 73, Sub-section 1, No. 10b, Basic Law this competence is however limited to cooperation between the Federation and the federal states, and the Federation has thus presumed to take on legislative competences that are actually incumbent upon the federal states pursuant to Art. 70, Basic Law, in as much as in the BVerfSchG the Federation has accorded a remit for enforcement with an external impact to the BfV and has granted the BfV corresponding executive powers. In addition, the federal legislator has granted the BfV powers to issue instructions to the authorities in the federal states entrusted with protection of the constitution (contrary to the term “central office” and the federal order as stipulated in § 7 BVerfSchG).<sup>122</sup> Ultimately, the Federal Office contradicts the provisions on the overall systemic approach laid out in Sub-section 1, Sentence 2 in Art. 87 Basic Law and to the term and function of the “central office” in the Basic Law as the supreme federal authority. In this capacity this body is subject not only to legal oversight by the BMI, but also to the BMI’s technical oversight. By rights, central offices pursuant to Art. 87, Sub-section 1, Basic Law are not subject to technical oversight by a federal ministry but constitute “non-ministerial” administrative units.<sup>123</sup> However, Article 87, Basic Law does at least afford the option of removing the central offices from the ministries’ organisational sphere of competence.<sup>124</sup>

DIE LINKE proposes that in future the central office’s organisation and competences should be structured to comply with the originally intended scope of competence for this body as stipulated in the provisions of Art. 73, Sub-section 1, No. 10b Basic Law and Art. 87, Sub-section 1, Sentence 2, Basic Law: the aim was to authorise the Federation to establish a coordination body that would not fall under the aegis of a minister, and that would act solely to collect documentation on insurgent activities with a view to protection of the constitution, without any executive powers of its own – in particular with reference to secret information gathering – and without any rights to issue instructions to the federal states.<sup>125</sup>

### **b) Federal Coordination Agency for documentation of neo-Nazi, racist and anti-Semitic attitudes and ambitions as well as other manifestations of Group-Focused Enmity<sup>126</sup>**

The domestic security agencies in the form of the offices for the protection of the constitution were at the heart and the security policy debacle in the NSU context and were the driving force behind errors made. Consequently, the parliamentary group DIE LINKE advocates abolishing the offices for protection of the constitution, functioning as domestic intelligence agencies. Future structures and competences must

be guided consistently by the constitutional provisions laid out in the Basic Law: A “*Federal Coordination Agency for documentation of neo-Nazi, racist and anti-Semitic attitudes and ambitions as well as other manifestations of group-focused enmity*” (short title: *Coordination Agency for Documentation of Group-Focused Enmity*), established by a Federal Bill, would, after an initial phase of development, replace the “Federal Office for Protection of the Constitution” as the Federation’s central agency for purposes of protection of the constitution pursuant to Art. 87, Sub-Section 1, Sentence 2, Basic Law. The *Coordination Agency* would be an office of the Federation not under the aegis of any ministry i.e it would be under the legal oversight of a federal ministry but would not be subject to technical oversight by a federal ministry. In keeping with the constitution, its remit would be limited to the “compilation of documentation” (Art. 87, Sub-section 1, Sentence 2, Basic Law) and its powers would be limited to coordinating receipt of information, along with forwarding and mediating the exchange of information and intelligence transmitted to it by the federal states and the Federation, international bodies and bodies in other states.<sup>127</sup> It would not be empowered to collect information on its own account – not even from generally accessible sources.<sup>128</sup> There would be a statutory prohibition on reception and transmission by this body of information and intelligence acquired used methods, objects and instruments of secret information gathering in the meaning of § 8, Sub-section 2, BVerfSchG including information or intelligence obtained by using long-term paid informers or sporadic informers; use of such methods, objects and

<sup>122</sup> Gusy, loc. cit., p. 1117, 1121: “The central offices of the Federation do not have a right to issue instructions to the federal state authorities”; also B. Becker, central offices pursuant to Art. 87, Sub-section 1, Basic Law, in: DÖV 1978, 551, 554: “erroneous”. <sup>123</sup> B. Becker, Öffentliche Verwaltung, 1989, S. 291. <sup>124</sup> See on this point Gusy, loc. cit., p. 1117, 1124: “The history of the genesis of Art. 87, Basic Law, and the systematic approach it fits into it, offer numerous grounds to note that a spin-off of this type is not only admissible but is even necessary.” <sup>125</sup> C.f. Gusy, loc. cit., p. 1117, 1121 and ff. <sup>126</sup> In our definition of “group-based enmity” we follow the approach adopted in the research project of Wilhelm Heitmeyer et al., in which the term is defined as follows “Enmity does not refer to an individual relationship of animosity towards another person, but refers instead to groups. We refer to group-based enmity, which may violate or destroy the dignity of those affected, when people are labelled as being not equal because of chosen or ascribed group membership and are exposed to mentalities rooted in animosity, such as devaluation, exclusion etc.”. (Wilhelm Heitmeyer et al, Deutsche Zustände, Folge 2, Frankfurt a.M. 2003, p. 14). <sup>127</sup> The current understanding is that this is a logical consequence of constitutional provisions, specifically the special status accorded to the basis of empowerment for its establishment as a “central office” in Art. 87, Sub-section 1, Sentence 2, Basic Law (for example in Schatzschneider, Ermittlungstätigkeit der Ämter für Verfassungsschutz und Grundrechte, 1979, 55 ff.), but also, according to the Wissenschaftliche Dienst des Bundestages with reference to Ibler, in: Maunz/Dürig, GG, 64. Ergänzungslieferung 2012, Art. 87 Rn. 118, from the systematic connection between Art. 87, Sub-section 1, Sentence 2, Basic Law and the legislative competence of the Federation as per Art. 73, No. 10, Basic Law: “The simple-legislative thrust of optional administrative competence is in the first instance limited by legislative competence, as, according to the jurisprudence of the Federal Constitutional Court BVerfG, the legislative competence of the Federation constitutes the outermost limit of the Federation’s administrative competences. Otherwise, the Federation would be enforcing legislation adopted by the federal states, which is entirely prohibited by the provisions of the Basic Law (Art. 30, Basic Law). That signifies that federal bodies engaged in protection of the constitution are limited to coordination of cooperation between the Federation and the federal states, as the legislative competence stipulated in Art. 73, Sub-section 1, No. 10 lit. B, Basic Law applies only to “cooperation”. (Robbe, Rechtsfragen zur Erforderlichkeit, Organisation und Arbeitsweise des Verfassungsschutzes im föderalen Verbund; WD 3 – 3000 – 244/12). <sup>128</sup> C.f. Gusy, loc. cit., p. 1117, 1122 ff. with further references.

instruments by this new body would, similarly, also be prohibited.<sup>129</sup> If the information is received from bodies that hold a statutory entitlement to deploy intelligence instruments, the new body would be required to appraise the status of the information on a case-by-case basis. If any doubt still remains after such an examination as to whether the information or the intelligence has been acquired using instruments of secret information gathering, further processing and transmission is not authorised. The files in question must be deleted, and the documents destroyed. Information and intelligence that is not obtained with intelligence methods, objects and instruments may as a general rule only be forwarded by the *Coordination Agency* to bodies that are not authorised to deploy such methods, objects and instruments. Transmission to bodies that are empowered to use intelligence instruments is only authorised if these bodies pledge not to combine information or intelligence received from the *Coordination Agency* with intelligence obtained from secret information gathering. The *Coordination Agency* must scrutinise constantly whether and to what extent this pledge is actually respected. If a particular body does not abide completely by this commitment, any exchange of information with that body must be suspended until such a time as it can demonstrate that effective precautions have been adopted to ensure compliance in future.

The *Coordination Agency* is not empowered to issue instructions to the authorities in the federal states involved in protection of the constitution.<sup>130</sup>

### c) Federal Foundation for Observation, Investigation and Intelligence on all forms of “Group-Focused Enmity”

The *Coordination Agency* shall not itself appraise and process the information and knowledge received in keeping with these provisions. This work would be done by a further body, which would also need to be established: *Federal Foundation for Observation, Investigation and Intelligence on all forms of Group-Focused Enmity* (short title: *Federal Foundation for Observation and Investigation of all Group-Focused Enmity*). The *Federal Foundation* should be established as a federal, public law foundation with legal capacity, which would be independent of the *Coordination Agency* in legal and organisational terms, as well as in terms of its staff. It would be set up by means of a formal federal Establishment Bill. The purpose of the foundation is to protect human dignity and the fundamental rights laid out in the Basic Law by means of academic studies, information, documentation and education about the causes of group-based enmity and the forms in which it is manifested. It would work in keeping with the statutory paradigm: “Responsible citizens are the best form of protection for the constitution”<sup>131</sup> based on the principle of “protection of the constitution through education”. The foundation has a statutory remit to observe and document antipluralistic, in particular neo-

Nazi, racist and anti-Semitic attitudes, behaviours and undertakings, as well as other manifestations of individual and group-based enmity, and to research these together with the individual and structural causes and consequences. The foundation advises and supports private and public bodies and social initiatives in their efforts to promote and consolidate a pluralistic consensus and democratic participation. The *Federal Foundation* fulfils its statutory remit by:

- Continuous reception and transmission of information, in particular information, reports and documentation relating to relevant topics and persons, along with intelligence from the *Coordination Agency for Documentation of Group-Based Enmity* of the Federation;
- Surveying generally accessible information and accessible documentation and how this is addressed in academic work;
- Establishment and maintenance of an archive, along with a documentation office and a library;
- Advising the Federal Government and the Bundestag in the spirit of the Foundation’s mission;
- Education about the individual and structural causes of individual and organised group-based enmity and the forms in which it is manifested;
- Development and presentation of recommendations for action to combat the causes of group-based enmity and the forms in which it is manifested;
- Technical support to private-sector and public-sector bodies in the spirit of the Foundation’s mission;
- Financial assistance and technical help to societal initiatives, in particular to initiatives involved in counselling and support for victims of group-based enmity;
- International cooperation in the spirit of the Foundation’s mission.

Federal state and Federation bodies, along with international and non-national structures would have access to the *Federal Foundation’s* information and intelligence solely through the *Federal Coordination Agency*. At the head of the foundation there will be a Board of Directors, appointed and monitored by a Foundation Council. The Members of the Foundation Council shall be appointed by the Bundestag. An Academic Advisory Council shall advise the Foundation as it fulfils its remit, developing social-science yardsticks and provisions to govern the collection, analysis and evaluation of the information compiled – in particular for information relating to topically and personally

<sup>129</sup> The decision on the future structure and organisation of the Federal State Offices for Protection of the Constitution is incumbent on the federal states. The prohibition called for here on utilisation of information obtained using secret intelligence-gathering methods, to be applicable to the Federation’s new central agency, would however open up scope for the corresponding Offices for Protection of the Constitution in the federal states to refrain from using such methods too. <sup>130</sup> C.f. Gusy, loc. cit., p. 1117, 1121: “The central office of the Federation is not empowered to issue instructions to the authorities in the federal states.” <sup>131</sup> C.f. Fromm, in: 60 Jahre im Dienst der Demokratie: Bundesamt für Verfassungsschutz. Reden anlässlich des Festaktes 60 Jahre Bundesamt für Verfassungsschutz am 6. Dezember 2010, Begrüßung, p. 7, 14: “Responsible citizens who are aware of the threats posed by political extremism are indubitably the best form of protection for the constitution.”

identifiable information, intelligence, documents – and other data, as well as on regular evaluation thereof and shall adapt these to the constantly changing societal context. In addition, the Advisory Council may make recommendations on general aspects of further development of research, documentation and counselling practice.

As an early warning system for any kind of shortcoming in the Federal Coordination Agency or the Federal Foundation, employees of both bodies shall be authorised, through an explicit provision to that effect in the Establishment Bill, to turn directly to the German Bundstag and its fora on matters relating to the service and to technical issues without going through the official channels and without being obliged to inform their superiors. The in-house data protection commissioners shall be integrated into the leadership of the Coordination Agency of the Foundation and of the Federal Foundation.

The Federal Commissioner for Data Protection and Freedom of Information (Bdfl) shall also provide external scrutiny of compliance with statutory and sub-statutory provisions, including provisions pertaining to the prohibition on reception and transmission of information that arises from the use of intelligence instruments by the Coordinating Agency and the Federal Foundation.

#### **d) Strengthening the Federal Commissioner for Data Protection and Freedom of Information (Bdfl)**

The staff and technical resources available to the Federal Commissioner for Data Protection and Freedom of Information (Bdfl) shall be sufficiently strengthened to enable him or her to engage in effective scrutiny vis-à-vis the Federal Coordination Agency and the Federal Foundation. The oversight powers of the Bdfl and of the Federal State Commissioners for Data Protection should be extended accordingly.

Detailed documentation obligations shall be envisaged for the transfer of personal data to bodies outside Germany by the Coordination Agency, the Federal Foundation and the security agencies of the Federation, in order to guarantee effective subsequent oversight to ensure that the legal and factual preconditions are met in each individual case.

### **3. Parameters to improve parliamentary monitoring of the existing secret services**

The parliamentary group DIE LINKE takes the view that the secret services, and most particularly domestic security agencies acting in the interests of de facto political control, are as a general rule non-democratic and non-constitutional institutions and has long called for the secret services to be gradually abolished. This does not in any way exclude scope to make improvements to parliamentary and public monitoring of the security services whilst these services continue to exist on the basis of a parliamentary majority. It does however mean that the specific shape assumed by

improvements plays a very particular role. Do such improvements tangibly reduce the core areas in which the security agencies work, and government policy is conducted, under executive autonomous responsibility, and thus not subject to parliamentary monitoring? Do these improvements noticeably strengthen transparency and scope for oversight by parliamentarians and the general public? Do they restrict scope for the governing majority to circumvent the minority's need for and right to information in the competent fora and committees? Answers to these questions determine whether greater oversight actually occurs, rather than reinforcing institutional structures and improving the working conditions of a body bound by confidentiality provisions.

#### **a) Principle: Restrict secret policy areas – extend public parliamentary oversight**

Improving parliamentary democratic instruments for oversight of the security agencies must above all tackle two points:

- Extensive disclosure of all processes, activities and decisions previously categorised as classified.
- Transfer of rights to exercise oversight over the security/intelligence agencies, previously vested exclusively in the Parliamentary Control Panel, to the Committee on Legal Affairs, the Committee on Home Affairs and the Budget Committee, meeting as public parliamentary bodies, and to the Bundestag Members as a whole.

#### **b) Replacing the Parliamentary Control Panel (PKGr) by a permanent Committee for Oversight of the Security Services (AKrND)**

In the current parliamentary system of government, government activity is not monitored primarily by the majority, but by the opposition, in other words, generally a by minority. This also holds true for the Parliamentary Control Panel (PKGr) und dem trusted committee, responsible for monitoring the activities of the secret services. The constitutional principle of protection of minorities that underpins all forms of investigative parliamentary oversight is currently insufficiently guaranteed in the PKGr and the Confidential Committee. As a first step minority rights in the PKGr and in the Confidential Committee must therefore be consistently strengthened. In order, over and above this, to strengthen parliamentary oversight of the secret services, the current PKGr should in addition be replaced in the medium term by a permanent *Committee for Oversight of the Security Services* (AKrND) in the form of a committee meeting in public in parliament.

The scope of the Federal Government's duty to provide information about the security agencies' activities must also be reformed, along with the reasons the Federal Government may present to justify refusing information to parliamentary oversight bodies. In addition to Federal Government's reporting obligation, at present only limited right to self-information exist for

members of the oversight body. As a result, this oversight body is not in a position to develop well-founded counter-accounts to the government's account of events. Furthermore, regular written reports should be submitted as a general rule to the PKGr – and as such reports are made in writing, it will be possible to trace information at a later point in time.

The parliamentary bodies currently exercising oversight must rely, as their sole source of information, on information provided by those over whom they exercise oversight. Within the context of urgently needed structural reforms, the Federal Government must finally fulfil its fundamental obligation to provide comprehensive information to the PKGr. To achieve this, the Federal Government must shift to a system whereby, in the field of intelligence activities, it informs the oversight bodies autonomously and comprehensively on on-going and planned measures rather than insisting that information is only provided if an enquiry is submitted by a member of these oversight bodies.

An obligation to provide information must also apply for the Federal Government in the realm of international cooperation. To date, parliamentary oversight of the German security/intelligence services has been dependent on foreign agencies' willingness to release information exchanged with the German services for the attention of the PKGr. Release of such information is virtually never granted. If this is not addressed, it will remain impossible in future to exercise parliamentary oversight of the German security agencies in central areas of modern intelligence work, as a considerable proportion of intelligence information is obtained in an international context and exchanged in the framework of long-established cooperations between security/intelligence services.

### **c) Strengthening parliamentarians' right to raise questions and exercise oversight**

In order to ensure more effective oversight, the permanent committees and Bundestag Members must also be granted broader competences. The current system, with special bodies granted competence for oversight over the security services, does not primarily reflect the nature of the subject matter, but stems from an attempt to evade oversight by involving only a small group in this process, whilst at the same time making this group passively complicit. In order to counteract this and to guarantee greater transparency and a qualitative improvement in the rights of all Bundestag Members to receive information, it is important to strengthen the rights to information and notification of the committees whose areas of expertise are affected by the security services, in particular the Committee on Home Affairs, the Committee on Legal Affairs and the Budget Committee. It is essential for the deliberations of the Budget Committee that the Confidential Committee be abolished as a sub-committee and that the individual budget plans of the security services be integrated into regular budgetary deliberations. To date the

Budget Committee has been obliged to take decisions on the financial resources to be made available to the security services whilst being kept more or less in the dark in terms of information, and has thus had to rely on how the Confidential Committee has voted. In this process minority protection, for example, is entirely missing, as a minority vote is not foreseen in the Confidential Committee.

### **d) Extending the right to information of the permanent committees and the government's duty to provide information**

Effective parliamentary scrutiny of the federal security services cannot be guaranteed by a single special body in the Bundestag, whose work is furthermore characterised by an extreme lack of transparency. According to current legal provisions, the Parliamentary Control Panel (PKGr) must to a large extent keep any deficits and shortcomings it becomes aware of to itself. The Federal Government repeatedly refuses to provide information to the Bundestag's permanent committees and to Bundestag Members in response to questions with a link to security agency matters, indicating that information on these topics is provided only in the PKGr, which has been established precisely for this purpose. The function and practice of parliamentary scrutiny of the security services is thus contrary to a ruling by the Federal Constitutional Court from 2009. The Federal Constitutional Court ruled that the rights of Bundestag Members to raise questions and the rights of the permanent committees to receive information, including in the area that falls within the remit of the PKGr, may not be restricted.<sup>132</sup> Contrary to the Federal Government's practice concerning provision of information up until the present,<sup>133</sup> the Basic Law does not provide for any exclusive right to information on the part of the PKGr. Democratic scrutiny is however based on openness and transparency. Areas of Federal Government activity that elude scrutiny and exclusive powers of scrutiny for a subsidiary body within the Bundestag, which meets in camera, are fundamentally not compatible with democratic scrutiny. In order to ensure effective democratic scrutiny of the Federal Government's responsibility for the federal security agencies' activities, the parliamentary group DIE LINKE therefore proposes that the right of Bundestag Members and parliamentary groups to raise questions, and the Federal Government's duty to provide

<sup>132</sup> C.f. BVerfG, 2 BvE 5/06 vom 1.7.2009. <sup>133</sup> C.f. 17/10305: Written question from MP Pau; BT-Drs. 17/10737: Written question from MP Dagdelen; BT-Drs. 17/6272: Written question from MP. The various levels of classified information are presented by way of example in the responses. "Evident need for confidentiality" of answers relating to the number and evaluation of the long-term paid informers in the "Thüringer Heimatschutz", i. e. no information is provided (17/10737). No need for information on telecommunication surveillance measures of the security agencies beyond that provided to the PKGr (17/6272) and no public information on how often and on which occasions the PKGr has been informed about the development of right-wing extremism (17/10305). In the 17<sup>th</sup> electoral term the number of individual questions not answered in public due to classified information status is certainly in the hundreds solely for questions from the parliamentary group DIE LINKE.

information should be regulated explicitly in the Basic Law and constraints relating to the purported exclusive competence of sub-bodies and bodies meeting exclusively in camera should be excluded.

Preparations for setting up Committees of Enquiry can only be conducted in an informed manner, and mandates for Committees of Enquiry can only be formulated in a targeted manner if the right of parliamentary groups and Members of the Bundestag, which essentially is already substantiated by the function of parliamentary scrutiny of the Federal Government, to have access to public records, is also explicitly guaranteed outside Committees of Enquiry too. Emulating the constitutions of certain federal states, an explicit right to access to public records, and provision of access to public establishments should be incorporated into the Basic Law. Definitive provisions should be established therein on reasons that may be given by the Federal Government for refusing to provide information, to ensure access to public records or federal establishments: the Federal Government should be entitled to refuse to provide information, or to refuse access to public records or federal establishments only if and only to the extent that this is necessary and proportionate in order to preserve its own responsibility in consensus-shaping and decision-making when preparing government decisions, in order to avert serious threats to the common good or to provide effective protection for the rights of third parties. If the assumption of illegal actions by the government is substantiated by facts, the Federal Government cannot appeal to its own responsibility or to the public good when presenting grounds for refusal.

#### 4. Conclusions relating to the police

##### a) Independent police complaints body/ independent monitoring of the police

There must be scope for the general public to criticise police work and call its conduct into question. This has once again been demonstrated by the way in which the victims of the NSU's acts and the surviving family members have been treated. There must be a contact body with comprehensive competences, which can be contacted by anyone with complaints about police misconduct, erroneous investigations or inappropriate treatment of family members of victims of crime. This body must be set up outside police structures and must be independent. In the 16<sup>th</sup> and 17<sup>th</sup> legislative periods, DIE LINKE has made proposals on establishing an independent police complaints body of this kind.<sup>134</sup>

We call for a complaints and examination mechanism, independent of the police, to be set up at the federal level in order to ensure monitoring of police activities. In designing this mechanism, the demands put forward by Amnesty International and the Humanistische Union<sup>135</sup> should serve as a basis. The independent police monitoring office must inter alia:

- Be empowered to investigate allegations of serious human rights violations, discriminations, ethnicising

forms of investigation in the context of police work;

- Be authorised to receive reports of official complaints and grievances from individuals and to investigate accordingly, and also to initiate investigations independently even if no official complaint has been made;
- Have the requisite powers and resources to fulfil its remit;
- Report regularly to the Bundestag and/or to the parliaments in the federal states.<sup>136</sup>

The Federal Government should enter into discussion with the federal states to promote this concept of an independent police complaints body in the federal states too. In 2009, Saxony-Anhalt set up a "Central Police Complaints Body" – inter alia as a consequence of several cases of police misconduct and inappropriate behaviour after racist and neo-Nazi acts of violence, and in the case of Oury Jalloh. However, as this body is under the aegis of the Ministry of the Interior, it cannot be said to be independent, and thus does not correspond at all to the basic requirements for a body of this kind.<sup>137</sup>

If such a complaints and investigation body is to be successful, it must be independent and offer ready, easy access i. e. the body must not be influenced by or receive instructions from the police, the public prosecutor's office, ministries or politicians. As well as processing individual cases of police misconduct, there must also be scope for the complaints body to address cases of structural racism in the context of police work, which led to systematic flaws in the thrust of the investigations in the case of investigations into the Česká murder series.

Examples of this kind of body in other European countries include the "Human Rights Advisory Council" ("Menschenrechtsbeirat") in Austria, the "Police Complaints Authority" in Great Britain, the "Police Ombudsman" in Northern Ireland or the "Inspeção Geral da Administração Interna" in Portugal.

##### b. Considerable improvements needed in initial and further police training, police forces that are more representative of migrant communities and police research

Concepts relating to intercultural competence in initial police training and regular further training, as well as making the police forces more representative of migrant communities can help to counteract a structurally racist environment. Ongoing review of the effec-

<sup>134</sup> C.f. Official Documents (Drucksachen) 16/12683 and 17/10685. <sup>135</sup> C.f. Amnesty International, Täter unbekannt. Mangelnde Aufklärung von mutmaßlichen Misshandlungen durch die Polizei in Deutschland, 2010 [www.amnesty-polizei.de/sites/default/files/imce/pfds/Polizeibericht-internet.pdf](http://www.amnesty-polizei.de/sites/default/files/imce/pfds/Polizeibericht-internet.pdf); Humanistische Union, Gesetzentwurf zur Institutionalisierung eines Polizeibeauftragten [www.humanistische-union.de/wiki/hu/projekte/polizeikontrolle/gesetzentwurf](http://www.humanistische-union.de/wiki/hu/projekte/polizeikontrolle/gesetzentwurf). <sup>136</sup> 136 C.f. Amnesty International, loc. cit., pp. 113f. <sup>137</sup> C.f. Lars Ostermeier, Mit Beschwerdestellen, Polizeikommissionen und Polizeibeauftragten gegen Polizeigewalt und Rassismus, in: RAV-Infobrief Nr. 104/2010 [www.rav.de/publikationen/infobriefe/infobrief-104-2010/mit-beschwerdestellen-polizeikommissionen-und-polizeibeauftragten-gegen-polizeigewalt-und-rassismus](http://www.rav.de/publikationen/infobriefe/infobrief-104-2010/mit-beschwerdestellen-polizeikommissionen-und-polizeibeauftragten-gegen-polizeigewalt-und-rassismus) (last consulted, 9.8.2013).

tiveness of existing concepts is essential. Significantly higher numbers of police officers should be recruited from migrant communities and supported through appropriate human resources development measures and the evolution of a multi-ethnic organisational culture. Existing efforts undertaken in police forces in some of the federal states and in the national police force to promote diversity mainstreaming should be consolidated and extended. The Federal Government should present a concept on police work in the Federation by April 2014.

#### **aa) Improving initial and further training**

In initial and further training for the police, there should be a greater focus on topics such as "The Police in a Society Shaped by Immigration", "Structures of Prejudice and Structural Racism in Police Work", as well as on the issue of right-wing extremism, and these topics should be tackled in mandatory further training courses. Reports from some trainers suggest that these issues are only touched on as rather peripheral points and that attendance figures at courses addressing these topics are very low. Qualified trainers should teach the courses and examples with direct links to police practice (for example, to the investigative work on the murder series) should be used to underline the importance of these topics. The aim should be to ensure that a mandatory range of courses on these issues are available right across the country in the Federation's police forces and that these courses are continuously reviewed to ensure they are effective.

Proposals on initial and further training in this area were included back in 1997 in the concluding report of the project group "Polizei und Fremde" ("Police and Aliens") of the "Leadership, Deployment and Fighting Crime" sub-committee (UA FEK), organised under the aegis of Working Group II of the Conference of Ministers of the Interior; in the light of the NSU investigations, these proposals should be revised and implemented across Germany. Regular monitoring of implementation is essential.

Initial and further training on topics related to right-wing extremism/racism has been dealt with differently to date in the Police Schools of the federal states, in technical colleges and at the German Police Academy in Münster. Right-wing extremism should form a distinct focal point in further training courses for senior officials at the German Police Academy in Münster, which provides initial and further training for leadership/management positions in the police – and this should also be the case in training for middle-level managers. The German Police Academy should serve as a model in this context, and should considerably extend the courses on tackling right-wing extremism and racism that it offers. Existing initial and further training courses offered in the federal states should be consolidated and expanded. There is scope for closer cooperation with civil society institutions, counselling projects and initiatives with specialised know-how in

addressing right-wing extremism/racism. Over and above initial and further training on these topics, regular supervision must be guaranteed in the context of police work, as this offers scope to highlight and remedy erroneous developments, forms of discrimination, structural racism in investigations and other problems of day-to-day police work.

#### **bb) Intercultural Competence**

A comprehensive concept on intercultural competence should be developed for further training in the police at the federal level: it should address the police's own structures of prejudice and prejudice within society as a whole, and work through these in the light of the work done by the police. Recognising and dealing with crimes that arise in the context of group-focused enmity should be one priority here. Dealing with victims of such crimes and the family members of victims should also be a priority. Communication with family members of victims of crimes – also drawing on the assistance of the relevant experts – and providing regular information about investigations must be central points in this context.

Intercultural competence, prejudice structures and forms of crimes in the context of group-focused enmity should also play a role in regular and mandatory further training, and not just as part of initial police training. There should be continuous review of how the goals of initial and further training are implemented in practice, inter alia by commissioning empirical research to accompany this process, in order to provide an academic underpinning for the concepts deployed in initial and further training and to continue developing these concepts. In addition, it is important to ensure that the content in question is conveyed by professionals qualified in this field (cultural studies experts and scholars, intercultural trainers) and that this is done at all levels right across the country, to ensure that intercultural initial or further training is not relegated to a "niche, exotic status".

The expert *Schicht* commented to the committee on this point:

"As I indicated in my study on human rights training for the police, what is known as the first level of the hierarchy is a very important target group. It is important to raise the awareness of superiors who have a direct influence on the police actively involved in operations. Police officers must be empowered to a much greater degree to reflect on and consider their work, to call themselves into question, to begin to break down these clichés and routines that have such devastating consequences, and to learn to think about their own mindsets."<sup>138</sup>

#### **cc) More intensive research on the police**

The parliamentary group DIE LINKE proposes that the IMK commission a survey on attitudes in the police

<sup>138</sup> Protokoll-Nr. 72. p. 45 f.

forces on the topic “Racism and the Police”, in order to establish an objective foundation for the debate on the possible presence of racist prejudices and latent attitudes in the police forces, and to ensure that measures and recommendations that may prove necessary are based on the requisite data.

In order to support internal police evaluation of investigative work and investigative procedures, there is also a need to intensify empirical research on police selection patterns in investigative procedures; insights thus gleaned should feed into initial and further training in the police and help to identify erroneous priorities and neglected or omitted investigative approaches.

### c) Reform the recording methods of “PMK-rechts” and ensure independent monitoring

Since 1990, over 10,000 people in eastern and western Germany have been the victims of racist and politically motivated right-wing acts of violence. However, since reform of the “PMK-rechts criteria” [Politisch motivierte Kriminalität/rechts – Politically-motivated crime/right-wing, Editor’s note] by the Conference of Ministers of the Interior (IMK) in 2001 it has not been possible to provide precise figures. Instead, in 2013 it is only possible to make assumptions about the extent to which across-the-board right-wing and racist violence determines everyday life for many people in eastern and western Germany. According to official statistics from the Federal Office for Protection of the Constitution, in 2012 there were at least two politically motivated right-wing acts of violence every day in Germany – a third of these attacks had racist motivations.<sup>139</sup> However, for the same period independent counselling projects for victims of right-wing violence in eastern Germany and Berlin assume that 662 such violent acts occurred in the five new federal states and Berlin alone, and are thus working on the basis of a much higher figure.<sup>140</sup> Two studies from 2009 refer in this context to a considerable number of unreported incidents. In the first cross-Europe study on racist violence and discrimination, the Fundamental Rights Agency of the European Union (EU) interviewed over 20,000 men and women in 27 EU Member States<sup>141</sup>. 37 per cent of those interviewed stated that they had had personal experience of discrimination during the previous year; twelve per cent reported that they had been the victim of a physical attack motivated by racism during the previous year. At the same time however, only one-fifth of those affected turned to the police. Every year thousands of cases of racist violence, threats and discrimination remain invisible: this was the conclusion of the EU Fundamental Rights Agency. “The study reveals how high the figures for non-reported cases of racist crimes and discrimination in the EU really are. The official figures on racism are just the tip of the iceberg”, to cite *Morten Kjaerum*, Director of the Fundamental Rights Agency.

Disclosure of internal police evaluations relating to use of uniform national criteria for recording politi-

cally motivated crime (PMK), which have been in force since 2001, could help to remedy this situation. On the basis of the information submitted by the BKA, it must however be assumed that the last comprehensive evaluation of how the PMK (right-wing crime) criteria are utilized was in 2002 – more than 10 years ago.<sup>142</sup> This makes clear that there is apparently no political desire to record the actual extent of right-wing and racist violence in Germany. A discrepancy of roughly one-third regularly arises even between the data on right-wing, racist and anti-Semitic acts of violence as recorded by the Criminal Police Offices in the federal states and the figures recorded by the specialised counselling sectors for victims, which operate throughout the eastern German federal states and Berlin: this indicates the federal states’ Criminal Police Offices do not believe these cases stem from right-wing political motivations. This discrepancy cannot be explained entirely by the fact that fear of revenge by perpetrators, along with fear of not being taken seriously by the police or facing further racist stigmatisation, means that many of those affected do not report these cases to the police and inform only the counselling centres about the violence they have experienced. A review of how the PMK-criteria are used in practice by the various police stations is also urgently necessary as initial appraisal by the officers who record such reports of crimes is also decisive for the subsequent processing and appraisal of violent acts. In addition, it should also be in the interests of the law enforcement authorities to have a more realistic picture of the extent of right-wing violence than has been the case to date. It seems fair to assume that the official figures put forward by the authorities represent only a tiny fragment of the actual situation, particularly in areas with no independent counselling centres for people affected by right-wing violence – for example in Baden-Wuerttemberg, Hamburg and Hesse – or where there is limited geographical access to counselling centres – as is the case in Bavaria, North Rhine-Westphalia, Schleswig-Holstein and Lower Saxony.

DIE LINKE recommends that the IMK commission a comprehensive survey on how the existing PMK (right-wing crimes) criteria are used and on the differences in police practice in the federal states – including the results of independent monitoring of the specialised counselling centres run by autonomous organisations – and that, on the basis of the results of this survey, further reforms be initiated in order to record the actual extent of politically motivated acts of right-wing violence. This could serve to identify and overcome shortcomings in the utilisation of PMK (right-wing crimes) criteria. The

<sup>139</sup> C.f. Verfassungsschutzbericht des Bundes 2012, p. 30. <sup>140</sup> Joint press release of 14.03.2013 from the counselling centres for victims of right-wing violence in the eastern federal states and Berlin: “626 Fälle politisch rechts motivierter Gewalt in Ostdeutschland/Anstieg der rassistischen Gewalttaten Besorgnis erregend”; [www.mobile-opferberatung.de/b\\_0001130.html](http://www.mobile-opferberatung.de/b_0001130.html). <sup>141</sup> EU-MIDIS: European Union minorities and discrimination survey; <http://fra.europa.eu/en/project/2011/eu-midis-european-union-minorities-and-discrimination-survey>. <sup>142</sup> EU-MIDIS: European Union minorities and discrimination survey; <http://fra.europa.eu/en/project/2011/eu-midis-european-union-minorities-and-discrimination-survey>.



results of the evaluation should be presented in public. In respect of victims killed as a result of right-wing and racist violence, there is also a considerable discrepancy between journalistic research conducted by ZEIT and Tagespiegel and the victims killed due to right-wing violence who are recognised by the Federal Government (and the federal states). Whereas journalists work on the assumption that there have been at least 152 fatalities due to right-wing and racist violence in eastern and western Germany since 1990, the Federal Government recognises only 63 victims killed as a result of right-wing violence.<sup>143</sup> The results of the review of the victims killed in Saxony and Saxony-Anhalt reveal how vital it is to complete the review of past victims, a process promised but not yet completed. Two further victims killed as a result of right-wing acts of violence in the 1990s were recognised in Saxony in 2012; in Saxony-Anhalt the Ministry of the Interior and the Ministry of Justice announced the recognition of three further victims killed in right-wing acts of violence in the 1990s.<sup>144</sup> Currently the Ministry of the Interior of Brandenburg has entrusted the *Moses Mendelssohn Zentrum* with scrutinising homicides in which the potential presence of right-wing and racist motivation has not been acknowledged to date.

#### d) Protection for whistleblowers

“Cop culture” and the traditional “esprit de corp” in the police do not merely contribute to the erroneous direction pursued by investigations and in investigative procedures, reinforcing their structurally racist thrust, but also mean that critics within authorities or organisations are silenced. A high degree of moral pressure is exerted to make it more difficult, if not impossible, for them to go public with their concerns. Reproaches that people are “fouling their own nest” if they make criticism public, within the organisation, authority or in the general public, do not even have to be voiced directly. In particular, officials with an especially positive attitude towards their work have often long internalised this attitude.

As an early warning system to pick up on internal shortcomings, to spot tolerance or dissemination of racist positions or cover-ups of errors in official actions rooted in such attitudes, explicit provisions should be included in the laws of the federal police forces authorising employees to turn directly to the German Bundestag and its for questions relating to service matters without having to go through official channels or to inform their superiors.

#### 5. Strengthening civil society, integrating and protecting refugees

It is impossible to tackle racism, anti-Semitism and neo-Nazism successfully and effectively without the tenacious commitment of many independent anti-fascist groups, documentation and research projects and initiatives in eastern and western Germany, along with courageous trade unionists, pastors, anti-right-wing

alliances and charitable foundations. This also holds true when it comes to working through the NSU affair: independent anti-fascist initiatives, archives, research groups and magazines, in conjunction with committed journalists, counteract the often incorrect and trivialising public “appraisals” of the secret services with genuine knowledge, well-founded analyses and readily accessible information – which was also indispensable for the Committee of Enquiry.

Grassroots alliances and initiatives – such as the Dortmund-based Antifa-Bündnis (DAB) in North-Rhine Westfalia, the civil society initiative “Zossen zeigt Gesicht” (Brandenburg), the “Bunte Bürgerforum Limbach-Oberfrohna” (Saxony) and the “Bürgerforum Gräfenberg” (Bavaria), to cite by way of example just a few of the many tireless protagonists in similar organisations – are the ones who, in the face of countless forms of resistance, accusations of “fouling their own nest” and threats, indeed even arson attacks, have investigated the activities of the right-wing organisations known as the “Freie Kameradschaften”, have mobilised action against neo-Nazi marches and concerts, informed mayors about real-estate purchases by neo-Nazis and the emergence of neo-Nazi centres. Through all these actions, these alliances and initiatives have brought democracy to life and have made democratic resistance possible.

Many individuals, ranging from teachers to bar-owners and artists, support victims of right-wing and racist violence. They organise workshops and seminars for schools and for educational structures outside this framework, addressing the forms assumed by modern right-wing extremism; they draw attention to the important role played by women in neo-Nazi networks; bodies such as the Antifaschistische Pressearchive und Bildungszentrum e. V. (Anti-Fascist Press Archive and Education Centre) and the Antifaschistische Informations-, Dokumentations- und Archivstelle München e. V. (Munich Anti-Fascist Information, Documentation and Archive Centre) to transparent investigation of the NSU affair. They educate others in their workplaces about anti-Semitism, racism and neo-Nazis, and thus create a democratic, solidarity-based culture at grassroots level. They continue tenaciously to uphold their commitment, even when right-wing extremism and racist violence do not (any longer) hit the headlines and journalists have once again turned their attention to other topics, even when – as is the case for example for alternative youth centres in Mecklenburg-Western Pomerania and Brandenburg – they are publicly defamed and discredited by the authorities involved in protection of the constitution, and even when the police and public prosecutor target them due to their participation in blockades of neo-Nazi marches.

Anti-fascist initiatives, citizen’s alliances, professional

<sup>143</sup> C.f. MAT\_A\_IMK-1/5b. <sup>144</sup> Toralf Staud, “Die unterschlagenen Toten”, in: Zeit Online of 20<sup>th</sup> March 2013 [www.zeit.de/gesellschaft/zeitgeschehen/2013-03/todesopfer-rechtsextremismus](http://www.zeit.de/gesellschaft/zeitgeschehen/2013-03/todesopfer-rechtsextremismus).

counselling projects for victims of right-wing violence and mobile counselling teams run by independent organisations very often respond more rapidly and more competently to racist violence or neo-Nazi activities than state bodies do.

Over the last ten years, a comprehensive network bringing together highly professional and absolutely essential counselling projects for victims of right-wing and racist violence, as well as mobile counselling teams, has developed, in particular in the new federal states and Berlin, but also in some western federal states. Part of the work of those in this network involves advising and coaching local authorities, those with political responsibility, associations and clubs.

The work of these successful counselling projects, as well as the model projects that receive positive evaluations, encounters enormous hindrances over and over again: for example, as a result of the short time-frames for which funding is awarded by the Federal Ministry for the Family and the permanent threat of cuts in co-financing from the federal states, but also as a result of what is known as the “extremism clause”.

#### **a) Double and consolidate federal funding**

Expanding professional counselling projects for people affected by right-wing and racist violence, along with the mobile counselling teams, and working to the same professional quality standards for the counselling projects and mobile counselling teams in western Germany as is already the case in the federal states in eastern Germany and in Berlin will only be possible if the annual funding now available from the Federation is doubled to at least 50 million Euro per annum. Increasing the funding to this level is the only way to ensure that the counselling projects and mobile counselling teams can continue to exist and the only way to prevent threatened funding cuts. In addition, an “initiative fund”, which should be readily accessible, should be set up for small independent anti-fascist initiatives, which are urgently needed to promote alternative youth culture at grassroots level.

Doubling the existing budget would send an urgently needed message to those affected by right-wing violence and to society as a whole: it would indicate that the political decision-makers have recognised that right-wing extremism and racism are not time-delimited phenomena that will disappear again of their own accord. On the contrary, these are enduring problems for society as a whole – similar to problems pertaining to drugs and HIV – and long-term counselling and advice structures are essential to combat these problems.

In order to place funding on a permanent basis, as recommended by the experts *Prof. Barbara John* und *Britta Schellenberg*, the parliamentary group DIE LINKE would like to endorse *Prof. Barbara John's* recommendation that a foundation should be set up. The constitutional scope for long-term continuous

funding for work to combat neo-Nazism and to foster democracy at the federal level has been demonstrated inter alia by constitutional law experts *Prof. Dr. Dr. h.c. Ulrich Battis* (HU Berlin) and *Prof. Dr. Klaus Joachim Grigoleit* (TU Dortmund) in an expert report commissioned by the Central Council of Jews in Germany, church bodies and initiatives such as the “Bundesarbeitsgemeinschaft Kirche & Rechtsextremismus”, the German Trade Union Confederation (DGB) and other associations and initiatives that work to combat right-wing extremism.<sup>145</sup> Promoting democratic culture and combating neo-Nazis lies within the state's sphere of responsibility, but it is also the responsibility of society as a whole. In order to take on this responsibility, a certain degree of funding security is needed for appropriate social projects. This could be assured on the basis of federal legislation by establishing an organisational unit – such as a foundation or a GmbH (limited liability company) – to promote this societal work. Pursuant to Article 87, Sub-section 3, Basic Law, the Federation is empowered to set up federal corporations and institutions under public law. Analogously, Article 87, Sub-section 3 also provides a basis for competence to set up foundations and organisations under private law. Scope to distribute funds through third parties within the framework of the Federal Budget Regulations (BHO) would not however produce greater continuity as a stand-alone measure, *Battis* continues. He emphasises however that if this were done in conjunction with establishment of an organisational unit, creating this type of consolidated institutional structure would per se lead to more funding reliability than is currently the case. In terms of constitutional law, either option – a foundation established under civil law or under public law – would be possible. However, it is easier to organise democratic oversight in a public-law foundation. The preconditions for this would be a federal bill and a political decision on a funding model: this would ensure that the fragmented mosaic of countless sources of funding for independent bodies at the national and federal state level could at last become effective, coordinated and reliable support, and also take into account the fact that right-wing violence and neo-Nazi activities are a problem for all of Germany and are not restricted to the federal states in eastern Germany.

#### **b) Integrating competence from academic circles and from civil society**

Since 2001 the various Federal Governments that have held power and the Federal Ministries (BMI, Federal Ministry of Family, Senior Citizens, Women and Youth (BMFSFJ) and Federal Ministry of Labour (BMA)) – with half a dozen time-limited funding programmes – have

<sup>145</sup> Gutachten zur Verstetigung der finanziellen Mittel zur Demokratieförderung und Bekämpfung des Neonazismus, abrufbar unter: [www.amadeu-antonio-stiftung.de/aktuelles/gutachten-zur-verstetigung-der-finanziellen-mittel-zur-demokratieforderung-und-bekämpfung-des-neonazismus](http://www.amadeu-antonio-stiftung.de/aktuelles/gutachten-zur-verstetigung-der-finanziellen-mittel-zur-demokratieforderung-und-bekämpfung-des-neonazismus).

also always incorporated an academic evaluation of the federal programmes. However, all too often the results and recommendations were not taken into account when re-designing programmes, as was also the case for the experiences and competences to be found in civil society initiatives and projects. This must change with the establishment of a federal foundation – or, if the Federal Government does not follow the joint recommendations from the committee, with a follow-up programme to “Toleranz stärken – Kompetenz fördern” (“Reinforcing tolerance – promoting skills”). It should be mandatory to take the results of independent academic evaluations of previous federal programmes into account when developing structures, contents and funding focuses.

### c) Abolish the extremism clause

In addition, it is high time that factors that impede the work of civil society initiatives should finally be scrapped. This includes first and foremost what is known as the “extremism clause”, which must be signed in return for funding at the request of ministries such as the Federal Ministry for the Family, and other ministries at national and federal state level. This is tantamount to defaming people who defend democracy day in and day out in places where the representatives of democratic institutions have long beaten a retreat, and establishes a general suspicion as to these individuals or organisations. In order to acknowledge civil society commitment, the “Statement of acceptance of the liberal democratic order”, better known as the “democracy declaration” and dubbed the “extremism or non-confidence declaration” by the initiatives in question, should be abolished and abandoned entirely. This would also take account of the legal concerns about this declaration – voiced *inter alia* by the Academic Service of the Bundestag<sup>146</sup> and by the Dresden Regional Court (Ref: 1 K 1755/11).

### d) Stop criminalising anti-fascist commitment

The increasing criminalisation of people who take part in blockades of neo-Nazi marches is also discouraging for many committed individuals. They wish to see their fundamental rights respected – and an end to politically motivated criminal prosecution of people who take part in peaceful blockades, such as the Jena City Youth Pastor *Lothar König*. Many of those who have broken out of the right-wing scene have made clear in discussions how necessary and important it was for them as they moved out of that scene for there to be people going out onto the streets and unmistakably, visibly and uprightly demonstrating against the contemptuously inhumane ideology of inequality, and also take a clear stand in personal encounters. Often these encounters and experiences strengthen the doubts and misgivings driving neo-Nazis who wish to drop out of the scene – and it is these people or organisations they remember when they seek help and support to leave the scene. Banning, restricting and criminalising

protests against these marches within sight and sound of the neo-Nazis also means that those who decide to introduce such measures are prepared to accept that this makes the neo-Nazi scene more self-confident and strengthens its inner cohesion, while making it more difficult to drop out.

### e) Integrating refugees rather than engaging in racist harassment campaigns

One of the key conclusions from the 2<sup>nd</sup> Parliamentary Committee of Enquiry is that societal moves to tackle ideologies of inequality – such as neo-Nazism, racism and anti-Semitism, but also antigypsyism and homophobia – cannot be limited to combating neo-Nazis and the extreme right. It is just as important to have statutory provisions that contribute to ensuring that everyone who lives in Germany – irrespective of their origin, their sexual orientation, social status, skin colour, physical or mental impairment or residence status – has the same rights and enjoys the same protection. In its joint assessment, the committee stated explicitly that in the 1990s there was a wave of

“acts of racist violence in the new federal states, in many cases in public spaces, in front of countless neighbours – often sympathisers – and these occurred without the state security and law enforcement agencies intervening on the side of the victims and effectively and visibly acting to combat the perpetrators of such violence. Potential emulators and sympathisers of the extreme right likely encouraged and confirmed in their beliefs as a result.”<sup>147</sup>

It can be demonstrated statistically that the numbers of racist acts of violence against black Germans, asylum-seekers and migrants always increase when media and political discourses cast racist slurs on these groups and marginalise them – for example in the debate on *Thilo Sarrazin*'s theses or currently in the defamatory campaign against so-called economic migrants from Eastern Europe, in particular Roma, and against asylum-seekers as a group, whose numbers are said by Federal Minister of the Interior *Friedrich* to be “alarming”,<sup>148</sup> although they represent only a fraction of a percent of all those who live in Germany.<sup>149</sup> The growing number of attacks on and threats directed against official refugee accommodation,<sup>150</sup> houses where Roma and Sinti live<sup>151</sup> and against anti-racism activists since the start of the year<sup>152</sup> reflect how this policy of exclusion and isolation encourages and strengthens neo-Nazis and right-wing extremist citi-

<sup>146</sup> The expert report is available at: <http://www.thierse.de/dokumente/ordner-fuer-dokumente/gutachten-extremismusklausel.pdf>. <sup>147</sup> C.f. BT-Drucksache 17/14400, Abschlussbericht des 2. PUA, S. 849. <sup>148</sup> Focus Online “Zahl der neuen Asylbewerber steigt um 112 Prozent” vom 14.8.2013, [http://www.focus.de/politik/deutschland/fast-10000-asylantraege-im-juli-zahl-der-fluechtlinge-steigt-um-112-prozent\\_aid\\_1071059.html](http://www.focus.de/politik/deutschland/fast-10000-asylantraege-im-juli-zahl-der-fluechtlinge-steigt-um-112-prozent_aid_1071059.html). <sup>149</sup> [http://www.proasyl.de/de/presse/detail/news/innenminister\\_friedrich\\_unterstellt\\_reflexhaft\\_massenhaften\\_asylmissbrauch](http://www.proasyl.de/de/presse/detail/news/innenminister_friedrich_unterstellt_reflexhaft_massenhaften_asylmissbrauch). <sup>150</sup> “Ausländer-Raus Kampagnen der extremen Rechten im Visier” in: Monitor – Rundbrief des apabiz e. V. Nr. 57/2012; [www.apabiz.de/publikation/monitor/Monitor%20Nr.57.pdf](http://www.apabiz.de/publikation/monitor/Monitor%20Nr.57.pdf). <sup>151</sup> “Facebook-Hetze gegen Roma Haus ist Aufruf zu Mord” in: Der Westen of 13.08.2013, [www.derwesten.de/staedte/duisburg/west/staatschutz-ermittelt-nach-gewalt-aufruf-gegen-roma-id8311398.html](http://www.derwesten.de/staedte/duisburg/west/staatschutz-ermittelt-nach-gewalt-aufruf-gegen-roma-id8311398.html). <sup>152</sup> C.f. Chronik Rechte Aktivitäten 2013 von a.i.d.a. e. V., <http://aida-archiv.de>.

zens' alliances:

In order to ensure that populist racist discourses and thugs do not flourish, several immediate measures are urgently needed:

- Victims of racist violence who do not have residency status or whose status is a temporary stay of deportation (*Duldung*) should be granted a humanitarian right to remain by a new provision in § 25, Residence Act. A provision such as this in the Residence Act would send a clear message to the culprits behind this kind of attack and to their circles; it would show them that their political goal ("foreigners go home") is explicitly counteracted and that their goal of driving away those they attack is thwarted because representatives of the state stand up in support of those attacked, in material terms too. Over the last few years, the Ministers of the Interior in Brandenburg and Saxony-Anhalt have granted a humanitarian right to remain by applying the discretionary scope afforded by existing legislation in two individual cases of victims of racist violence who at the time of attack solely held the status of temporary stay of deportation (*Duldung*) and who were to be deported during the criminal proceedings against the culprits. These decisions send out a clear message in the region and make clear that calls for a humanitarian right to remain, as articulated by counselling centres for victims of right-wing and racist violence, are viable in practice.<sup>153</sup> There is however a need for clear and reliable statutory regulation. In the light of practice to date, *Mehmet Turgut*, would have been deported from Germany if he had survived the shots fired by the NSU, just like his brother Yunus shortly after the attack. Mehmet and Yunus Turgut had been persecuted because of their Kurdish background in Turkey in the 1990s and had fled to Germany, but were not granted asylum here and, until Mehmet Turgut's murder on 25<sup>th</sup> February 2004 in Rostock, lived in Germany without any residence papers – like many thousands of others.
- Provisions on mandatory residence (*Residenzpflicht*) should be abolished immediately, as long demanded by those directly affected and by numerous human rights and civil rights organisations, such as Pro Asyl, the Humanistische Union and the Republikanischer Anwältinnen- und Anwälteverein (RAV). In association with this, asylumseekers and those with a "*Duldung*" (stay of deportation) status who cannot and may not be deported must have the right to freedom of movement and to freedom to choose where to live. This would re-establish a universal human right to freedom of movement for asylum-seekers in Germany; in 1982 the SPD/FDP coalition stripped asylum-seekers of this right for "deterrence purposes" and asylum-seekers have been denied this right for that sole reason ever since.

In addition, surveillance and enforcement of the mandatory residence ("*Residenzpflicht*") is associated in practice with racist police controls. Asylum-seekers have

their papers checked particularly frequently in regional trains and in stations, and are also taken away by the police if they are not in compliance with the mandatory residence provisions (*Residenzpflicht*) – labelling them in public as alleged "criminals". Breaches of mandatory residence provisions are recorded in police crime statistics, which make the figures for "criminality" among non-Germans appear elevated.<sup>154</sup> This reinforces prejudices concerning allegedly "criminal foreigners".

- End mandatory accommodation of asylum-seekers and those with a temporary stay of deportation in so-called "collective living quarters", which above all have one effect: a small group and a minority is turned into an allegedly large mass, and as a result, especially in small villages and communities is experienced as a "threat", as well as being rendered visible and stigmatised as being different, as "them".
- The principle of providing what is known as "in-kind" assistance has a negative impact similar to that of the mandatory residence provisions: if asylum-seekers can only shop in certain stores and/or only with vouchers, they are stigmatised as people with fewer rights. Longer queues in shops due to the complicated accounting system for vouchers make people annoyed and angry with the supposed "trouble-makers".
- End the nine-month ban on employment or education for asylum-seekers and abolish the so-called "priority check" for access to the labour market.

Implementation of these immediate measures is vital to enable asylum-seekers and refugees with a temporary stay of deportation to participate in society and to nip populist-racist campaigns in the bud.

## 6. Strengthen migrants' rights – end exclusion

The rights to political participation for migrants living in Germany must also be reinforced.

Studies show that two-thirds of the German public agree entirely or partly with the assertion "Foreigners only come here to exploit our social security system". This alarmingly high figure is also a consequence of official government policy, which in migration policy repeatedly references the motto of "preventing migration into German social security systems" and uses this as a pretext to introduce stricter legislation. Fundamental rights should however not be appraised in terms of cost considerations. This kind of political approach promotes concepts and notions of inequality that can easily be adopted by the extreme right. The same applies to campaigns that promote prejudices directed against an alleged "refusal to integrate" for which there is how-

<sup>153</sup> Schönbohm: Bleiberecht für Opfer rassistischer Gewalt" <http://www.opferperspektive.de/Home/640.html>, "Eine gemischte Bilanz: 10 Jahre Mobile Opferberatung", p. 12, [www.mobile-opferberatung.de/doc/10-jahre-mob.pdf](http://www.mobile-opferberatung.de/doc/10-jahre-mob.pdf). <sup>154</sup> According to Beate Selders ("Keine Bewegung! Die 'Residenzpflicht' für Flüchtlinge – Bestandsaufnahme und Kritik", Berlin 2009) roughly a quarter of all offences committed in the context of legislation on non-nationals are related to non-compliance with residence restriction provisions. <sup>155</sup> C.f. on this point BT-Drs. 17/5693 und 17/4798.

ever no empirical evidence.<sup>155</sup>

The following immediate measures are needed to reinforce migrants' rights:

- Naturalization should be made easier and there should be general acceptance of dual citizenship (abolition of the obligation to choose between German and foreign citizenship (*Optionspflicht*), which can lead to loss of German citizenship for young people who were born and have grown up as Germans here), lowering the requirements for the periods of residence that must be demonstrated, the proof of income and language skills and fees, scrapping attitude tests and naturalization tests that regard all those who wish to acquire citizenship as being under suspicion, German citizenship for all children born in Germany to foreign parents who live in Germany on a permanent basis.
- Voting rights for non-Germans at the national, federal state and municipal level; this would require an amendment of the Basic Law with a two-thirds majority in the Bundestag and Bundesrat, but would by no manner of means be impossible in terms of constitutional law.

## VII. EPILOGUE

A thorough going elucidation of the NSU affair has only just begun: the concluding report of the Commission of Enquiry, the joint conclusions and the dissenting opinions mark the end of an important initial step. The BKA and the Public Prosecutor General Generalbundesanwalt continue investigations into alleged NSU supporters and are seeking to determine whether further, not yet identified acts of violence should also be ascribed to the NSU. There is no end in sight at all in the trial against *Beate Zschäpe, Ralf W., Carsten Schultze, Holger Gerlach* and *Andre Eminger*.

Everyone must play their part correctly if the process of shedding light on the NSU affair is to unfold with as much transparency as possible: the general public, the media, parliamentarians and civil society. This also holds true for the continuing problem of racist and right-wing violence. At least two or three right-wing or racist acts of violence occur in Germany every day. It is up to all of us to ensure that calls for civil courage are translated into genuine commitment – and that victims of right-wing and racist violence are not left alone.

## GLOSSARY

- AG OIREX/Arbeitsgruppe Operativer Informationsaustausch Rechtsextremismus:** Working Group on Operational Exchanges of Information on Right-wing Extremism
- AK IV/Arbeitskreis IV:** Working Group on Operational Exchanges of Information on Working Group IV of IMK
- AKrND/Ausschuss für die Kontrolle der Nachrichtendienste:** Committee for Oversight of the Security Services
- Aufenthaltsgesetzes:** Residence Act
- Beweisaufnahme:** evidentiary hearing, hearing of evidence, the evidence heard
- BfDi/Bundesbeauftragte für den Datenschutz und die Informationsfreiheit:** Federal Commissioner for Data Protection and Freedom of Information
- BKA/Bundeskriminalamt:** Federal Criminal Police Office
- BLKR/Bund-Länder-Kommission Rechtsterrorismus:** Federation-Federal States Commission on Right-Wing Extremism
- BMI/Bundesministerium des Inneren:** Federal Ministry of the Interior
- BMVg/Bundesministerium der Verteidigung:** Federal Ministry of Defense
- BND/Bundesnachrichtendienst:** Federal Intelligence Service
- BT-Drs./Bundestagsdrucksache:** Bundestag Official Document
- Bundesunmittelbare Körperschaften:** federal corporations
- BVerfG/Bundesverfassungsgericht:** Federal Constitutional Court
- BVerfSchG/Bundesverfassungsschutzgesetz:** Bill on Cooperation between the Federation and the federal states in Matters Pertaining to Protection of the Constitution and on the Federal Office for Protection of the Constitution
- Dienst- und Fachaufsicht:** Administrative and technical supervision
- DV/Dienstvorschrift:** internal regulations
- Einbürgerungstests:** mandatory tests in order to get German citizenship
- Errichtungsgesetz:** Establishment Bill
- Fachaufsicht:** technical supervision
- G10-Maßnahme:** G 10 measure - wire tapping/telecommunications surveillance
- GAR/Gemeinsame Abwehrzentrum gegen Rechtsextremismus:** Anti-Right-Wing-Extremism Centre
- GBA/Generalbundesanwalt:** Federal Attorney General
- Geheimschutzstelle:** restricted access room for classified information
- Generalstaatsanwalt:** Office of the Public Prosecutor
- GETZ/Gemeinsame Extremismus- und Terrorismusabwehrzentrum:** Joint Anti-Extremism and Anti-Terrorism Centre
- GTAZ/Gemeinsame Terrorismusabwehrzentrum:** Joint Anti-Terrorism Centre
- IGR/Informationsgruppe zur Beobachtung und Bekämpfung rechtsextremistischer/terroristischer, insbesondere fremdenfeindlicher Gewaltakte:** Information Group to observe and combat right-wing extremist/terrorist, in particular xenophobic, violence
- Im öffentlichen Auftrag:** by public order
- IMK/Innenministerkonferenz:** Conference of Ministers and Senators of the Interior of the federal states
- Kameradschaft Jena:** neo-Nazi group of Beate Zschäpe, Uwe Mundlos and Uwe Böhnhardt and others in the city of Jena in the 1990ies
- KG PMK-rechts/Koordinierungsgruppe politisch motivierte Kriminalität – rechts:** Coordination Group on Politically Motivated Criminality – Right-wing
- Kleine und große Anfragen:** minor and major interpellations
- MAD/Militärischer Abschirmdienst:** Military Counterintelligence Service
- Menschenrechtsbeirat:** Human Rights Advisory Council
- Optionspflicht:** obligation to choose between German and foreign citizenship
- PIAV/Polizeilicher Informations- und Analyseverbund:** Police Information and Analysis Alliance
- PKGr/Parlamentarischer Kontrollgremium:** Parliamentary Control Panel
- PUAG/Untersuchungsausschussgesetz:** Act on the Parliamentary Committee of Enquiry
- Rechtsverstöße:** statutory infringements
- RED/Rechtsextremismusdatei:** Anti-Right-Wing-Extremism File
- Residenzpflicht:** mandatory residence
- SGB II/Sozialgesetzbuch II:** Social Security Code Vol II
- Sperrung der Akten:** access restriction order
- StGB/Strafgesetzbuch:** Criminal Code
- StPO/Strafprozessordnung:** Code of Criminal Procedure
- Tarnkennzeichen:** false vehicle number plates
- Tarnpapiere:** false ID papers
- THS/Thüringer Heimatschutz:** Thuringian Homeland Security, a neo-Nazi organisation in Thuringia
- TLfV/Thüringer Landesamt für Verfassungsschutz:** Thuringian Office for the Protection of the Constitution
- TLKA/Landeskriminalamt Thüringen:** Thuringian Criminal Police Office
- UA FEK/Unterausschuss Führung, Einsatz, Kriminalitätsbekämpfung:** "Leadership, Deployment and Fighting Crime" sub-committee politically motivated crime
- Verpflichtungsgesetz:** Bill on Engaging Individuals Other than Public Officials
- Vertrauensgremium:** Confidential Committee
- VP/Vertrauensperson:** long-term paid informer