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Joint Report on Legal Review in the Field of Internal Security Oversight in Germany

A Contribution to the Project

"Improvement of Civilian Oversight of Internal Security in Turkey"

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Preface

This study 'Legal Review in the Field of Internal Security Oversight in Germany' is a contribution to the EU funded technical assistance project 'Improvement of Civilian Oversight of Internal Security' of UNDP Turkey.

Part of this broad project is the working package 'Benchmarking and review of the existing legislative framework and obstacles to exercise effective oversight functions over the law enforcement bodies and internal security bodies.' The oversight mechanisms of different European countries are to be examined, evaluated and compared.

This study concentrates – as agreed in the contract with UNDP Turkey - on

- an overview about the political and internal security system,
- core constitutional oversight principles over ISFs,
- oversight powers of parliaments,
- judicial oversight mechanisms,
- structure, remit and oversight functions of Ministries of Interior,
- internal oversight mechanisms,
- oversight of governors,
- independent external oversight mechanisms,
- the mechanisms for citizen and local authorities engagement into security policies and
- other legal arrangements and considerations in relation to civilian oversight in Germany

The study was carried out by Dr. Bernhard Frevel, professor for political science, Dr. Frank Braun, reader for constitutional law and administrative law, and Dr. Vanessa Luczak, lecturer for policing and sociology, who teach and research at the University of Applied Science for Public Administration and Public Management of North Rhine-Westphalia.

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1. Legal and Institutional System in Germany – An Overview

(Bernhard Frevel)

Germany is a federal republic consisting of 16 member states. After the Second World War and the national-socialist dictatorship the three west-allies (USA, UK and France) initiated the Federal Republic of Germany (BRD) with a the state model based on the principles of democracy, federalism, individual liberty rights and social state. In the Russian occupied zone the German Democratic Republic (DDR) was established, which followed the principles of a socialist state. After the revolution in 1989 the DDR dissolved and five new states were established, which joined the Federal Republic in 1990.

Political science names the German model of federalism “co-operative federalism” (Kropp 2010), which means that the federation (“*Bund*”) and its 16 states (“*Länder*”) have to collaborate in most of policies.

In principle the states have the prerogative for legislation and only in certain fields, enumerated in Article 78 of the Constitutional Law, the federation has the right of legislation. But during the time more and more de facto legislative competence shifted to the federation, while the competences of states were reduced (so-called ‘unitaristic federalism’, see Lehmruch 2002). The most important fields of state legislation are police, school education and higher education/science.

On the other hand the executive and administrative competence of the states increased and the federation has an own administration only in a few fields (e.g. international affairs, military, customs control).

This setting is important for the co-operative federalism: The law, e.g. criminal law, code of criminal procedure, traffic law, are federal law, which will mostly be executed by state or municipal public services. The police are mainly (see below) a concern of the states and ruled by state’s police law, but they enforce primarily federal law.

Also in the judicative this division of work is implemented. Law enforcement and penal system are generally a matter of state, not of the federation. Persons charged with a crime (defined by federal criminal law) are arraigned by a state attorney and are on trial at a district or regional court (belonging to the state judicial system). The Federal Court of Justice acts only as a revision court. Even if the Federal Police or the Federal Criminal Police Office are in charge and assist the Federal Public Prosecutor the court of first instance is a state court. Germany has no federal prisons.

Co-operative Federalism (especially in matters of internal security) means the double division of powers: first the traditional (horizontal) division of legislative, executive and judicative power, and second the vertical division of federal and state competence. Thirdly the inter-ministries division of power is to be considered: The ministry of interior puts a special emphasis on law enforcement and policing, while the ministry of justice builds a sort of counterpart with the adherence of individual liberty rights. This complex setting of powers and competences in Germany is often a bit complicated, but it is also a system of checks and

balances, which restricts the state, decreases the risks of arbitrariness and despotism and in the consequence helps to ensure individual liberty and privacy. (Frevel 2008) (see Annex 1)

Article 20 of the German Constitutional Law (*Grundgesetz – GG*¹) describes Germany as a democratic and social state under the rule of law, in which all state authority is derived from the people. Art. 20 (3) GG says: *“The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.”* Part I (with Article 1 to 19) of the Constitutional Law describes the Basic Rights with a set of people’s defensive rights against the state and rights of political participation. Article 1 (3) GG: *„The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.“*

This law are the basis for the supremacy of law and binds the police to the protection of liberty rights. They are also important to understand that the police (and police officers) are accountable to judicial revision by the regular courts of administration and also to criminal courts. Art. 19 (4) GG: *“Should any person’s rights be violated by public authority, he may have recourse to the courts.“*

¹ Excerpts of the Basic Law of the Federal Republic of Germany, see Annex 2.

2. Police and Policing in Germany

(Bernhard Frevel)

Following the federal constitutional system of Germany, there are independent police authorities at the federal level as well as at the level of the 16 states. Against this background the essential structural elements of the police in Germany are presented below with regard to the federal, state and local level.

2.1 The federal level

In principle it is true to say that police policy is a concern of the states in Germany. It is incumbent on them to recruit and train police officers, to create an organizational framework for the various police tasks in the areas of the public safety and the deployment of officers, crime control and prosecution, road safety, victim protection and crime prevention in order to fulfil their police service task.

The Basic Law ("*Grundgesetz*" [GG], also constitutional law) stipulates only three areas in which police authority is a national (federal) concern. In accordance with article 73 (10) GG the federation has the exclusive legislative authority for "*co-operation between the Federation and the states: a) in criminal investigation, b) for the protection of the free democratic constitutional structure, its continuance and the security of the Federation or a state (protection of the constitution) and c) in the protection against attempts on federal territory, which through the use of force or preparatory acts of such, endanger the foreign interests of the Federal Republic of Germany, as well as the maintenance of a Federal Criminal Police Office and the combat of international crime*".

According to Article 73 (9a) GG the Federation is also responsible for "*protection by the Federal Criminal Police Office against the dangers of international terrorism when a threat transcends the boundary of one Land, when the jurisdiction of a Land's police authorities cannot be perceived, or when the highest authority of an individual Land requests the assumption of federal responsibility*". According to Art. 87 (1) 2 GG the Federation is also responsible for border control, which is carried out by the Federal Police (formerly the Federal Border Guard). All other police tasks are fulfilled in principle by the state police forces and there is no "superorder" of the Federal Police to the state police forces.

Table 1: Police at the federal level

Supervisory control	Designation	Character	Main Tasks
Federal Ministry of the Interior	Federal Criminal Police Office (" <i>Bundeskriminalamt</i> "; BKA)	Police of the Federal State	<ul style="list-style-type: none"> National Information Centre International cooperation Combating terrorism and other crimes
	Federal police (" <i>Bundespolizei</i> "; BPol)	Police of the Federal State	<ul style="list-style-type: none"> Riot police Border Guard Service Railway Police
Federal Ministry of Finance	Customs Criminal Investigation Office (" <i>Zollkriminalamt</i> ")	Special Police of the Federal State	Prosecution and prevention of cases of customs crime

Federal Ministry of Transport, Building and Urban Development	Federal Office for Goods Transport (" <i>Bundesamt für Güterverkehr</i> "; BAG) River and shipping police	Special Police of the Federal State Special Police of the Federal State	<ul style="list-style-type: none"> • Roadside Controls • Road toll control service <ul style="list-style-type: none"> • Threat Aversion for the safety and efficiency of the traffic on federal waterways.
President of the German Bundestag	Police at the German Bundestag	Police of the Federal State	<ul style="list-style-type: none"> • Public order and safety in the area of the German Bundestag • Ensures the work of the Parliament

Source: own representation. After: Lange 1999: 7

In this sense the Federal Criminal Police Office (5.500 employees) and the Federal Police (with 40.200 employees) are the main federal police authorities. They are both subordinated agencies to the Federal Ministry of the Interior. Other police authorities at federal level include the police service of the German Bundestag and the river and shipping police of the federation (see Knemeyer 2004: 30 f.), as well as several special police services, for example the Customs Criminal Investigation Office, which is subordinated to the Federal Ministry of Finance. Germany has no Gendarmerie and has no military police with competences in internal security matters.²

2.2 The state level

If the main responsibility for the police is thus on the state level, this then means also that 16 state ministers of interior act as the highest authority of the police, that 16 federal state parliaments decide on 16 different police regulations and police organization laws, that there are numerous ideas for the education and training of police officers, and that even as far as equipment is concerned – from the uniform to armament – no standard national regulations can be expected.

Table 2: Employees in German Police Forces

State	Employees (officers and administration)
Baden-Württemberg	30,000
Bavaria	29,800
Berlin	16,000
Brandenburg	8,000
Bremen	2,500
Hamburg	9,800
Hessen	18,000
Lower Saxony	23,000
Mecklenburg-Vorpommern	6,000

² The military police in Germany, the so called „Feldjäger“, are a special group in the „Bundeswehr“ and are only responsible for policing soldiers, military areas and barracks.

North Rhine-Westphalia	50,000
Rhineland-Pfalz	7,200
Saarland	3,000
Saxony	13,900
Saxony-Anhalt	8,000
Schleswig-Holstein	6,500
Thüringen	7,700
total	239,400
Federal Criminal Police Office	5,500
Federal Police	40,200
Customs Criminal Police Office	400
total	285,500

Source: de/wikipedia.org (diverse pages)

The structural organisation in the federal states varies considerably and even the concept of organisation is by no means consistent. Whereas in some states the highest police authority is a department of the Ministry of Interior (e.g. in North Rhine-Westphalia, Mecklenburg-Vorpommern, Rhineland-Pfalz, Bavaria), others have a separate organizational entity, the so-called “*Landespolizeipräsidium*” (e.g. Baden-Württemberg, Hessen, Lower Saxony) – with only slight differences in actual jurisdiction. The regional police authority in one state (for example North Rhine-Westphalia) may be referred to as the “*Kreispolizeibehörde*” or “district police authority”, while in another state the same entity is called “*Polizeipräsidium*” (Baden-Württemberg, Hessen) or “*Polizeidirektion*” (Lower-Saxony, Brandenburg). Authorities in one state may allocate specific tasks – such as particular technical services – to a police constabulary (Hessen: Constabulary for Technology, Logistics and Administration), in another state they are the jurisdiction of the state authority (NRW: State office for Central Police Services). (see Groß/Frevel/Dams 2008: 23). The organigram of the police in North-Rhine-Westphalia and Hessen, as two special types of police organisation, are shown in Annex 3.

But also in other areas, there is evidence of diversity due to federalism. For example, while some states retain the so-called “three-tier career path” for the police, and thus have a work force at the intermediate level of service, who have completed the vocational training (usually 2 ½ years), other states choose the “two-tier career path”, in which a university qualification (B.A. degree, 3 years) is required. There are further differences between the police forces concerning for example the legal provision regarding e.g. special search allowance or “the last resort shot” with which a hostage-taker may be shot and killed.

The fact that a certain uniformity in the police in Germany does exist in spite of the many differences, is due particularly to three elements:

(1) At the “Standing Conference of Interior Ministers and Senators of the *Länder*” (IMC) substantial aspects of the policy of internal security are agreed upon and coordinated. This conference and its working groups discuss important matters of police and policing, it develops the “Programme Internal Security” (last version 2008/09) and also put up a “Template for Police Act” (1977), which gave hints and drafts for the development of police

acts of the states. The main task of the conference is to discuss matters and give advice to the ministries. If the conference decides about anything the conference this has to be unanimity.

(2) The standards for the central criminal law, criminal trial law and traffic law are as a Federal Law the same for all police forces and thereby lead to a large extent to a standard police assignment.

(3) The upper service level of all German police forces are trained together at the German Police University in Münster, whereby the basic understanding of police activity and management is harmonized. The GPU provides senior police training and police further training to the senior police services of the Federation and the Federal states throughout Germany. Professors, readers and lecturers from 14 small faculties for social sciences, economics, law, crime sciences, police strategies & tactics, traffic management deliver the academic police training in a Master course. Only graduates from this special course are promoted to the ‚higher police service‘ (superintendent and higher ranks).

With these connecting elements a kind of “unity in diversity” has evolved in Germany (see Groß/Frevel/Dams 2008: 36).

Annotation to the analysis

As described above the responsibility for the police is mainly a matter of the states and not of the federation. In this analysis the national level is referred to as often as possible. If the state level and the specific aspects of police have to be considered the focus will be on the state North Rhine-Westphalia (NRW), which is the state with the largest number of inhabitants and also the biggest state police force in Germany³. Other states are mentioned if there are noteworthy special features and differences to be regarded.

2.3 The local level

With the portrayal of the police system in Germany with the two main nationally responsible forces in the Federal Criminal Police Office and the Federal Police, as well as the 16 federal state forces, it is already apparent that there are no more additional municipal police forces in Germany.

While the first decades after the foundation of the Federal Republic of Germany were characterised by a reduction of the municipal police in all states with de-policing of the municipal administration conducted with varying degrees of intensity during the last two decades, the withdrawal of police tasks from local affairs seem to have come to an end. Under the label of “municipal crime prevention” the police are turning back to the municipality and the relevant safety actors at the local level and the actors of local affairs are moving back toward the police as well (Prätorius 2003: 310).

Municipal crime prevention and the consequent understanding of crime prevention as a theme that affects society as a whole serves as a starting point for the (re)municipalisation of policing (but not a municipalisation of police force). The inter-agency component of this

³ Structures of the Police in North Rhine-Westphalia see Annex 3.

development has its roots in the idea of community policing. This – coming from the Anglo-American area – is discussed in Germany under the keywords community-based or community-oriented policing. The central ideal of community policing is the merging of actors to a community partnership, within which community-based prevention activities (‘problem-solving’) and an effective fight against crime can be realized (van den Brink 2005: 59).

2.4 Borderlines of Police in the Security System

The police have an important role in the German internal security system. To ensure safety and security they collaborate with several partners, but have their unique responsibility and are separated from other services.

The police are separated from intelligence services. The intelligence agencies (*Bundesnachrichtendienst* = Federal Intelligence Service; *Bundes- und Landesverfassungsschutz* = Federal and States Offices for the Protection of the Constitution) have no police allowances (see § 8 Abs. 3 BVerfSchG), while the police are not allowed to use intelligence operations. This borderline was established with the foundation of the republic and should preclude an upcoming of a system as in the national-socialist regime with the ‘Gestapo’ (secret state police).

Table 3: Employees in German intelligence agencies

State	Employees (officers and administration)
Baden-Württemberg	338
Bavaria	442
Berlin	?
Brandenburg	105
Bremen	37
Hamburg	148
Hessen	246
Lower Saxony	260
Mecklenburg-Vorpommern	85
North Rhine-Westphalia	300
Rhineland-Pfalz	157
Saarland	84
Saxony	207
Saxony-Anhalt	102
Schleswig-Holstein	100
Thüringen	97
Federal Office for the Protection of the Constitution	2,750
Federal Intelligence Service	6,500
Military Counter-Intelligence Service	1,200

Source: [de/wikipedia.org](http://de.wikipedia.org), websites of intelligence services (diverse pages)

After “9/11” the German government installed the so-called “Joint Counter Terrorism Centre” (*Gemeinsames Terrorismusabwehrzentrum*, abbr. GTAZ), seated at the Federal Criminal Police Office in Berlin. This Centre allows the immediate communication of the federal and states police forces and the federal and states intelligence services and helps them to analyse terror risks and threats, but in principle keeps the separation of services. This centre has no operative competences and concentrates on intelligence.⁴ (see Annex 4)

The police are also differentiated from the *Bundeswehr* (Military). The *Bundeswehr* has – in times of peace – no allowance to act in matters of internal security. Only in extreme situations and if the police are not able to deal with a certain threat (because of e.g. lack of technique), the police can ask the support of the *Bundeswehr* (for example in situations like 9/11) (see Art. 35 (2) and (3)).

⁴ See <http://www.verfassungsschutz.de/en/fields-of-work/islamism-and-islamist-terrorism/gtaz-en>

3. Institutional Oversight Principles

(Bernhard Frevel)

3.1 Overview

Table 4: Core institutional oversight principles over internal security forces

	Germany	Turkey
Constitution/ date	yes – 1949	Yes / 1982
Supremacy of law asserted	Yes, see constitutional law (basic law, Grundgesetz [GG]) Art. 20 (2) and (3):	yes
Restriction on supremacy of law	No	Unlawful orders execution not excluded. High military council decisions not subject to judicial scrutiny.
Protection of free exercise of liberties	The protection of free exercise of liberties is obligation of the ISFs.	Not an ISFs mission
Subordination to Civilian Authority	Yes, the ISFs are subordinated to the (elected, civilian) government	No (There is no provision in the Constitution related to subordination to civilian authority)
Internal/External security definition	Indirect definition of external security in Art. 115 a GG, when “the federal territory is under attack by armed force or imminently threatened with such an attack (state of defence)”. But there is no legal definition of internal security.	No def. of internal/ external security.
Accountability of all	Yes	

	Germany	Turkey
administrations and forces		no

3.2 Policing, the supremacy of law and liberty rights

There are two fundamental important articles in the German Basic Law (approved in 1949) to consider when thinking about policing in the German constitutional state, which were already mentioned in chapter 1:

Article 1 (3) GG: *„The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.“*

Article 20 (3) GG: *“The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.“*

In difference to a lot of other constitutions the German Basic Law puts the people, their basic rights in and against the state and the boundaries of state’s power at the begin of the constitution. The Parliamentary Council, which wrote the draft of the Basic Law in 1948/49, decided about this special structural element of the constitution against the background of the inhuman national-socialistic regime. Never again should a German state be allowed to oppress the people, to deny fundamental liberty rights and to act arbitrarily.

The human dignity shall be inviolable, says Article 1 (1) GG, and to respect and protect it shall be the duty of all state authority. This sentence formulates the core task of the state and also an important assignation for the state’s executive – including the police and other internal security forces. In combination with Article 1 (3) GG the immediate effect of the basic rights for all state powers is evident, as the liberty rights are directly applicable law. This does not only mean, that the state has to respect the rights of the people, but also to be in duty to defend and protect these rights if they are violated or in risk to be violated by other parties. This might cause problematic situations, for example if a discredited political minority with ridiculous demands wants to demonstrate and the police have to protect this demonstration (e.g. of racists and Nazis) against other people. The right to demonstrate is a liberty right codified in Article 5 “Freedom of expression” and Article 8 “Freedom of Assembly” which has to be protected by security forces even if and despite the state and the society do not share the opinions.

The executive is bound by law, which means the Basic Law as well as other special law. All executive’s activities have to be assigned and justified by law and/or decrees, which must not contradict law and constitution. In the consequence the executive’s action can and must be reappraised by courts. This gives the right to the people to recourse to the courts if they think that a public authority, e.g. the police, violates their person’s rights (Article 19 GG). This includes suits against any wrongdoing, misinterpretation of law, unequal treatment, discrimination etc. by civil servants. Concerning cases are proceeded at administrative courts.

If a civil servant, here: a police officer, commits a crime (e.g. assaults during police operation) this crime will be dealt with at a criminal court. If the officer is convicted with a penalty of more than one year in prison this person will be dismissed from the force.

This shows that not only the state institutions are accountable for activities, but also the individual civil servant and police officer are accountable for his/her doing if this concerns criminal behaviour. If a police officer receives an illegal order (e.g. to enter premises without permission of a judge, to use unreasonable force) the officer has the right and the obligation to remonstrate and is allowed to disobey the order.

3.3 Summary of institutional oversight principles

Table 5: Core institutional oversight principles over internal security forces - enhanced

	Germany	Turkey
Constitution/ date	Bund: yes – 1949 NRW: yes - 1950	Yes / 1982
Supremacy of law asserted	Yes, see constitutional law (basic law, Grundgesetz [GG]) Art. 20 (2) and (3): (2) All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. (3) The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.	yes
Restriction on supremacy of law	No. All activities of police (as an organization) and of police officers are bond to law, especially police law, criminal law, code of criminal procedure. There are no branches or tasks, which are not under supremacy of law or without the chance of judicial review.	Unlawful orders execution not excluded. High military council decisions not subject to judicial scrutiny.
Protection of free exercise of liberties	The protection of free exercise of liberties is one of the special obligations of the police. The personal freedoms (Art. 3 GG), freedom of assembly (Art. 8 GG), freedom of movement (Art. 11 GG) and the privacy of correspondence, posts and telecommunication (Art. 10 GG) are to be mentioned as they give certain duties to police and also constrict the police activities. The police have to obtain special permission from a judge for certain activities, which would intervene in specific	Not an ISFs mission

	Germany	Turkey
	<p>liberties. For example: Inviolability of the home (Art. 13):</p> <p>(1) The home is inviolable.</p> <p>(2) Searches may be authorised only by a judge or, when time is of the essence, by other authorities designated by the laws, and may be carried out only in the manner therein prescribed.</p> <p>(3) If particular facts justify the suspicion that any person has committed an especially serious crime specifically defined by a law, technical means of acoustical surveillance of any home in which the suspect is supposedly staying may be employed pursuant to judicial order for the purpose of prosecuting the offence, provided that alternative methods of investigating the matter would be disproportionately difficult or unproductive. The authorisation shall be for a limited time. The order shall be issued by a panel composed of three judges. When time is of the essence, it may also be issued by a single judge.</p> <p>The police have to respect and protect the free exercise of liberties. But they often have weigh conflicting interests and contradicting liberties, for example the liberty of personal freedom (Art. 2 (2) GG: Every person shall have the right to life and physical integrity.) which could be affected by a demonstration (Art. 8: (1) All Germans shall have the right to assemble peacefully and unarmed without prior notification or permission. (2) In the case of outdoor assemblies, this right may be restricted by or pursuant to a law.), which might lead to violence. Sometimes the police come to the conclusion, that the risks of a demonstration (e.g. by neo-nationalist groups) are high and it could endanger the public – and want to forbid this demonstration. Quite often this conclusion is not accepted by the group/person who organises this demonstration and complains at an administrative court. If this court decides, that the right to demonstrate shall not be restricted, the demonstration will be allowed and the police have not only to respect but to protect this demonstration (e.g. against attacks from political opponents).</p>	
Subordination to Civilian Authority	<p>The “chain of legitimacy” begins with the general, free, equal and secret election of the parliaments (Land and Bund). The parliament elects the Chancellor resp. Prime minister, who builds his/her government. The Ministry of Interior supervises the police and accounts to the parliament.</p>	<p>No (There is no provision in the Constitution related to subordination to civilian)</p>

	Germany	Turkey
		authority)
Internal/External security definition	<p>There is an indirect definition of external security in Art. 115 a GG, when “the federal territory is under attack by armed force or imminently threatened with such an attack (state of defence)“. But there is no legal definition of internal security.</p> <p>On the other hand the forces for internal and external security are separated. The military (“Bundeswehr”) is not a part of the internal security; they are not acting as support for the police or would be deployed in case of internal security matters (such as riots etc.). After the 9/11-attacks the constitutional law was amended with a new paragraph that weakens the up to then strict separation. Art. 87a (4) says:</p> <p>In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land, the Federal Government, if the conditions referred to in paragraph (2) of Article 91 obtain and the police forces and the Federal Border Police prove inadequate, may employ the Armed Forces to support the police and the Federal Border Police in protecting civilian property and in combating organised armed insurgents. Any such employment of the Armed Forces shall be discontinued if the Bundestag or the Bundesrat so demands.</p>	No def. of internal/ external security.
Accountability of all administrations and forces	<p>The police - as all other public services - and the officers / servants are accountable for their doing. The administrative court judicially approves this normally. In case e.g. of misuse of force or other criminal acts of police officers they are individually accountable to the criminal court.</p>	no

4. Parliamentary control of Internal Security

(Bernhard Frevel)

4.1 Overview

Table 6: Oversight Powers of Parliaments

	Germany	Turkey
Exclusive powers to legislate on the legal terms of the security forces	Yes, differentiated to the legislature of the Federation (e.g. criminal law) and the states (police law)	
Discussion and Approval of State Budget	Yes	yes
National yearly plan submitted to Parliament	Yes	no
National yearly report on the situation in terms of security and security forces during the previous year	Yes: Police Crime Statistics and various status reports on selected security matters	
Appointments (power to appoint, auditions, elect members to internal security bodies, give opinions, etc.)	Parliament appoints the president of courts of audio and Commissioner for Data Protection and Freedom of Information High ranked officers or police presidents are appointed by government and not the parliament. Parliament can appoint experts to give opinions	
Summoning Ministers	Yes, on the request of one parliamentary group or 5 % of the attendant MPs.	
Summoning public officers (e.g. police directors)	No, but the (summoned) minister can ask high ranked police officer to provide information	
Summoning	Yes, in the context of hearings and "Enquete	

	Germany	Turkey
experts	Commissions" (study commission).	
Parliamentary request of Information from government	Yes, within a graded system	yes
Parliamentary Inquiries /Questions & Interpellations	Yes, with "Kleine Anfrage" (minor interpellation) "Große Anfrage" (major interpellation)	yes /yes
Parliamentary Investigation Committees	Yes, if a quarter of the MPs demands this	Yes (including permanent Human Rights Investigation Commission)
Publicity of parliamentary investigation reports	Yes, online.	Yes, online
Set plenary debates on security issues (explain if opposition can schedule alone or requires approval of the majority)	A plenary debate (not only) on security issues can be set up in different formats. The opposition can schedule a plenary debate on her own (request of one parliamentary group or 5 % of MPs)	
Court of Accounts	Court of Accounts ("Rechnungshof") are installed at federal and state level and are an independent bodies of government	yes
Remit of Court of Accounts	The Court of Account examines financial management and audits both revenue and expenditure of all public administration. The Rechnungshof does not evaluate policy decisions made in compliance with applicable legislation.	Large scope. Every central government department, local adm. and army.

	Germany	Turkey
	The Court reports to the parliament.	
Exception on control of security policy formulation bodies	No exceptions.	No exception. Control over ministry in charge of policing
Ombudsman report (yearly report submitted to parliament including citizens complaints about the action of security forces and police abuses)	In Germany no ombudsmen are installed.	

4.2 Oversight by parliament

As described above the executive (and within the police) are bound to law and justice. This law is ‘made’ by the legislative power, meaning the federal and states parliaments. These parliaments are elected regularly (different in the states every four or five years). As a parliamentary democracy the government is elected by the parliament and not (as in presidential democracy) by the people. Germany established a system of a (weakened) competitive democracy (Frevel 2009). The competition of political parties and an election system leading to proportional representation leads (normally) to a situation with a parliamentary majority (often in coalitions) (which votes for ‘her’ government) and an (often strong) opposition.

While the parliamentary majority tries to support and legitimize the government, the opposition has the right and duty to control the government. To enable the parliament for a (more or less) sufficient control the rules of parliamentary order give a graded set of instruments.

- *Questions* for oral or written answer about single aspects of different kind are usually addressed to the Parliamentary State Secretary of the ministry (§ 105 GO-BT⁵). These questions will often be either answered in written way or in the so-called “Question Time”, which takes place in every sitting week of the parliament.

⁵ GO-BT = Geschäftsordnung des Deutschen Bundestags, parliamentary rules of procedure of the German Federal Parliament. The rules in the state parliaments are similar.

- *Aktuelle Stunde* (topical hour) in which actual topics are discussed (§ 106 GO-BT). The members of parliament ask the government about their attitudes, activities and plans, and the parliament debates the political perspectives on the topic.
- *Kleine Anfragen* (minor interpellation) are formulated by single MPs and deal with specific problems and/or certain activities of the executive. They are written notices and answered by the responsible ministry also in written way. (§ 104 GO-BT)
- *Große Anfragen* (major interpellation) are more complex. They are also submitted written, answered written by the government and then discussed in the parliamentary debate. (§ 100 GO-BT)
- *Untersuchungsausschüsse* (parliamentary investigation committees) have to be established if a quarter of the parliament requests this (Art. 44 GG). They are the ‘sharpest knife’ of parliamentary control and used to investigate scandals. These committees are mainly an instrument of the opposition, who sees the chances to prove the governments failures (and tries to benefit from this in the next election).⁶

The parliament and also its committees (e.g. committee of internal affairs, which deals with matter of internal security) can – on request of a parliamentary group or 5 % of attendant MPs – summon the responsible minister to give answers during a session (§ 42 GO-BT).

Within the work of parliamentary investigation committees, in hearings during the parliamentary consultancy or in “Enquete Commissions” (study commissions) the parliament or parliamentary groups summon and question experts from government/administration, academics, interest groups etc. to widen the horizon and to consider specific expertise.

Beside these special control instruments the parliament has its usual tasks of legislation. Regarding the project topic there are some acts to be mentioned:

- Federation: criminal law, code of criminal procedure, traffic law, law about regulatory offence, Federal Criminal Police Office Act, Federal Police Act, Joint Counter Terrorism Centre Act, ...
- States: police law, police organisation law, ...

Also the budget has to be passed as law. The police budget is part of the budget of the Ministry of Interior. The draft of the police budget is prepared by the police department at the Ministry of Interior, but the final draft and proposal to the parliament is in the responsibility of the Ministry of Finance and the decision of the cabinet. The budget shows the revenues and expenditures and gives a differentiated overview about the personnel, but has no section about policies, political intention, strategy or operative activities. In the parliamentary budget

⁶ Recent examples of parliamentary investigation committees (PIC) are the PICs about the right-wing terror group „national socialist underground“ at the Federal parliament (http://www.bundestag.de/dokumente/textarchiv/2014/49561254_kw08_sp_nsu/215776) but also in the state parliaments of Thüringen, Saxony, Bavaria, North-Rhine-Westphalia and Baden-Württemberg. Also in Baden-Württemberg a PIC analyses the police use of force with batons, water cannons and pepper spray against demonstrators, who protested against a new railway station in Stuttgart and the uprooting in the palace garden (<http://www.landtag-bw.de/cms/home/der-landtag/gremien/ausschusse/untersuchungsausschuss-polizeiei.html>).

debate the section 'police' is often discussed, as it is one of the central indicators for the situation of internal security. In the debate the facts and figures are used to discuss the actual risks and threats, the police strategy, the police's equipment, the need of alterations of police law etc.

4.2.1 Assistance of parliamentary oversight by independent agencies

a) Court of Accounts

The budget gives a framework for the government and administration. Whether this budget is kept is analysed by the *Rechnungshof*⁷ (Court of Accounts / Court of Audit) and reported annually to the parliaments commission for budgetary control. In case that the *Rechnungshof* and the parliament reproves certain costs, activities and discrepancies of budget and de facto expenses the government has to report to the parliament about taken measures. (Bundesrechnungshof 2009)

The *Bundesrechnungshof* is a supreme federal authority. As an independent body of government auditing it is subject only to the law. The status of the *Bundesrechnungshof*, its Members and its key functions are guaranteed by the Constitution (Article 114 (2) GG). A president, who also acts as the Federal Performance Commissioner, and is designated by order of the Federal Government, chairs this court. The staff (about 600 employees) includes mainly jurists and economists, who are supported by civil servants. Division IV audits the defence budget and domestic security services. – Similar to the "*Bundesrechnungshof*" the state "*Rechnungshöfe*" are organised as independent bodies.

The *Rechnungshof* also analyses the economic behaviour of specific authorities and tests certain projects. The reports are given to the head of authorities and also to the parliament. The ministries with responsibility give written explanations to the results of the report.

The protocols of the parliamentary debates, the text of minor and major interpellation and the government's answers, the *Rechnungshof*-reports and the ministries' statements are documented as "Parliament Papers" and are online available – unless they are not classed secret (e.g. based on risks for the internal or external security, but also intellectual property and patents, fiscal secret).

b) Commissioners for Data Protection and Freedom of Information

Beside the "*Rechnungshof*" the Federal and states "Commissioners for Data Protection and Freedom of Information"⁸ report directly to the parliament. They have a quite strong position as a public body that monitors and supervises compliance with data protection laws and regulations. The commissioners are elected by the parliaments, and the agency works independently from the government.

⁷ See <https://www.bundesrechnungshof.de/en/bundesrechnungshof>

⁸ The position of the Federal Commissioner for Data Protection was installed 1978, the North Rhine-Westphalian Commissioner in 1979.

The report of the North Rhine-Westphalia Commissioner for Data Protection and Freedom of Information has a chapter about „Police and Justice“ in which for example the data protection in the context of tracing or telephone and Internet surveillance are discussed.

Apart from the general data protection laws there are special laws at both state and federal level that contain data protection provisions governing specific areas. For instance, the North Rhine-Westphalia Police Act includes special provisions concerning data processing by police services. Public and police authorities have to observe, with precedence, the data protection provisions laid down in the special laws that apply to them. Every police authority has to have a data protection officer.

c) No ombudsmen – no police commissions

While the institutionalised control by the parliament and the court of accounts is well established in Germany the independent control is meagre. In Germany no ombudsmen for police matters are installed. The governments and also the police unions argue that there would be no need for such a position, as the parliament (assisted by the courts of audit and the Commissioner for Data Protection and Freedom of Information), the police itself and the courts would ensure enough oversight.

Only in Hamburg existed from 1998 until 2001 a “police commission” with three independent volunteers, which had the task to observe malpractice of police officers and eventual risks for the police in a system with the rule of law. The discussion about the sense and task of this commission was highly controversial.

With fewer competences than an ombudsman has, in several countries in some German states so called “Central Complaint Points” were installed (Hamburg, Berlin, Saxony-Anhalt). But these are organizational units in the force and not independent from police or ministry.

Police critics in Germany see a serious lack of civilian oversight in the fact that there are no ombudsmen or independent commissions. (Pütter 2011). Amnesty international in Germany complains about the lack of control and individual accountability for malpractice. Amnesty demands an identification mark for every police officer (especially for members of armed riot police) and also presents (unregularly) reports on police violence.

4.2.2 Relationship of Parliament and Government

The parliament in the parliamentary democracy in Germany has beside all tasks as the legislative power on the one hand the right and duty to elect the Chancellor (Federation) or the prime minister (in the states), on the other hand it has to control and supervise the government and the subordinated administration. As shown above the parliament has a differentiated set of instruments to fulfil these tasks. But the government and the ministries are not only object of requests, but also inform the parliament (and the public) on own initiative and/or because of tradition or obligation.

One of the most important reports in aspects of internal security is the Police Crime Statistics, which is published (and send to the parliament) annually. This statistic informs about offences, offenders, victims and damage by crime. Beside this statistic the authorities also publish diverse status reports on different aspects of internal security, for example about human trafficking, drugs, organised crime, cyber crime, counterfeit money, corruption etc.

Endeavours to establish a series of “Periodical Security Reports”, which would discuss matters of internal security based on scholarly analysis, did not succeed. So only in 2001 and 2006 this report was published.

4.3 Summary: Oversight Powers of Parliament

Table 7: Oversight Powers of Parliaments - enhanced

	Germany	Turkey
Exclusive powers to legislate on the legal terms of the security forces	<p>The exclusive power to legislate on the legal terms of the security forces lies with the parliament. The federal parliament (Deutscher Bundestag) is responsible for the law of the Federal Criminal Police Office, the Federal Police and the smaller police forces in the area of accountability of federal ministries. Also the legislation about the Federal Office for the protection of the Constitution is a matter of the Bundestag.</p> <p>As the other police forces are in the responsibility of the states the state parliaments (Landtag) have the legislative competence on police law, police organization law.</p> <p>The ministries can concretize this law with decrees and regulations, but these have to regard the law and its sense.</p>	
Discussion and Approval of State Budget	Yes, yearly budget consultation in the federal and state parliaments. Police as a part of the ministries of interior have a declared budget in the ministries’ budget.	yes
National yearly plan submitted to Parliament	The annually budget plan is submitted to the parliament and this decides about this budget. The budget shows the differentiated revenues and expenditures and also the plan of staff. But this plan has no part giving information about tasks, strategy and focal points of police and policing.	no
National yearly report on the situation in terms of security and security forces during the previous year	Germany and the member states have no tradition of presenting reports on the situation of security. Instead of reports with analyses, conclusions and recommendations the responsible (federal or state) minister of interior presents and comments annually the crime statistics (Polizeiliche Kriminalstatistik) with data about the type and number of recorded criminal offences, the date and place of the offence, the victims and criminal damage, the clear-up rate, the suspects' age, gender, nationality and other characteristics to the	

	Germany	Turkey
	<p>parliament and the public.</p> <p>The specialized federal and/or state offices for criminal investigation publish also different status reports for example on cybercrime, corruption, drug trafficking. These reports are also read and discussed by the parliamentary committees on internal affairs.</p> <p>A former federal government tried to establish a series of “periodical security reports”, which would present not only statistics but also scholarly analysis and political assessment. But this report was only published in 2001 and 2006.</p> <p>On the state level only Lower Saxony also tried to establish security reports, but also only twice (2001, 2006).</p>	
Appointments (power to appoint, auditions, elect members to internal security bodies, give opinions, etc.)	<p>The power to appoint high ranked officers or police presidents lies with the government and not with the parliament.</p> <p>During the parliamentary discussion of draft law the committee responsible can appoint auditions of experts, representatives of interest groups and other persons. Every parliamentary group is allowed to name persons for these hearings (the number of persons to be invited is often in relation to the size of the parliamentary groups).</p>	
Summoning Ministers	<p>The parliament and also the committees can summon a minister to the discussions. In the Bundestag the minister can be summoned on the request of one parliamentary group or 5 % of the attendant MPs. The parliamentary rules of procedure of the state parliament might have different quorums, so in North Westphalia one parliamentary group or 25% of MPs have to vote for the summoning.</p>	
Summoning public officers (e.g. police directors)	<p>The parliament, mainly the responsible committee, can summon not only the minister but also the high ranked police officer to provide information about actual problems. It is for example the “inspecteur of police” (the highest ranked uniformed police officer in the ministry of interior), the “state director of criminal investigation” (highest ranked CID officer in the</p>	

	Germany	Turkey
	ministry) or the state police president, who report directly to the parliament. Lower levels report to their seniors, not to the parliament.	
Summoning experts	<p>The parliament has in particular two options to summon external experts.</p> <p>Firstly with the hearings during the parliamentary discussion. (see above)</p> <p>Secondly with the so-called “Enquete Commissions” (study commission). In these Enquete Commission members of parliament, scholarly experts and representatives of interest groups discuss complex matters and report to the parliament after a usually perennial debate.</p>	
Parliamentary request of Information from government	<p>The parliamentary rules differ between several requests:</p> <p>For specific matters of different kind the MPs can ask questions to the ministries, mainly addressed to the Parliamentary State Secretary.</p> <p>“Aktuelle Stunde” (topical hour): If there is an actual topic a quarter of the members of parliament can demand a topical hour, in which the parliament discusses this topic outside of the usual agenda.</p> <p>Example: In September 2014 an Islamist group (Salafists) patrolled as a self-called “Sharia Police” in the city center of Wuppertal. The parliament of NRW demanded a “topical hour”, discussed the matter and asked the Minister of Interior which measures the ministry and the police are going to take against such activities and how the state’s monopoly of policing shall be ensured.</p>	yes
Parliamentary Inquiries /Questions & Interpellations	<p>“Kleine Anfrage” (minor interpellation): mainly short, fact based question of a single Member of Parliament to the government, which has to be answered in a few days or weeks. These minor interpellations are usually to be answered without extensive research. It is an instrument of the opposition and should help to control the government and the administration, here: police.</p> <p>Example: In October 2014 a MP asked the</p>	yes /yes

	Germany	Turkey
	<p>Minister about the development of staff in a special task force “Einsatztrupp” and the impact on street crime. Also in October 2014 a MP asked about the usage of tasers.</p> <p>The “Große Anfrage” (major interpellation) is comprehensive, differed in chapters and several sub-questions. A parliamentary group normally asks the major interpellation. The government has to do a thorough research and has to answer the questions not only with facts but also explanations and in larger context. The major interpellation is mainly an instrument of the opposition, but also used by the governing party or coalition to offer “their” government a forum for the presentation of activities, results and successes.</p> <p><u>Example:</u> In March 2013 the opposition asked about “The Situation of police and crime fighting in NRW”. In more than 60 differentiated questions aspects of staff, deployment, development of certain crime (e.g. burglary) etc. were asked on 13 pages and the answer of the ministry was 114 pages long with several tables, figures and explanations.</p>	
Parliamentary Investigation Committees	<p>For example after scandals the parliament can install an investigation commission, which has excessive competences to question the government, the administration and (external) witnesses. The competences are in some way comparable to the competences of a court.</p> <p><u>Example:</u> A right wing terror group “national socialist underground” murdered 10 people between 2000 and 2010 – but the police and intelligence services had not detected the political background of the assaults and were not able to arrest the group. The failures of the security services had been topics of several PIC in the Bund and several member states. The parliament in NRW also installed a PIC, which has to find out about the failures of NRW police and the Office for Protection of Constitution.</p>	<p>Yes (including permanent Human Rights Investigation Commission)</p>

	Germany	Turkey
Publicity of parliamentary investigation reports	The reports of the PIC (as well as the answers of minor and major interpellations) are published as parliament reports, which are available online.	Yes, online
Set plenary debates on security issues (explain if opposition can schedule alone or requires approval of the majority)	<p>A plenary debate (not only) on security issues can be set up in the context of a 'topical hour' or of 'major interpellations'. A topical hour is put on the agenda if</p> <ul style="list-style-type: none"> - the 'Council of Elders' agrees about this in their regularly planning sessions, - one parliamentary group or 5 % of the attendant MPs request this after the answer of the government to a oral question, - and also independently from the 'Question Time' when a parliamentary group or 5 % of the attendant MPs request this topical hour. <p>With these instruments the opposition is able to schedule a debate also against the approval of the majority. Setting up a public plenary debate is an important tool for the parliamentary minority.</p>	
Court of Accounts	As well as in the Bund also the Länder have a Court of Accounts, the so-called "Rechnungshof". These are independent authorities, which control effectiveness and efficiency of all public services.	yes
Remit of Court of Accounts	<p>The Rechnungshof analyses the activities of services against the background of tasks assigned by law and the budget. The Rechnungshof is an independent "authority sui generis" not belonging to legislative, executive or judicative. (Art. 114 (2)).</p> <p>It has the duty not only to inspect but also to advise the administration.</p> <p>The Rechnungshof does not evaluate policy decisions made in compliance with applicable legislation.</p> <p>The Rechnungshof publishes a yearly report, in which the most important results of inquests are described. This report is given to the government and the parliament – and also online to the public. Comprehensive reports with detailed information and advises are given to the authorities.</p>	Large scope. Every central government department, local adm. and army.

	Germany	Turkey
	<p><u>Example</u>: in 2013 the Landesrechnungshof NRW evaluated the efficiency of car repair workshops of the police and the problems with the implementation of police digital radio. In 2012 the Bundesrechnungshof analysed the German Police University.</p>	
<p>Exception on control of security policy formulation bodies</p>	<p>There are no exceptions. The parliament decides about police law and police budget. The ministry acts politically and administrative in this framework and supervises the police activities. The parliament controls the ministry.</p>	<p>No exception. Control over ministry in charge of policing</p>
<p>Ombudsman report (yearly report submitted to parliament including citizens complaints about the action of security forces and police abuses)</p>	<p>In Germany no ombudsmen are installed. The governments and also the police unions argue that there would be no need for such a position, as the parliament, the police itself and the courts would ensure enough oversight.</p> <p>So no ombudsman report is presented and discussed.</p>	

5. Judicial Oversight Mechanisms in Germany

(Frank Braun)

5.1 Overview

Table 8: Judicial Oversight Mechanisms

	Germany	Turkey
COURTS		
Courts functions and independence guaranteed in constitution	Yes	Yes
Judicial courts oversight		
ISFs in investigation receive	- No	- No
Special protection	- Yes	- Yes
Aggravated sanctions		
Nature of restrictions to courts' investigation powers	- No prior authorization	- Prior authorization (if a crime is committed during administrative duties)
-by administration	- No military courts have jurisdiction on policing activities	-No military courts have jurisdiction on policing activities
- by army		
Strong oversight powers over police investigators	- Yes	-Yes. Investigation and arrest under Judicial Authorities
- investigation	- Yes	- Yes. Custody measures to be Reported to Prosecutor.
-arrests		

	Germany	Turkey
Special accreditation for investigation officers	- No	Yes – Police Yes – Gendarmerie
Assessment of investigating officers by public prosecutor	- No	- Yes
Restriction because of “national interests”	- No personal privileges or restrictions concerning court procedures - Only restrictions concerning Courts’ access to information or documents covered by Law on official secrets; the confidentiality, however, can be examined in a specific in-camera-procedure before the Federal Administrative Court	No / PPC Article 47 and 125
Administrative courts oversight		
Citizen challenging decrees, orders etc...	Yes	Yes
Checking powers conferred to government	Yes. Constitutional powers of Government under the Jurisdiction of the Constitutional Court and Administrative Courts	Yes. Gov. decisions under scrutiny of constitutional courts and ministers & governorships of administrative courts.
Good practices		
Updated codes of police practice	No	No

5.2 Judicial Oversight

5.2.1 Courts functions and Independence Guaranteed in the Constitution

Section IX of The Basic Law for the Federal Republic of Germany (*Grundgesetz* - GG) which carries the title “The Judiciary” (Article 92–104 GG) does not contain a cohesive and closing

regulation concerning the Judiciary. Only a few questions, namely those that are regarded as especially important, are being answered. The court's organization and function have not been settled precisely in the Constitution, but those regulations can be found in the ordinary law of the Federation.

By Article 92 GG, the exercising of court ruling is assigned to the *judge*. A transfer of this judicial role to bodies of the legislative or executive power is inadmissible. The judge's position is characterised by organisational, personal and functional independence, as well as by neutrality and distance towards the parties involved.

The judge's *personal independence* guarantees his irremovability as well as his independence from transfer to another position, Article 97 (2) GG. Judges appointed permanently to full-time positions may only be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office by virtue of judicial decision and only for the reasons and in the manner specified by the laws.

Functional independence is the freedom from all influences and instructions through state authorities concerning those fields that are assigned to the judge for independent exercising. By this, it should be guaranteed that in the decision-making process the judge gets his bearings only by the law.

5.2.2 Judicial Courts Oversight

The judicial system in Germany comprises basically three different types of courts: Ordinary courts, dealing with criminal and most civil cases, specialised courts, such as the administrative, labour, social and fiscal courts, and finally constitutional courts (*Federal Constitutional Court* and Constitutional Courts of the Länder/states).⁹

In Germany, a decision is made between two tasks of the police: Firstly, the *prevention of threats to public security* ("Gefahrenabwehr") and secondly, *criminal investigations* ("Strafverfolgung"). In the area of *prevention of threats*, the police essentially operate independently. Judicial review procedures are in principle performed afterwards – upon request of the citizen concerned. *Administrative courts* are competent in these cases.

In the area of *criminal investigations*, the police are bound to further obligations: Throughout the whole investigation proceedings, they are subject to the instructions of the public prosecution office. Many measures require the involvement of an independent judge (see below 1.3.1). Subsequent legal protection (in contrast to the prevention of threats as a purview of the police) needs to be granted by *ordinary courts*.

Ordinary courts are organized in four tiers, each of increasing importance: the local courts ("Amtsgerichte"), the regional courts ("Landgerichte"), the Higher regional courts ("Oberlandesgerichte") and the Federal Court of Justice ("Bundesgerichtshof"). In criminal cases, each of the first three courts may have jurisdiction, depending on the nature and seriousness of the crime:

⁹ For an overview about the court system in Germany see annex 5.

- Local courts as trial court: Criminal offences in which the sentence is expected to be less than two years (1 judge); Criminal offenses in which the sentence is expected to be between two and four years (2 judges and 2 lay judges).
- Regional courts as trial courts: Cases in which the sentence is expected to exceed four years, minor political crimes (2 or 3 judges, 2 lay judges); Specially constituted „Strafkammer“ for felonies resulting in death and special economics crimes (3 judges, 2 lay judges).
- Regional courts as Appellate Court: Appeal for review of facts and law from the local courts (1 judge, 2 lay judges). Higher regional courts as trial court - Serious political crimes (3 or 5 judges).
- Higher regional courts as Appellate Court: Appeal for error of law from certain decisions of local courts as well as appellate decisions of regional courts.
- Federal Court of Justice - Only Appeal for error of law from trial decisions of the regional courts and the higher regional courts (5 judges).

At the end all the police powers that could have an impact upon rights and liberties are under the control of the judiciary.

Ordinary courts will also act when officials with a role in the field of security have committed a crime. Members of security forces do not enjoy any kind of jurisdictional “privilege” as compared to ordinary civilians.

5.2.3. Aggravated sanctions

Aggravated sanctions are incurred in some cases or for specific types of crimes. This applies for crimes that are committed by police staff either within their official duty or within cases that are directly related to their duty.

For example: Forcing someone to make a statement (§ 343 German Criminal Code [Strafgesetzbuch – StGB]); Making false entries in public records, § 348 German Criminal Code; Perverting the course of justice, § 339 German Criminal Code), Taking bribes; Taking bribes meant as an incentive to violating one’s official duties, (§ 331, § 332, § 335 German Criminal Code); Intentionally or knowingly prosecuting innocent persons; Enforcing penal sanctions against innocent persons (§ 344, § 345 German Criminal Code); Causing bodily harm while exercising a public office (§ 340 German Criminal Code); Facilitating escape of prisoners (§ 120 Abs. 2 German Criminal Code); Assistance given in official capacity, § 258a German Criminal Code); Destruction of materials under official safekeeping(§ 133 Abs. 3 German Criminal Code); Abuse of official position (§ 174b German Criminal Code); Using threats or force to cause a person to do, suffer or omit an act - abuses his powers or position as a public official (§ 240 Abs. 4 Nr. 3 German Criminal Code).

5.2.4 Oversight Powers over police investigators

In Germany strong oversight powers exist over police investigators.

5.2.4.1 Investigation

According to the conception of the Code of Criminal Procedure (Strafprozessordnung – StPO), in investigation proceedings the police can request relatively few encroachments on

fundamental rights independently (e.g. Photographs and Fingerprints, § 81b Code of Criminal Procedure or procedures for Establishing Identity, § 163b Code of Criminal Procedure).

The injunction of serious encroachments on the rights of the accused or of other persons is in principle reserved to the *investigating judge* (e.g. search, § 102 Code of Criminal Procedure, physical intervention, § 81a Code of Criminal Procedure, Interception of Telecommunications systems, § 100a Code of Criminal Procedure etc.). The public prosecution office and the police are only entitled to a competence in urgent cases. This *competence in urgent cases* presupposes the existence of exigent circumstances. This means, that a prior obtaining of the judge's decision would endanger the success of the operation. If this is the case, the order may also be given by a police officer.

In a minority of cases, the competence in urgent cases - in the event of exigent circumstances - is only assigned to the public prosecution office (e.g. Seizure of Postal Items, § 100 Code of Criminal Procedure or Interception of Telecommunications, § 100b Code of Criminal Procedure).

The public prosecution office and the police have been very generous in the acceptance of exigent circumstances. In practice, the competence of urgent matters of the police and the public prosecution office still constitutes the general rule - and not as being required by the legislator - the exception. The Federal Constitutional Court tried to ensure the regularity of the judges' decisions¹⁰: In an organisational regard, the State is obligated to establish an urgency service for investigating judges, so that they can also be accessible at night. Furthermore, the public prosecution office and the police need to document and verify the acceptance of exigent circumstances. In principle, it must always be attempted to at least reach the judge by telephone.

5.2.4.2 Arrests

Remand detention shall be imposed by the *judge* in a written warrant of arrest (§ 114 Code of Criminal Procedure). As a general rule, the warrant of arrest is to be issued before the accused has been arrested. In exigent circumstances, the *public prosecution office* and *officials in the police force* shall be authorized to make a provisional arrest if the prerequisites for issuance of a warrant of arrest or of a placement order have been fulfilled (§ 127 Code of Criminal Procedure). After an arrest by the police on account of an arrest warrant, as well as in the case of a provisional arrest, the accused shall, without delay, be brought before the court that is to examine him and decide on his further detention. The police may hold no one in custody on their own authority beyond the end of the day following the arrest.

The accused may, if remand detention is continued after he is brought before the competent judge, lodge a complaint against the warrant of arrest or apply for a review of detention and an oral hearing. The accused shall be advised that he may at any time, also before his examination, consult with a defence counsel of his choice. An accused who does not have a sufficient command of the German language or who is hearing impaired or speech impaired shall be advised in a language he understands that he may demand an interpreter or a

¹⁰ BVerfG, 2 BvR 1845/00 vom 03.12.2002, Absatz-Nr. (1 - 25), http://www.bverfg.de/entscheidungen/rk20021203_2bvr184500.html.

translator to be called in for the entire criminal proceedings free of charge. A foreign national shall be advised that he may demand notification of the consular representation of his native country and have messages communicated to the same.

5.2.5. Special Accreditation

There is *no Special accreditation* for investigation officers. However, measures of investigation, which substantially restrict the rights of the accused, may only be requested by “public prosecution office assisting officials” in exigent circumstances (otherwise the judge is responsible, see 1.2.4.1). Relevant requirements, however, are low. For being acknowledged as an investigator, it is only required that the potential employees shall be members of the public services, shall have completed their 21st year of age, and shall have worked as police officers for at least two years. In this respect, almost every police officer will be an investigating official for the public prosecution office. There are no badges or special identity cards for showing the capacity as an investigator; partly, official identity cards of the police in some States contain appropriate labeling.

In Germany, the police of the Länder perform the majority of investigations. Their Criminal Investigation Departments are known as the *Kriminalpolizei* (Criminal Police or Criminal Investigation Department).

In the Länder, the Criminal Investigation Department is structured and organised very differently. However, the Criminal Investigation Department is always in charge of the fight against serious crime, e.g. homicides, trafficking of narcotics, weapons and human beings, credit card fraud, hold-ups, robberies and extortion etc. Other types of crime are being prosecuted by non-specialised police officers of the security police.

In the past, the security police and the Criminal Investigation Department were clearly separated in the Länder. At the beginning of the 1990s, the trend of abolishing this specialisation began. This became evident in the training of the young police officers as well as in the organisation. In most of the Länder (e.g. North Rhine Westphalia) there is no strict organisational separation between the security police and the Criminal Investigation Department. Furthermore, in most of the Länder, a special training for members of the Criminal Investigation Department does not exist any longer. During their career, police officers often perform tasks within units of the security police as well as of the Criminal Investigation Department.

Moreover, highly specialised forces and specially trained investigation officers work in the Federal Criminal Police Office. The Federal Criminal Police Office (Bundeskriminalamt/ BKA) has to carry out law enforcement tasks in certain cases of international and serious crime. The BKA has original jurisdiction to conduct investigations in cases of internationally organised trafficking in weapons, ammunition, explosives or drugs, internationally organised production, or passing of, counterfeit currency, internationally organised money laundering and, since the year 2002, in cases of internationally organised terrorism as well as particularly serious cases of computer sabotage.

In Germany there is *no assessment of investigating officers by the public prosecutor*. A judicial police is not established. The police officers operating in criminal investigations are

incorporated into the general police service. Only police officers, respectively officials of the Interior Ministry are hierarchical superiors. The public prosecution offices remain under supervision of the Ministry of Justice.

According to the law, however, the *public prosecution offices are in authority over the police officers* in the context of investigation proceedings. The public prosecution office is the “sole mistress of the procedure”. It shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided. There are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all authorities. The managerial power of the investigations through the public prosecution office as the sole mistress of procedure includes, that the public prosecution office allows the police a free hand in cases in which the police has the better expertise. In the fields of forensic science and criminal tactics, for example, the public prosecution office is not entitled to issue any instructions to the police.

However, the legal division of responsibilities between the public prosecution office and the police, which has been described above, does not reflect reality: In most cases the police independently carry out the investigations, which they regard as necessary, and only forward the case to the public prosecution office after its completion. Then the public prosecution office may only decide whether or not to launch a prosecution due to the investigation results of the police. This is not unproblematic, because in that eventuality, the public prosecution office cannot live up to its legal responsibilities within the investigation proceedings. The police have more employees, are more technically advanced, possess an extensive data-processing network, and have therefore an enormous information advantage over the public prosecution office. On account of this, the public prosecution office has immense difficulties in fulfilling its managerial powers.

5.2.6 Privileges or restrictions concerning court procedures

There are *no personal privileges or restrictions* concerning court procedures, but restrictions concerning the Courts’ access to information or documents covered by Law on *official secrets*; Submission or surrender of files or other documents officially impounded by authorities or public officials may not be requested if their highest superior authority declares that publication of the content of these files or documents would be detrimental to the welfare of the Federation or of a German Land (see § 96 Code of Criminal Procedure).

Germany, however, has the particular feature, that the confidentiality of official files can be examined in an own legal procedure (so called *in-camera-procedure*). If a public body refuses to pass out - in their view - secret files to a court, the court concerned can call in the Federal Administrative Court. Then, the documents need to be handed out to the Federal Administrative Court, which examines whether the authority rightly kept the documents secret.

5.2.7 Administrative Courts Oversight

The administrative courts are an integral part of the German judiciary. They have no advisory functions and are strictly independent from any executive branch of the government. The jurisdiction of the administrative courts covers legal protection against all administrative acts

and other administrative proceedings. The administrative courts handle all trials under public administrative law (except those that fall under the jurisdiction of the social, finance or constitutional courts). Before the Administrative Courts, any police action, which is performed for the purpose of the prevention of threats to public security, can be examined.

The present system of administrative jurisdiction in Germany is three-levelled, with 52 administrative courts of first instance at the bottom, 15 Higher Administrative Courts in the middle and the Federal Administrative Court at the top of the hierarchy. At present the administrative jurisdiction comprises approximately 2.400 judges. The tribunals of first instance and the High Administrative Courts are financed, administered and staffed by the constituent state to which they belong. Every state maintains one Higher Court. The number of courts of first instance varies according to the size of the respective state. The Federal Administrative Court is financed and equipped by the Federation. A lawsuit normally starts in the administrative court of first instance, unless the respective legal matter is assigned by law to the High Administrative Courts or to the Federal Administrative Court. The Higher Administrative Courts are mainly courts of appeal. They re-examine decisions of the tribunals of first instance as to the facts and to the law. In contrast to that, the Federal Administrative Court reviews the decisions of the lower courts only on points of law. The respective proceedings are called "revisions". Generally, the actions brought before the Federal Administrative Court are directed against decisions of the courts of appeal.

5.3 Summary: Judicial Oversight Mechanisms

Table 9: Judicial Oversight Mechanisms – enhanced

	Germany	Turkey
COURTS		
Courts functions and independence guaranteed in constitution	Yes The exercising of court ruling is assigned to the judge. A transfer of this judicial role to bodies of the legislative or executive power is inadmissible. The judge's position is characterised by organisational, personal and functional independence, as well as by neutrality and distance towards the parties involved.	Yes
Judicial courts oversight		
ISFs in investigation receive	- No	- No

<p>Special protection</p> <p>Aggravated sanctions</p>	<p>- Yes</p> <p>Aggravated sanctions are incurred in some cases or for specific types of crimes. This applies for crimes that are committed by police staff either within their official duty or within cases that are directly related to their duty. For example: Causing bodily harm while exercising a public office (§ 340 German Criminal Code)</p>	<p>- Yes</p>
<p>Nature of restrictions to courts' investigation powers</p> <p>-by administration</p> <p>- by army</p>	<p>- No prior authorization</p> <p>- No military courts have jurisdiction on policing activities</p>	<p>- Prior authorization (if a crime is committed during administrative duties)</p> <p>-No military courts have jurisdiction on policing activities</p>
<p>Strong oversight powers over police investigators</p> <p>- investigation</p> <p>-arrests</p>	<p>- Yes (investigation):</p> <p>The injunction of serious encroachments on the rights of the accused or of other persons is in principle reserved to the investigating judge (e.g. search, § 102 Code of Criminal Procedure, physical intervention, § 81a Code of Criminal Procedure). The public prosecution office and the police are only entitled to a competence in urgent cases.</p> <p>Furthermore public prosecution offices are in authority over the police officers in the context of investigation.</p> <p>- Yes (arrest):</p> <p>Remand detention shall be imposed by the judge in a written warrant of arrest (§ 114 Code of Criminal Procedure). As a general rule, the warrant of arrest is to be issued before the accused has been arrested. In exigent circumstances, the public prosecution office and officials in the police force shall be authorized to make a provisional arrest if the prerequisites for</p>	<p>-Yes. Investigation and arrest under Judicial Authorities</p> <p>- Yes. Custody measures to be Reported to Prosecutor.</p>

	<p>issuance of a warrant of arrest or of a placement order have been fulfilled (§ 127 Code of Criminal Procedure). After an arrest by the police on account of an arrest warrant, as well as in the case of a provisional arrest, the accused shall, without delay, be brought before the court that is to examine him and decide on his further detention. The police may hold no one in custody on their own authority beyond the end of the day following the arrest.</p>	
<p>Special accreditation for investigation officers</p>	<p>- No</p> <p>In most of the Länder (e.g. North Rhine Westphalia) there is no strict organisational separation between the security police and the Criminal Investigation Department. Furthermore, in most of the Länder, a special training for members of the Criminal Investigation Department does not exist any longer. During their career, police officers often perform tasks within units of the security police as well as of the Criminal Investigation Department.</p> <p>Moreover, highly specialised forces und specially trained investigation officers work in the Federal Criminal Police Office. The Federal Criminal Police Office (Bundeskriminalamt/ BKA) has to carry out law enforcement tasks in certain cases of international and serious crime.</p>	<p>Yes – Police</p> <p>Yes – Gendarmerie</p>
<p>Assessment of investigating officers by public prosecutor</p>	<p>- No</p> <p>A judicial police is not established. The police officers operating in criminal investigations are incorporated into the general police service. Only police officers, respectively officials of the Interior Ministry are hierarchical superiors. The public prosecution offices remain under supervision of the Ministry of Justice.</p> <p>According to the law, however, the public prosecution offices are in authority over the police officers in the context of investigation proceedings. The public prosecution office is the “sole mistress of the procedure”. It shall be</p>	<p>- Yes</p>

	entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided. There are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all authorities.	
Restriction because of “national interests”	<ul style="list-style-type: none"> - No personal privileges or restrictions concerning court procedures - Only restrictions concerning Courts’ access to information or documents covered by Law on official secrets; the confidentiality, however, can be examined in a specific in-camera-procedure before the Federal Administrative Court 	No / PPC Article 47 and 125
Administrative courts oversight		
Citizen challenging decrees, orders etc...	Yes	Yes
Checking powers conferred to government	Yes. Constitutional powers of Government under the Jurisdiction of the Constitutional Court and Administrative Courts	Yes. Gov. decisions under scrutiny of constitutional courts and ministers & governorships of administrative courts.
Good practices		
Updated codes of police practice	No	No

6. Structure, remits and oversight functions of Ministries of Interior

(Vanessa Luczak)

6.1 Overview

Table 10: Structure, remits and oversight functions of Ministries of Interior in Germany

	Germany	Turkey
Territorial organization	<p>Internal Security Forces (ISF):</p> <ul style="list-style-type: none"> -federal police, - police of the state (Länder), -intelligence services (no police competences), -customs authorities. <p>Federal and state police authorities under supervision of the Mol.</p> <p>External security forces: German Army (Bundeswehr)</p> <p>(see extensive Table annex 6)</p>	<p>Gendarmerie / police areas: mutually exclusive.</p> <p>Changes in the Jandarma “Duties and authority” regulation in 2009.</p>
Gendarmerie, Coast Guards	<ol style="list-style-type: none"> 1. subordinated organizations of the police of the states: river and shipping police 2. federal police (external borders, aviation security, railway facilities) 	<p>GD of Security Gendarmerie and Coast Guards are “Affiliated Institutions”</p>
Budgetary control of all ISF’s by Mol	<p>Yes.</p>	<p>Police: No</p> <p>Gendarmerie: No</p>
Head(s) of ISFs	<p>According to the primacy of politics:</p> <ol style="list-style-type: none"> 1. Federal Minister of the Interior (federal police, federal criminal police office) 2. Minister of the Interior (state police) <p>with subordinated character:</p> <ol style="list-style-type: none"> 3. Federal Inspector of the riot police (riot police of the state) 	<p>3 heads. Police under Mol.</p> <p>Gendarmerie and Coast Guards for military duties are under the chief of the army staff, for</p>

	Germany	Turkey
	<p>4. Inspectors of the riot police of the state</p> <p>5. national police commissioners (police of the state)</p> <p>6. police commissioner and district administrators (local police)</p>	the internal security duties they are affiliated to the Mol.
Appointment of national police head	The (federal) Minister of Interior appoints the inspectors and commissioners.	PM & Pd. , after proposal of Mol
Appointment of national gendarmerie head	Germany has no gendarmerie. There's a division between internal safety (police, ISF) and external safety (army).	PM &Pd after proposal of Chief of Staff of Army + signature of Mol
national police head profile	Police officers and administrators of the higher civil service.	Governor
gendarmerie national head profile	No gendarmerie in Germany.	Land forces general (contrary to 1977 constitutional court ruling)
Appointment/ dismissal of provincial heads	The (federal) minister of the Interior appoints the inspectors and (local) commissioners.	<p>Police:</p> <ul style="list-style-type: none"> - PM &Pd , after proposal by Mol; - Gendarmerie & coast guards: General Command of Gendarmerie/ Coast Guards.

	Germany	Turkey
Policy formulation/ daily work orientation	<p>Tasks: criminal prosecution, averting of danger and the prosecution of administrative offences (set by law).</p> <p>The federal criminal office is the key investigation branch.</p>	<p>Authority of MoI differs for Police, Gendarmerie and Coast Guards</p>
One Homogeneous Legal Text which Applies to All ISF	<p>Grundgesetz (national constitution)</p>	<p>None</p>
Inspection / Sanctions	<p>Legal and technical supervision of police authorities: MoI</p> <p>MoI itself is supervised by political means.</p> <p>Legal basis of inspections and sanctions are disciplinary laws.</p>	<p>MoI Inspectorate Board / GD of Security</p> <p>Inspectorate Board / Gendarmerie</p> <p>General Command Inspection Head and Gendarmerie Inspection Board</p>
Specific gendarmerie academies / civilian professors	<p>Police: both, accredited studies (Bachelor/Master) and specific academies.</p> <p>Civilian professors teach law, business administration and social sciences.</p>	<p>Partly/ Yes</p>
Representative of gov. at local level	<p>MoI and Prime Minister of each state</p>	<p>Governor</p>

6.2 Territorial organization of ISF

Table 1 shows the territorial organization of ISF, especially police authorities. The police are separated from intelligence services, which have no police allowances, like intervention measures apart from the gathering of information. Vice versa the police are not allowed to use intelligence operations. This borderline was established with the foundation of the republic and should preclude an upcoming of a system as in the national-socialist regime with the 'Gestapo' (secret state police).

The external security falls into the field of responsibility of the Ministry of Defence including the German Army (Bundeswehr).

Considered relevant to this contribution are the Internal Security Forces. A gendarmerie doesn't exist within the police forces.

6.3 The federation and the states

It is important for the understanding that Germany is a federal republic consisting of 16 member states (the Länder) and the federation (Bund). According to this organization there is one Federal Ministry of Interior, which supervises the federal police authorities.¹¹ Furthermore the Federal Ministry of Interior co-ordinates the border police cooperation of the European Union (mainly: Frontex), the European and international cooperation of criminal police (mainly: Europol), the European cooperation of national intelligence services and the European and international cooperation of emergency response (van Ooyen 2012: 18).

As part of Europeanization efforts of internal security tasks and competences of federal ISF become significantly more important.

16 Ministries of Interior (Moi) supervise the state police authorities. Emergency response authorities and the local municipal surveillance (both neither police nor ISF) also fall within their competences. Structure and key tasks of Moi are shown in figure 2.

State police authorities and the Federation police are the most important ISF of internal security. On the local level, towns and municipals also have some tasks of general risk prevention. But they are no police authorities. The latter authorities are state institutions. The local police commissioners cannot be elected by citizens but are appointed by the Minister of Interior (Lange 1999: 272).

6.4 Budgetary control of Moi

6.4.1 Budgetary organization

The budget of federal police authorities falls within the competence of the Federal Ministry of Interior. The Ministries of Interior of the states are competent for the budget of state police authorities. In cases of transnational police-deployments of a state police the Federal Ministry of Interior has to consent.

¹¹Organizationalchart of the BMI, see

http://www.bmi.bund.de/SharedDocs/Downloads/DE/Ministerium/PDF_Organigramm_BMI.pdf;jsessionid=A58A3F2564D2AE80F1F0E4F31D6B1B56.2_cid287?__blob=publicationFile

The budget of the towns and municipalities is organized in local self-government.

The state police's annual budgetary amounts to 1 / 1,5 billion euro/year/state. This corresponds to a share of 70 percent of the total expenditures of each ministry of interior. 80-85 % of the total costs of police are personnel costs.

6.4.2 Budgetary Procedure

The budgetary department of the Mol determines the needs of the local police authorities (increased and reduced requirements for new or lost duties/tasks). Many states support this procedure by making use of a supporting authority (regulatory authorities, e.g. district governments, state police headquarters). The regulatory authorities have the competence to control the budgetary needs of the local police authorities. Savings on material sources can be used to finance expenditures. Requirements resulting from new regulations are also considered.

The procedure for establishing the Administrative Board is a multistage system. The Administrative Board for each following year is already established at the beginning of the current year. Furthermore the medium-term fiscal planning comprises three more years.

The state parliament negotiates the approval of state resources. The legal frameworks are the state constitutions (e.g. § 81 state constitution of North Rhine-Westphalia).

The Ministry of Interior negotiates with the Ministry of Finances about the notified demands. After finishing the negotiations the state parliament decides the Financial Law (annual regulation of the Administrative Board) and the Administrative Board.

The Administrative Board is published by the state parliaments. The revenues and expenditures of police are defined in standardized budget chapters, especially budget chapter 03.110.¹²

6.5 Heads of ISF

The Minister of Interior is the senior employer¹³ of all police officers of the states.

The Federal Minister of Interior holds this office corresponding of all federal police officers. The Federal Inspector of the riot police (riot police of the states) and the inspectors of the state polices are higher ranking, comparable to a police commissioner. Table 4 represents the main heads of ISF.

The local police commissioner has a special significance. The states Saarland, Baden-Württemberg, Saxony, Lower Saxony and the state of Hessen have established "Landespolizeipräsidien", which are the main police authorities of the state. A police officer is the head. Other states control the executive working of police by installing a political head, e.g. North Rhine-Westphalia. In general rule, the domain of this political official¹⁴ shifted to the

¹²see <http://www.landtag.nrw.de/web/WWW/haushalt/cd-fm-0914/daten/pdf/2015/hh03/kap110.pdf>, Current Administrative Board concerning the police authorities for the state North Rhine-Westphalia.

¹³ Oberster Dienstvorgesetzter, Dienstherr.

¹⁴ politischer Beamter/ political servant

external relations. He represents the police authorities to the local, political and municipal administrative system and also to the local public (citizens, media, associations). Furthermore he promotes police interests to judicial institutions and to state supervisory authorities (regional departments¹⁵ and Mol). This is the concept of a civil management of police authorities. The police commissioner should correct the police-executive action in a political manner (Lange 1999: 272). The Minister of Interior appoints the police commissioners and can also retire them at any time (Lange 1999: 271).

6.6 Policy formulation/daily work orientation

The main focus of the daily work is represented in the summary of chapter 1 (see 1.7).

The task filed of criminal prosecution, averting of danger and the prosecution of administrative offences is set by law and are in charge of duties, which fall under the federation or the state. Federal authorities can support the state police (see Art. 35 GG, judicial and mutual assistance).

The federation (Bund) is competent for the boarder security (Art. 73 Nr 5 GG, the German constitution). Competences of the federal police authorities are expanding constantly. There's an extension to general security and criminal police tasks (Lange 2000: 157).

The federal criminal police office is allowed to support the state polices. Constitutional reservations are the result because Art. 20 GG, the German State Constitution), determines the federal organization of police. Overall, a rapidly change of internal security takes place. Since 11th september federal and state police intervention powers expanded (e.g. Anti-Terror-Pakete) and competences of federal ISF increased. The aims are improved data-collections and information-sharings.

6.7 Summary: Structure, remits and oversight functions of Ministries of Interior

Table 11: Structure, remits and oversight functions of Ministries of Interior in Germany - enhanced

	Germany	Turkey
Territorial organization	Internal Security Forces (ISF): -federal police - police of the state (Länder), -intelligence services, -customs authorities. The military (Bundeswehr) are competent for the external security.	Gendarmerie / police areas: mutually exclusive. Changes in the Jandarma "Duties and authority" regulation in 2009.

¹⁵ Bezirksregierungen, Oberbehörden

	Germany	Turkey
	<p>The Federal Criminal Police Office, the Federal Police and the Inspector¹⁶ of the riot police (Inspekteur der Bereitschaftspolizeien der Länder) are under supervision of the Federal Ministry of the Interior.</p> <p>16 Ministries of Interior of the Länder are competent for the police authorities of the Länder.</p> <p>(see table annex 6)</p>	
Gendarmerie, Coast Guards	<ol style="list-style-type: none"> 1. subordinated organizations of the police of the Länder: river and shipping police 2. federal police (external borders, aviation security, railway facilities) 	<p>GD of Security Gendarmerie and Coast Guards are “Affiliated Institutions”</p>
Budgetary control of all ISF’s by Mol	<p>Yes. Some aspects additionally are subject to the approval of the Federal Ministry of the Interior (e.g. costs of transnational police deployment)</p>	<p>Police: No</p> <p>Gendarmerie: No</p>
Head(s) of ISFs	<p>According to the primacy of politics:</p> <ol style="list-style-type: none"> 1. Federal Minister of the Interior (federal police, federal criminal police office) 2. Minister of the Interior (state police) <p>with subordinated character:</p> <ol style="list-style-type: none"> 3. Federal Inspector of the riot police (riot police of the state) 4. Inspectors of the riot police of the state 5. national police commissioners (police of the state) 6. police commissioner and district administrators (local police) 	<p>3 heads. Police under Mol. Gendarmerie and Coast Guards for military duties are under the chief of the army staff, for the internal security duties they are affiliated to the Mol.</p>

¹⁶ Inspector of the state riot police is comparable to a commissioner

	Germany	Turkey
Appointment of national police head	The (federal) minister of the Interior appoints the inspectors and commissioners.	PM & Pd. , after proposal of Mol
Appointment of national gendarmerie head	Germany has no gendarmerie. There's a division between internal safety (police, ISF) and external safety (army). The general inspector of the army is appointed of the Federal President of Germany after proposal of the Federal Defense Minister.	PM &Pd after proposal of Chief of Staff of Army + signature of Mol
national police head profile	Police officers and administrators of the higher civil service (national police commissioners and inspectors) Only political civil servants (in North Rhine-Westphalia)	Governor
gendarmerie national head profile	Both the most senior soldier (supreme commander) of the army and military counsellor of the federal government.	Land forces general (contrary to 1977 constitutional court ruling)
Appointment/ dismissal of provincial heads	The (federal) minister of the Interior appoints the inspectors and commissioners.	Police: - PM &Pd , after proposal by Mol; - Gendarmerie & coast guards: General Command of Gendarmerie/ Coast Guards.
Policy formulation/ daily work	The task filed of criminal prosecution, averting of danger and the prosecution of administrative offences is set by law and are in charge of duties which fall under the federation or the state. Federal	Authority of Mol differs for Police, Gendarmerie and

	Germany	Turkey
orientation	<p>authorities can support the state police (see Art. 35 GG, judicial and mutual assistance).</p> <p>The federal criminal office is the key investigation branch.</p> <p>The police are the most political public administration, there's a close connection to politics, e.g. because there's a political leadership of the police.</p>	Coast Guards
One Homogeneous Legal Text which Applies to All ISF	Grundgesetz (national constitution)	None
Inspection / Sanctions	<p>Legal and technical supervision is implemented by the (Federal) MoI which itself is supervised by political means, e.g. (brief) inquiries¹⁷, petitions, legal actions.</p> <p>Legal basis of inspections and sanctions are disciplinary laws.</p>	<p>Mollnspectorate Board / GD of Security</p> <p>Inspectorate Board / Gendarmerie</p> <p>General Command Inspection Head and Gendarmerie Inspection Board</p>
Specific gendarmerie academies / civilian professors	<p>Police: both, accredited studies (Bachelor/Master) and specific academies.</p> <p>Army: specific academies.</p> <p>Civilian professors teach law, business administration and social sciences (police and army).</p>	Partly/ Yes
Representative of gov. at local	State prime minister and state Minister of Interior	Governor

¹⁷ minör/major interpellations

	Germany	Turkey
level		

7. Internal Oversight Mechanisms

(Vanessa Luczak)

7.1 Overview

Table 12: Internal Oversight Mechanisms

	Germany	Turkey
Mol inspection		
Audit services / status vis-à-vis ISFs	Internal audit departments within all police authorities (obligated by regulation). Legal and technical supervision by (federal) Mol which is also competent to determine "inspection themes" for all public police authorities of the state.	Mol Board of Inspectors (MoIBI) External to ISF's competent to both Police & Gendarmerie
Appointment of heads of inspections	determined by legal framework: Mol: inspection of local police authorities (most senior employer) supervisory authorities support the Mol	<u>Mol inspection</u> : PM+Pd after proposal of Mol <u>Police Inspection</u> : Mol after proposal of GD of Police <u>Gendarmerie Inspection</u> : General and thus subject to same procedure as appointment of other Generals. ¹⁸ <u>Gendarmerie Inspection Board</u> ; Colonel and thus appointed by Gendarmerie General Command.
Reporting line of audit service	Standardized notification procedure (e.g. <i>WE-Meldungen</i> ¹⁹ by the police: police authorities >	Mol Inspector Board reports to Minister

¹⁸The Procedure of the Generals Appointment: Gendarmerie General Command shows necessity, Chief of General Staff suggests, Minister of Interior gives a positive opinion, Prime Minister signs for the appointment and President approves of it.

¹⁹WE-Meldungen = Reports of important events, e.g. disciplinary offences, important deployments of police, big losses, catastrophes.

	Germany	Turkey
	supervisory authorities >Mol). The Mol has the competence to request reports both at reporting dates and as when appropriate.	
Audit without authorization of Minister of Interior	Audit of MIK by political instruments (e.g. brief inquiries)	No
Guidelines or standards for conducting inspections / publicity	Yes, there are both legal frameworks, regulations and requested reports when appropriate. Requirements for reporting to public subscribed in regulations.	Yes/ On line
Security forces inspections		
Audit services internal to ISFs	Internal audit departments and departments of managing complaints in a standardized manner.	Inspectorate Board GD of Police Head of Gendarmerie Inspection and Inspection Board
Reporting line of inspection services of police	Legal framework which defines a gradual procedure, three different bodies (police authorities, supporting supervisory authorities and Mol).	General Directorate of Police.
Reporting line of inspection services of Gendarmerie	A gendarmerie does not exist.	General Command of Gendarmerie
Discipline and sanctions		
Disciplinary sanction regime	- Regulations of the police and their professional duties: legal framework (disciplinary regulations of the federation and the state) ²⁰ -police organizational charts (plans about the task organization).	Police: own bylaw Gendarmerie and Coast Guards : Military Discipline Regime
Disciplinary investigations	Regulation of Mol and police investigation: see above (audit-services).	Mol inspection: Police inspection, Gendarmerie GC inspection head and

²⁰Execution of disciplinary proceeding see below.

	Germany	Turkey
		Inspection Board.
Disciplinary inspection without order of GD of police/ Gendarmerie	The MoI is competent to request and conduct inspections in cases the particular police authorities do not act.	no
Ordinary service versus special mechanism to register complaints at Police / Gendarmerie	both	special mechanism that applies to all public departments
Disciplinary sentencing	decision to start/initiating the disciplinary procedure: the Superior, the superior of the employes, services responsible for conducting investigations (Ermittlungsführer), supporting supervisory authorities, (federal) MoI.	MoI, Higher Discp. Board, GDoF Security Higher Discp. Board, GD of Police Discp. Board, Provincial Police Discp. Board, Governors, District Governors, Provincial Director of Police Gendarmerie: Military Discipline Regime
Penal investigation by inspectorate: -decision to start, -monitoring& -reporting to	<ul style="list-style-type: none"> - offences of the German penal code: criminal proceedings must be initiated (by public prosecutor). - offences of professional duties: disciplinary proceeding will also be initiated (legal framework, see above). <ul style="list-style-type: none"> - hierarchical superior or persons for conducting investigations (member of the concerned police authority, also competent for the decision to start). - supporting supervisory authorities and MoI (monitoring the procedure and self dependent starting of disciplinary procedures) <p>Reports: written by police authority or supporting supervisory authorities. Report of taken actions for the senior employer.</p>	<ul style="list-style-type: none"> - MoI, Minister, - no monitoring, - MoI, Minister, <p>and after transmitted to prosecutor</p>

7.2 Audit system, disciplinary powers and disciplinary level systems

There's a legal framework concerning audit systems (law, decrees of the MoI, regulations, legal framework of police organization, political means). The regulations determine audit sectors and issues, which must be reported as well as responsibilities, powers and duties of (regulatory) authorities. The disciplinary system and the formation of audit reports follow a level system²¹.

Figure 2 represents a summary of this step-by-step procedure, which is also based on law (especially organization of police authorities, so-called "Polizeiorganisationsgesetze").

Legal and technical supervision is implemented by the (federal) MoI, which itself is supervised by political means, e.g. (brief) inquiries/interpellations, petitions, legal actions. The MoI has also the competence to define so called "inspection themes" for all public police authorities of the state. Law, especially disciplinary regulations, defines methods and procedures.

Furthermore, external police advisory groups (Polizeibeiräte) were established in some states, e.g. North Rhine-Westphalia, Lower Saxony and Schleswig-Holstein. They are composed on local level and comprise 10-15 elected members. Local police authorities must report by an average of four times/year about the local reality of crime, the personnel situation, current legal situations or issues, which are point of interest of citizens. But the influence of those advisory groups is very limited (Frevel/Luczak 2014: 6, also see van Ooyen 2012: 98).

Vis-a-vis ISF there is no exchange about disciplinary issues because the legal framework defines a hierarchical line organization (local police authorities, regulation authorities, MoI). There is an exception concerning the following circumstances, which must be reported to the Minister of Justice. In cases of obligations of professional duties of police officers of the middle and higher intermediate grade of civil service the Minister has to be informed about the regulation of the decision to start a disciplinary procedure, about disciplinary decisions (e.g. §§ 91,92 DO NW), about the accusation scripture, final decisions of the starting police authority and of the disciplinary courts, appeals as well as the decision of a retrial.

This procedure is defined by disciplinary law (e.g. LDG NRW, state disciplinary regulation).

Disputes concerning the powers of ISF can be resolved by governmental bodies ("Organstreit" proceedings). One example is the discussion of the national deployment of the German Army within German borders (e.g. during the G8 in Heiligendamm/Germany, June 2007). Political parties can lodge a complaint. The focus has to be on political aspects, for example a lack of political participation (van Ooyen 2012: 71-74).

7.3 Procedure to cope with complaints about police

Another part of control is established by a standardized system of coping with complaints of citizens. All (local) police authorities must implement an internal audit department. It's also a duty to establish a standardized management of complaints. Complaints of citizens concerning professional obligations of police officers or their behaviour towards citizens are also treated in a step-by-step procedure.

²¹so-called "Stufenverfahren"

It's remarkable that there are only few (and with little influence) Joint Supervisory Authorities. The possibility to lodge a complaint ends up in the executive power itself (Lange 2000: 340).

In general, citizens can make a complaint to the (local head) of police authorities or, in cases of criminal offences, to the Public Prosecutor. They can also initiate proceedings requesting the courts. Quite new is a decree of the Minister of Interior, which determines the obligation to publish the complaining report. This is a result of the political coalition agreement.²²

In general, the police acting is controlled by the constitutional idea of separation of powers. The police-executive acting can be checked by legislative.

7.4 Disciplinary sanction regime

Civil servants are responsible for their acting in two ways, firstly by criminal proceedings, secondly by disciplinary proceedings. There are more perspectives, especially the ethical view, but the European Code of Ethics is not a legally binding obligation and only known more or less.

Disciplinary failures and the professional duties of civil servants are described in a legal framework, especially the disciplinary laws of the state (e.g. the BeamtStG, BBG, LBG, LDG, POG. These are the disciplinary regulations of the federation and the state).²³

If facts of a disciplinary offence become known, the superior initiates pre-investigations. The police officer must be informed about this initiating procedure. Disciplinary actions are taken by the police authority, or if the authority doesn't act, by regulation authorities or by the Mol which is also competent for monitoring the procedure. Disciplinary measures are defined by state disciplinary laws. They range from giving a rebuke, through monetary penalties, to removal from post and loss of entitlement to pension.

The execution of disciplinary proceedings is presented in table 5 and figure 4. In summary, it can be emphasised, that there are three responsible authorities for disciplinary proceedings in all states: the local police authority, regulatory authorities (e.g. regional departments) and the Ministry of Interior (top supervisory organ). They are allowed to initiate disciplinary proceedings upon notification of offences. The regulatory authorities are also competent for monitoring the disciplinary proceedings of the local police authorities and make reports to support the Mol.

Criminal offences and failures of professional duties can become public knowledge on an internal way, within the ISF, and external (e.g. by political, public means). Citizens can report a crime of police officers directly at the Public Prosecutor. Within the police authority they can make use of complaints as indicated above.

²²MIK NRW: Beschwerdebericht 2013 der Polizei NRW (report of complaints concerning the state police of North Rhine-Westphalia, 12.08.2014)

²³Execution of disciplinary proceeding see below.

7.5 Summary: Internal Oversight Mechanisms

Table 13: Internal Oversight Mechanisms - enhanced

	Germany	Turkey
Mol inspection		
Audit services / status vis-à-vis ISFs	<p>Legal and technical supervision is implemented by the (federal) Mol which itself is supervised by political means, e.g. (brief) inquiries, petitions, legal actions. The Mol has also the competence to define so called "inspection themes" for all public police authorities of the state. Methods and procedures defined by law, especially disciplinary regulations.</p> <p>All police authorities must implement an internal audit department. It's also a duty to establish a standardized management of complaints. There are only few (and with little influence) Joint Supervisory Authorities.</p>	<p>Mol Board of Inspectors (MoIBI) External to ISF's competent to both Police & Gendarmerie</p>
Appointment of heads of inspections	<p>There's a legal framework concerning the appointment.</p> <p>The Mol is competent for the inspection of local police authorities. He is the most senior employer.</p> <p>Many states have established further supervisory authorities which support the Mol (e.g. the LAFP in North Rhine-Westphalia or provincial state governments).</p> <p>The legal framework: Regulation of civil servants competences and setting of superior authorities with disciplinary powers, MoI, 01.03.2005.</p>	<p><u>Mol inspection:</u> PM+Pd after proposal of Mol</p> <p><u>Police Inspection:</u> Mol after proposal of GD of Police</p> <p>Gendarmerie Inspection: General and thus subject to a procedure as appointment of other Generals.²⁴</p> <p><u>Gendarmerie Inspection Board:</u> Colonel and thus appointed by Gendarmerie</p>

²⁴The Procedure of the Generals Appointment: Gendarmerie General Command shows necessity, Chief of General Staff suggests, Minister of Interior gives a positive opinion, Prime Minister signs for the appointment and President approves of it.

	Germany	Turkey
		General Command.
Reporting line of audit service	Standardized notification procedure (e.g. WE-Meldungen ²⁵ by the police: police authorities > supervisory authorities > Mol). The Mol has the competence to request reports both at reporting dates and as when appropriate.	Mol Inspector Board reports to Minister
Audit without authorization of Minister of Interior	Some Mol (states) delegate the competence to supporting supervisory authorities (not completely. E.g. the LAFP in North Rhine-Westphalia or regional departments in other states). Audit of MIK by political instruments (e.g. brief inquiries)	No
Guidelines or standards for conducting inspections / publicity	Yes, there are both legal frameworks, regulations and requested reports when appropriate. The requirements for reporting to public are rather subscribed in regulations than being confined by political means.	Yes/ On line
Security forces inspections		
Audit services internal to ISFs	Each (federal) police authority has the duty to establish internal audit departments and departments of managing complaints in a standardized manner.	Inspectorate Board GD of Police Head of Gendarmerie Inspection and Inspection Board
Reporting line of inspection services of police	Legal framework (see above) which defines a gradual procedure (Stufenverfahren), three different bodies (police authorities, supporting supervisory authorities and Mol).	General Directorate of Police.
Reporting line of inspection services of Gendarmerie	A gendarmerie does not exist. Concerning the Army (external security) there's a General Command of the army, a similar legal framework (law on soldiers - Soldatengesetz, army disciplinary regulation - Wehrdisziplinarordnung)	General Command of Gendarmerie
Discipline and sanctions		

²⁵WE-Meldungen = Reports of important events, e.g. disciplinary offences, important deployments of police, big losses, catastrophes.

	Germany	Turkey
Disciplinary sanction regime	<p>Regulations of the police and their professional duties: legal framework, e.g. the BeamStG, BBG, LBG, LDG, POG, these are the disciplinary regulations of the federation and the state.²⁶</p> <p>Furthermore police organizational charts (Geschäftsverteilungspläne, plans about the task organization).</p> <p>Each police officer (and soldier) also is accountable to criminal law.</p>	<p>Police: own bylaw</p> <p>Gendarmerie and Coast Guards : Military Discipline Regime</p>
Disciplinary investigations	<p>Regulation of MoI and police investigation: see above (audit-services).</p>	<p>MoI inspection:</p> <p>Police inspection, Gendarmerie GC inspection head and Inspection Board.</p>
Disciplinary inspection without order of GD of police/ Gendarmerie	<p>The MoI is competent to request and conduct inspections in cases the particular police authorities don't act.</p>	no
Ordinary service versus special mechanism to register complaints at Police / Gendarmerie	<p>Both:</p> <ul style="list-style-type: none"> - internal standardized management of complaints/standardized gradual procedure, legal framework of the disciplinary procedure. -the citizens can do public and individual remedies (e.g. petitions, disciplinary complaints). 	special mechanism that applies to all public departments
Disciplinary sentencing	<p>In accordance to the decision to start the disciplinary procedure: The Superior, followed by the superior of the employees (Dienstvorgesetzter), services responsible for conducting investigations (Ermittlungsführer), supporting supervisory authorities (e.g. LAFP, district governments), (federal) MoI.</p>	<p>MoI, Higher Discp. Board, GDoF Security Higher Discp. Board, GD of Police Discp. Board, Provincial Police Discp. Board, Governors,</p>

²⁶Execution of disciplinary proceeding see below.

	Germany	Turkey
	<p>Similar framework concerning the military (disciplinary regulations, law of soldiers). Offences outside of Germany also have to be prosecuted by the German penal code (§ 11 a StPO).</p> <p>The Parliamentary Commissioner for the Armed Forces supports the German Bundestag exercising the parliamentary control of the army. He is competent to report the parliament about the inner state of the army and law offences.</p> <p>On the other hand, each soldier can consult the Parliamentary Commissioner for the Armed Forces without making use of official channels.</p>	<p>District Governors, Provincial Director of Police</p> <p>Gendarmerie: Military Discipline Regime</p>
<p>Penal investigation by inspectorate:</p> <p>-decision to start,</p> <p>-monitoring&</p> <p>-reporting to</p>	<p>In case of offences of the German penal code criminal proceedings must be initiated (by public prosecutor).</p> <p>To prosecute offences of professional duties a disciplinary proceeding will also be initiated (legal framework, see above).</p> <p>The framework defines competent persons: hierarchical superior or persons for conducting investigations (member of the concerned police authority, also competent for the decision to start).</p> <p>The graded procedure defines that the supporting supervisory authorities and/or the MoI are competent for monitoring the procedure (getting knowledge by standardized reporting system). The supervisory authorities are also competent to start disciplinary procedures self-dependent.</p> <p>Reports: concerned police authority, supporting supervisory authorities. Report of taken actions to the senior employer (oberster Dienstvorgesetzter, MoI). Furthermore, the following circumstances must be reported to the Minister of Justice:</p> <p>a) the regulation of the decision to start, b) disciplinary decisions (§§ 91,92 DO) c) accusation scripture d) final decisions of the starting police authority and of the disciplinary courts,</p>	<p>- MoI, Minister,</p> <p>- no monitoring,</p> <p>- MoI, Minister,</p> <p>and after transmitted to prosecutor</p>

	Germany	Turkey
	<p>e) appeals, f) decision of a retrial.</p> <p>There's also a legal framework concerning non-formally disciplinary procedures (see application of the disciplinary regulation, e.g. "Anwendung der Disziplinarordnung des Landes Nordrhein-Westfalen RV d. JM vom 28. Mai 1982 (2030 - I A. 68)")</p>	

8. Oversight on regional and local level

(Vanessa Luczak)

8.1 Overview

Table 14: Oversight of Governors

	Germany	Turkey
How is government represented locally?	Mol and Prime Minister of the state	Governor is representative of all Ministers
Role	Mol: administrative, technical and disciplinary supervision, representative of internal security, elected politician. State Prime Minister: elected politician, superior of Mol, federally representative.	Direct and coordinate state administrations in the province.
Missions	In charge of public order, of elections, of political appointment. Police councils: elected on local levels.	In charge of public order, Head of Police and Gendarmerie Directors, + all administrations are under the authority of governor
Heads of provincial internal security forces reporting to the Prefect or Governor	Yes.	Police: Yes Gendarmerie: Yes Coast Guards: Not Clear in Legal Text
Assessing provincial heads of ISFs performance & quality of work	Yes.	Police: yes Gendarmerie: yes
Inspection and Discipline	Mol for ISF of the state, Federal Mol for the federal police/ISF.	Yes but Governors have no disciplinary authority on Gendarmerie and Coast Guard.

Agreement with Army restricting its role on policing	Yes, division between internal and external security is subscribed in the German constitution.	None (Emasya Protocol was abolished in 2010)
Private sector	<ul style="list-style-type: none"> - expanding influence of private security services companies - Police have no authority to give directives to private security companies, but their competencies are restricted. 	Authority on Private Security

8.2 Local representation of government

The Prime Minister of the state is the supreme elected representative. He/She's the head of the state ministers, which are responsible to various departments, e.g. justice, internal safety, labour, sciences, etc.

The Minister of Interior has two roles. In the general system of ISF he's the senior employer who represents the interests of his staff and has the overall responsibility for the executive acting of police authorities. He has to take political responsibility for this acting. He has to justify the acting in a political manner, e.g. by answering to inquiries/interpellations.

On the other hand, he should represent the public interests concerning issues of internal security. There's no election by direct vote of the citizens but by the state parliament. On a secondary level the inspector of police, highest ranging police officer, of the states fulfills the representing tasks assigned to him. He's also the counsellor of the Minister of Interior concerning police issues. The local police authorities are represented by the local police commissioners. Some states have established administrative offices (Landratsbehörden) led by a political civil servant (Landrat) who is also responsible for police authorities and municipal authorities.

8.3 The meaning of local councils and the private sector

On the local level police councils are elected to ensure a democratic control of local police authorities (also see table 5). States which have not established councils make use of similar advisory groups and co-operations, especially crime prevention councils. External partners cooperate with local police authorities. On the other hands, citizens are involved in solving local security problems by making use of civil defence leagues (Bürgerwehren). They have no official character, some neighbourhoods have established them for prevention of burglary. There are also various prevention councils (van Ooyen 2012: 96 f, Lange 2000: 385, Frevel 2012: 251).

Overall, a remarkable privatisation of internal security and public safety can be observed. There's an expanding influence of private security services companies. In some states police and/or municipalities collaborate with private security services. The police have no authority to give directives to private security companies, but their competencies are restricted. The shift concerning the serving provision of police, which could be described as "lean police"

or "new separation of powers" would not have been provoked to new legal insights but empty state coffers (Lange 2000: 351).

8.4 Public reports

The standardized public reporting system concerning complaints of citizens and offences of disciplinary duties was described in table 5. Concerning the output and outcome of (local) police authorities there are various public reporting systems. The annual police criminal statistics, road accident statistics, annual surveys of internal security, surveys of special crimes, reports e.g. on the issue of extremism are some key examples.

In addition, there is an internal reporting system of ISF concerning their strategies, aims, personnel performance, costs, results and outcome of police action (so-called security programs of local police authorities). Contents, complexity and intervals are regulated by decrees of the MoI.

8.5 Summary: Oversight of Governors

Table6: Oversight of Governors

	Germany	Turkey
How is government represented locally?	MoI and Prime Minister of the state (see above, Representative of gov. on local level)	Governor is representative of all Ministers
Role	MoI has the task of administrative, technical and disciplinary supervision whilst acting as legal representative of internal security. He/she's an elected politician. The Prime Minister of the state is superior of the MoI and federally representative.	Direct and coordinate state administrations in the province.
Missions	In charge of public order, of elections (e.g. Prime Minister), of political appointment (MoI, Police Commissioners). Police councils are elected on local levels. Local Council or personnel representatives of police authorities are elected by the authority itself.	In charge of public order, Head of Police and Gendarmerie Directors, + all administrations are under the authority of governor
Heads of provincial internal security forces reporting to the Prefect or Governor	Yes, e.g. in the case of offences of professional duties, standardized by legal framework (reporting system)	Police: Yes Gendarmerie: Yes Coast Guards: Not Clear in Legal Text

<p>Assessing provincial heads of ISFs performance & quality of work</p>	<p>Yes, both standardized reporting system, fixed reporting dates and when appropriate. The performing of the police authorities (costs, outcome, output,...) must also be reported to the MoI within a standardized procedure.</p>	<p>Police: yes Gendarmerie: yes</p>
<p>Inspection and Discipline</p>	<p>MoI for ISF of the state, Federal MoI for the federal police/ISF. Army: Parliamentary Commissioner of the Armed Forces. Furthermore external commissions (e.g. Hamburger Polizeikommission).</p>	<p>Yes but Governors have no disciplinary authority on Gendarmerie and Coast Guard.</p>
<p>Agreement with Army restricting its role on policing</p>	<p>Yes, division between internal and external security is subscribed in the German constitution. But an expanded concept of security in view of the 11.09.2001 dissolves boundaries step by step.</p>	<p>None (Emasya Protocol was abolished in 2010)</p>
<p>Private sector</p>	<p>Privatisation of internal or public safety: expanding influence of private security services companies, some states (police, cities or municipalities) cooperate with private security services. Police have no authority to give directives to private security companies, but their competencies are restricted. Expanding influence of civil defence leagues (see Frevel, table 8).</p>	<p>Authority on Private Security</p>

9. Independent External Oversight Mechanisms

(Frank Braun)

9.1 Overview

Table 15: Independent External Oversight Mechanisms

	Germany	Turkey
Independent oversight bodies		
Defense of rights. Internal security forces	None	None
Focus on Internal security forces independent mechanisms' powers: -Investigation -Sanction -Publicity	<i>Not independent</i>	None
Personal data protection	Commissioners for Data Protection and Freedom of Information (Federation and Länder)	None
Prisons/ detention centers managed by ISFs	- Prison Advisory Board - Penal System Appointee [several Länder]	None
Torture	National Agency for the Prevention of Torture as foreseen in UN protocol	None
Human rights /minorities	None	None

9.2 Independent External Oversight

In Germany there are currently no independent bodies or ombudsmen that would respond particularly to *police violence* (in contrast for example to England and Wales where the Independent Police Complaints Commission is installed). This is being criticised, among others, by Amnesty International²⁷ and the UN Committee against Torture²⁸. Allegations of torture and ill-treatment of unlawful use of force by the police are only investigated by the Public Prosecution Offices and the police acting under the supervision of the Public Prosecution Offices. Furthermore, police officers are not obliged (with the exception of Brandenburg and Berlin) to wear *identification badges* showing their number or name during the exercise of their functions. Thus, there is a risk, that cases of alleged ill-treatment by the police could not be clarified and prosecuted due to a lack of identification²⁹.

However, there are independent bodies for data-protection, for the prevention of torture and for the protection of prisoners.

9.2.1. Commissioner for Data Protection and Freedom of Information

The Commissioner for Data Protection and Freedom of Information controls and advises the Federal Government (e.g. overseeing the use of personal data by the police, video-surveillance etc). The data protection officers of the Länder have similar competences.

In addition, the Commissioner for Data Protection also represents Germany in the Article 29 Working Party of the European Union and in the European and international conferences of Commissioners for Data Protection and Freedom of Information. Moreover, she is involved in the Joint Representative Controlling Bodies for Europol and the Schengen Information System (SIS).

Every two years, the Commissioner for Data Protection informs the public and the Federal Government about major developments in data protection in an *activity report*, in which instances of maladministration are explicitly pointed out.

The Commissioner is subject to the supervision of the Ministry of Interior and of the Federal Government. The Commissioner for Data Protection is therefore *not completely independent*.

²⁷ Amnesty International: Unknown assailant – Insufficient Investigation into alleged ill-treatment by police in Germany (2010), <http://www.amnesty.org/en/library/asset/EUR23/002/2010/en/a713144c-f16a-4a12-84c1-2b9b6ecae901/eur230022010en.pdf>

²⁸ United Nations, Committee against Torture, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Germany, Nr. 19: „The Committee recommends that the State party: a) Take all appropriate measures both at the Federal and Länder level so as to ensure that all allegations of torture and ill-treatment by the police are investigated promptly and thoroughly by independent bodies with no institutional or hierarchical connection between the investigators and the alleged perpetrators from among the police ...“

²⁹ See also Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 November to 7 December 2010, p. 15

This has also been repeatedly reprimanded by the European Court of Justice³⁰, whereupon the Federal Government is now reacting. In a recent legislative procedure, an independent and effective control of data-protection should be ensured (Federal Government's bill, 10-13-2014)³¹.

9.2.2 National Agency for the Prevention of Torture

The *National Agency for the Prevention of Torture* has been mandated in 2008 to serve as an independent national preventive mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³².

However, deficits remain, among other things, in the equipment of the independent body. In an examination of the year 2011, the UN has demanded³³ that the Federal Government provides the National Agency with sufficient human, financial, technical and logistical resources for enabling it to carry out its functions effectively and independently. Up to now, this has not been sufficiently achieved.

9.2.3 Prisons/Detention Centres managed by ISFs

The penal system is allocated in an independent area of the judiciary administration in all federal states of Germany. The judiciary administration, which exercises control over all penitentiaries, is part of the executive branch of government. The supervision is incumbent on the ministry of justice of each state.

An advisory board is allocated to each penitentiary, which is superior to the prison's warden and takes on the role of public representation as well as supervisory tasks and consultation. In

³⁰ Judgment of the Court (Grand Chamber) of 9 March 2010. European Commission v Federal Republic of Germany. Failure of a Member State to fulfil obligations - Directive 95/46/EC - Protection of individuals with regard to the processing of personal data and the free movement of such data - Article 28(1) - National supervisory authorities - Independence - Administrative scrutiny of those authorities. Case C-518/07 and Judgment of the court (Grand Chamber) of 16 October 2012 European Commission v Republic of Austria supported by Republic of Germany. Failure of a Member State to fulfil obligations – Directive 95/46/EC – Processing of personal data and free movement of such data – Protection of natural persons – Article 28(1) – National supervisory authority – Independence – Supervisory authority and the Federal Chancellery – Personal and organisational links. Case C-614/10.

³¹ Draft of a second law for the change of the Federal Data Protection Act (Entwurf eines Zweiten Gesetzes zur Änderung des Bundesdatenschutzgesetzes – Stärkung der Unabhängigkeit der Datenschutzaufsicht im Bund durch Errichtung einer obersten Bundesbehörde), BT-Drs. 18/2848 v. 13.10.2014.

³² See <http://www.nationale-stelle.de/index.php?id=76&L=1> (in english).

³³ United Nations, Committee against Torture, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Germany, Nr. 13: “The Committee recommends that the State party provide the National Agency with sufficient human, financial, technical and logistical resources to enable it to carry out its functions effectively and independently, in accordance with article 18, paragraph 3, of the Optional protocol to the Convention and Guidelines n°11 and 12 of the Sub-Committee on Prevention of Torture, as well as ensure its regular and timely access to all places of detention at the federal and Länder levels, without the requirement of a prior consent to the visit by the respective authorities.”

accordance with §§ 162 ff. Criminal Executive Code (*Strafvollzugsgesetz – StVollZG*), the members of a *Prison Advisory Board* are citizens working on a voluntary basis in an institutionalized role to perform tasks mandated by law. The advisory board acts as an independent point of contact for inmates and staff alongside the prison’s warden, members of the Oversight Agency, the prisons pastoral care (spiritual guidance) and the Government’s Penal System Appointee. Additional inspections are performed by experts of *National Agency for the Prevention of Torture*. The appointment of members of the Prison Advisory Boards is conducted differently in each federal state: In some states, they are appointed by the minister of justice, in others through the judiciary administration or the prison’s warden. In most cases, these appointments follow the recommendations of city council factions. In its sessions, the Prison Advisory Board can hold hearings with the prison’s warden or staff. It is to support the inmates after their release from prison.

In some federal states, prisons are further monitored by a *Government’s Penal System Appointee*. His role is to work towards a penal system, which is set on the principles of human rights as well as a social and constitutional state. He advises the ministry of justice on the fundamental principles of the penal system as well as its continuous development. Furthermore, he is a contact person for all incarcerated people and additionally Penal System Ombudsman. The work of the Government’s Penal System Appointee is independent and has to comply only with the law. If prompted by the Government’s Penal System Appointee, the penal system administration has to disclose information (oral or in writing) or admit access to all their publicly administered facilities. The Government’s Penal System Appointee must be granted the possibility to conduct confidential hearings within these facilities. If needed, he shall be granted the necessary financial resources or man-power.

9.3 Summary: Independent External Oversight Mechanisms

Table 16: Independent External Oversight Mechanisms – enhanced

	Germany	Turkey
Independent oversight bodies		
Defense of rights. Internal security forces	None	None
Focus on Internal security forces independent mechanisms’ powers: -Investigation -Sanction	Not <i>independent</i>	None

	Germany	Turkey
-Publicity		
Personal data protection	<p>Commissioners for Data Protection and Freedom of Information (Federation and Länder)</p> <p>The Commissioner for Data Protection and Freedom of Information controls and advises the Federal Government (e.g. overseeing the use of personal data by the police, video-surveillance etc). The data protection officers of the Länder have similar competences. Every two years, the Commissioner for Data Protection informs the public and the Federal Government about major developments in data protection in an activity report, in which instances of maladministration are explicitly pointed out.</p>	None
Prisons/ detention centers managed by ISFs	<p>- Prison Advisory Board</p> <p>An advisory board is allocated to each penitentiary, which is superior to the prison's warden and takes on the role of public representation as well as supervisory tasks and consultation. The members of a Prison Advisory Board are citizens working on a voluntary basis in an institutionalized role to perform tasks mandated by law. The advisory board acts as an independent point of contact for inmates and staff alongside the prison's warden, members of the Oversight Agency, the prisons pastoral care (spiritual guidance) and the Government's Penal System Appointee.</p> <p>- Penal System Appointee [several Länder]</p> <p>His role is to work towards a penal system, which is set on the principles of human rights as well as a social and constitutional state. He advises the ministry of justice on the fundamental principles of the penal system as well as its continuous development. Furthermore, he is a contact person for all incarcerated people and additionally Penal System Ombudsman. The work of the Government's Penal System Appointee is independent and has to comply only with the law.</p>	None

	Germany	Turkey
Torture	The National Agency for the Prevention of Torture has been mandated in 2008 - as foreseen in UN protocol - to serve as an independent national preventive mechanism against Torture. The National Agency's principal task is to conduct visits at places of detention, as determined in Article 4 of the OPCAT, and to make recommendations aimed at the improvement of the treatment and conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment.	None
Human rights /minorities	None	None

10. Citizens, NGOs and Local Authorities Engagement into Security Policies

(Bernhard Frevel)

10.1 Overview

Table 17: The Mechanisms for Citizen and Local Authorities Engagement Into Security Policies

	Germany	Turkey
Existence of municipal police	No municipal police, but municipalities' public order departments (Ordnungsamt) with restricted competences	Zabıta ("weak" local police)
National councils	None. But some councils without any competences for decisions and only for discussion and opinion formation.	None
Partnerships: Local security plans / Local councils / chair	<p>Local security and safety partnerships (Crime Prevention Councils and Public Order Partnerships)</p> <p>Regional police forces (in North Rhine Westphalia) have a "police advisory board", chaired by the local chief of police.</p> <p>Regional police forces in North Rhine-Westphalia set up a "safety plan".</p>	<p>Local security protocols & plans.</p> <p>Community policing regulation: Boards open to administrative services and citizens. Chaired by deputy / district governor.</p>
Legal status of consultation with population	The police work is based on law and the decisions of legitimated leaders. The consultation with the people is not binding for the police.	Mandatory. Conclusions not binding.
Integration of consultation into policing plans	Only facultative.	No exact legal definition of the process of integration.
National tools	No obligatory tools and no obligatory use.	None

	Germany	Turkey
for examining citizen's expectations / date of 1st usage		
NGOs involved as think tanks in local security	Only indirectly via Crime Prevention Councils or Public Order Partnerships.	None

10.2 Internal security on the local level

In the matter of local security policy, the relevant public authorities in Germany are the police on the one hand and the municipalities on the other hand.

- The police in Germany are a matter for the states, or *Länder* (see above). They are under the control of the Ministries of Interior and are independent of the municipality. The police are responsible for public security and public order. Their tasks include threat prevention on the one hand and prosecution/law enforcement on the other hand. As a 24/7 institution, the police also fulfil the duties of other public order authorities when these are unable to act or not able to act in time or in those cases in which force is or might be needed.
- There are no municipal police forces. Cities in Germany have a specific responsibility for public order on the basis of acts of regulatory authorities (also within the legislative competence of the *Länder*). The municipalities' departments of public order mainly work in the office and give out permissions, by licensing requirements and orders, etc. But they also have people on the street (sometimes in uniform). The municipalities are in addition responsible for all aspects of fire security, rescue services and – in collaboration with the *Land* – disaster control.

This construction of separate organizations and overlapping responsibilities sometimes causes a lack of clarity and of accountability.

Local security is not, however, entirely the responsibility of the public administration. Although law enforcement remains the sole responsibility of the state, other aspects of safety and security are divided between public and private players and their agents (private security firms).

In principle, the responsibilities of managing urban security are well established. The police authorities on the one hand and the local authorities on the other appear competent at their jobs and they often collaborate successfully.

10.2.1 Partnerships and local security

Local authorities and the police are jointly responsible for the leadership of urban security management. But, acknowledging the increasing importance of commercial security and the decreasing ability of the state and municipalities to provide security, new forms of security architecture have been developed. It is still the duty of the state (including also the municipalities) to manage security by delivering central services (licensing, orders) and law enforcement. Although the authorities have to take the lead, other players can deliver some operational services. This makes it necessary for the authorities to build up firm forms of multi-agency partnership, inter-agency policing and security governance, characterized by the items Ehrhart (2010: 25) emphasized in his definition: “non-hierarchical relationship, using different means, instruments and methods to achieve a common aim on the basis of commonly shared norms, values and/or interests” – but in the framework of constitutional legality and rule of law, the value of civil liberties and the aim of equality.

Besides the collaboration of the police, local authorities and security firms on aspects of presence, surveillance and control, co-operation in Crime Prevention Councils and Public Order Partnerships has gained growing importance since the 1990s. Unlike for example in England and Wales, where partnerships are compulsory and regulated (Rogers 2012), partnerships in Germany are just suggested or requested by the Ministry of Interior. The city government and the local police force (as the main players) establish partnerships for urban security at their discretion. So there is a wide range of councils, round tables, working teams, etc., which sometimes are meetings of chiefs and senior representatives and sometimes are run by executives. Whereas some try to discuss the broad spectrum of security problems in the city, others concentrate on specific challenges such as domestic violence, drugs and drug-related crime or young people as offenders and victims. (Frevel 2012)

The representatives of the involved stakeholders, with regard to actual or structural problems, mainly set up the agenda of the committees. Also the local media influence this agenda with their reports. Quite seldom citizens' expectations are gathered systematically and integrated in the debate. There is no standard procedure for the analysis of the expectations and the use of questionnaires, complaint management or other instruments is seldom. Only few police forces installed a monitoring system to gather information and the views of the people.

10.2.2 Involvement of citizens and non-statutory partners

The police's mission statement of being community oriented resp. community based meets new or changed challenges for granting safety and security in the cities. Not only the police are able and in charge to protect people and to enforce law, but also other agencies have duties and competences in this field. The collaboration of the different stakeholders gains more importance. Secondly the citizens in Germany's developed democracy expect from the public services more communication, more involvement and more satisfaction of the people's needs and demands. State, municipalities and administration cannot act authoritarian but have to seek legitimacy in dialogue.

Since the early 1990s the collaboration of the police with other public authorities and the involvement of citizens and non-statutory partners increased. But the institutionalized connection of police and community has tradition (in the states which were governed by

American and British occupying power) since the post-war period. In North Rhine-Westphalia the British military government installed the police and – following the British tradition – “watch committees” at local or regional police forces in 1946. In 1953 their role was newly defined and the name changed to “police advisory board”. The members of these boards are elected members of the city or county council. These boards shall bridge the gap between police and community, build up trust, should discuss matters of local safety and security and give advice in aspects of policing. The competences are very restricted and concentrate of counselling and consultancy. (see Frevel/Luczak 2014)

Crime Prevention Councils (CPC) were built up since 1993, initiated by a decree of the Minister of Interior. This decree calls upon the police to initiate crime prevention councils and suggests to inviting several other agencies. The decree names the local authorities with their departments for public order, education, sports, youth, social affairs, health, equality, traffic, building and finances, also public transport, science (local/regional universities), economy, chamber of industry and commerce, unions, professional associations, judiciary, media, churches, private (welfare) agencies, citizens’ initiatives and representatives of ethnic minorities. As important fields of action the decree lists city planning, integration of particular sections of population, particular crime (e.g. drug abuse, violence, vandalism/graffiti). Every crime prevention council is free in its decision about their members, their procedures or their activities. As a sort of standard the co-operation of police and municipalities, education, welfare/social services (including victim support organisations) and judiciary has developed as the core setting in CPCs, while the formation of other partners differs a lot. Not-organised people are seldom to be seen in these councils. (Frevel 2007: 54 ff.)

The CPCs often have a small budget for their own activities, but mainly use the finances and manpower of the participating partners. The most important tasks of CPCs are communication about the local situation of public order, safety and security, initiation and support of primary and secondary crime prevention and the discussion of local security policy. However the role of CPCs is concentrated on debate and counselling, and they have no decision-making power binding the police.

10.3 Summary: Mechanisms for Citizen and Local Authorities Engagement

Table 18: The Mechanisms for Citizen and Local Authorities Engagement Into Security Policies - enhanced

	Germany	Turkey
Existence of municipal police	The police are a responsibility of the states. They are in duty to take care of public security/safety and public order. But also the local authorities are responsible for public order. The municipalities’ public order departments (<i>Ordnungsamt</i>) increased their activities in the public space since the 1990s and in the aftermath the servants often work in uniform. This uniform is often similar to the police’s. In Hessen (a member state of FRG) the public order department is allowed to name themselves as “ <i>Ordnungspolizei</i> ” (public order police) or in Frankfurt even	Zabita (“weak” local police)

	Germany	Turkey
	as "Stadtpolizei" (municipal police). But the competences of these forces are restricted.	
National councils	<p>None. But...</p> <p>The "German Forum for Crime Prevention": "The task of coordinating and fostering co-operation between all the relevant institutions in the field of crime prevention cannot be accomplished only by the police. In July 2001 the German Federal Government and the German States (Länder) called the Foundation German Forum for Crime Prevention, abbreviated with DFK, into life to act as a national body for crime prevention in Germany by promoting the various approaches that can be undertaken in order to reduce crime." Together with several other partners the German Forum for Crime Preventions organizes the annual "Prevention days", during these days best practice of crime prevention are presented and discussed, and the scientific discussion about crime prevention finds place.</p> <p>The "State's Crime Prevention Council North-Rhine-Westphalia" formulates the policy, coordinates the activities of government, civil society organizations, police etc. and develops and funds special programs.</p> <p>Aspects of traffic law and traffic policing are discussed by the "Deutscher Verkehrsgerichtstag", an annual meeting of jurists, social scientists, police officers et al. This forum formulates suggestions for traffic law and traffic policing (e.g. prevention of traffic accidents).</p> <p>There are several other forums, but they all are without any competences for decisions and only for discussion and opinion formation.</p>	None
Partnerships: Local security plans / Local councils / chair	<p>Since the early 1990s in Germany local security and safety partnerships were initiated. The request to initiate a partnership was based on decrees of the ministries of interior, so the partnerships are not based on an act (law).</p> <p>Some forms of partnerships can be differentiated:</p> <p>Crime Prevention Councils are committees, which bring together the police, local authorities (especially: mayor, departments for public order, welfare, youth), authorities</p>	<p>Local security protocols & plans.</p> <p>Community policing regulation: Boards open to</p>

	Germany	Turkey
	<p>for health, education, justice (prosecutor, local courts), non-statutory organizations (welfare, victim support, leisure, local economy: retailers). Individual citizens without an organizational background are seldom involved. The councils discuss a broad spectrum of public order topics, safety and security matters. The most often discussed topics regard problems of young people in the public space, drugs/alcohol abuse, but also domestic violence. The CPCs are mainly chaired by the mayor (or her/his deputy) or the local chief of police.</p> <p>Public Order Partnerships are thematically narrowed to specific problems and they involve mainly stakeholders with a topically responsibility/influence. They often concentrate the membership on public services, but also involve other relevant partners. Topics for POPs are for example drug scenes, graffiti, securing the student's way to schools.</p> <p>The local police forces in North Rhine Westphalia have an obligatory "police advisory board", which is chaired by the local chief of police. Members are elected delegates from the city or county parliament. The advisory board functions as a link between the police, local politics and citizens. It is a forum for the discussion about police activities, important plans of the municipality, which may regard public order or safety, and shall be an instrument to improve the relation of police and community. The police advisory board also discusses (but not decides) the "safety plan" of the police force, which points out the main focus of police's middle and long-term strategic matters in the region.</p>	<p>administrative services and citizens. Chaired by deputy / district governor.</p>
Legal status of consultation with population	The police work is based on law and the decisions of legitimated leaders (minister of interior, state's chief of police, police presidents et al.). The consultation with the people, with civil society groups and other interest groups is wanted, but the conclusions, suggestions, demands and wishes from these are not binding for the police.	Mandatory. Conclusions not binding.
Integration of consultation into policing plans	<p>Only the (obligatory) police advisory boards have the (organized) chance to discuss policing plans with the police.</p> <p>Further on the (facultative) Crime Prevention Councils can bring in suggestions, which are often regarded in the safety plan.</p>	No exact legal definition of the process of integration.

	Germany	Turkey
National tools for examining citizen's expectations / date of 1st usage	<p>There are no national tools and decreed procedures for the examination of citizens' expectations.</p> <p>But...</p> <p>... local police forces survey the expectations, the level of fear of crime, the estimation of "dangerous places" etc. on their own decision. Some forces do the survey regularly (for example Bremen, Osnabrück), most only occasionally.</p> <p>The Police NRW developed a survey tool, which was used in all local police forces in 2003. This tool and also a few other questionnaires developed by social scientists are used in Germany and have helped to build up a sort of standard how the citizens' view on safety, security and policing can be measured.</p>	None
NGOs involved as think tanks in local security	Some NGOs take part in the activities of Crime Prevention Councils or Public Order Partnerships and can make suggestions. But they are not "think tanks in local security".	None

11. Other Legal Arrangements and Considerations in Relation to Civilian Oversight

(Frank Braun)

11.1 Overview

Table 19: Other Legal Arrangements and Considerations in Relation to Civilian Oversight

	Germany	Turkey
Video surveillance laws/ mechanisms	Law on Video Surveillance	Video Surveillance: None. Law on Interception of Communications
Right to collective interest representation	Yes, but strike not allowed	No union rights for ISFs
Adopted code of Ethics / Date	None	An identical succinct document applies to both forces: Police: Yes / 2007 Gendarmerie: Yes / 2007
European code of Police Ethics	Yes	Police: yes/ 2007 Gendarmerie: yes/ 2007

11.2 Other Legal Arrangements in Relation to Civilian Oversight

11.2.1 Video Surveillance

In the German acts for law enforcement - the police laws and the Code of Criminal Procedure – are found a lot of varying regulations dealing with the use of cameras. But all those regulations depend on facts pointing to specific and actual hazards or the suspicion of a criminal act.

In the last years, lots of state police acts introduced provisions permitting video recordings at endangered places and objects such as central stations or Jewish cemeteries and also at so called *criminal hot spots*. There are as well laws on *video surveillance of demonstrations* in Germany.

However video surveillance in Germany is very limited compared to Britain and other Western European nations. This might be the result of the jurisdiction of the Federal Constitutional Court about privacy. With its *Volkszählungsurteil* (“Census Verdict”) the German Federal Constitutional Court established a *right to information privacy (Basic Right on Informational Self-Determination)*³⁴ also for the public space, and declared all surveillance a violation of the fundamental right to personal freedom. It ruled, that an infringement of this right to information privacy was only justified in the “prevailing general interest” provided a clear and constitutional legal basis and in line with the principle of proportionality.

The Commissioners for Data Protection and Freedom of Information of the Länder have wide-ranging powers to monitor the implementation of video surveillance systems.

As policing falls under the jurisdiction of the Länder these are in charge of the regulation of most forms of police surveillance, as the mentioned below.

11.2.1.1 *Video surveillance on criminal hot spots*

The right to information privacy sets certain limitations to police use of video surveillance in public spaces. In order to be legitimate, the threat to the public’s safety must outweigh the need for privacy. For this reason most Länder have introduced legislation more or less like that of North Rhine-Westphalia, for example, where § 15 North Rhine-Westphalia Police Act (Polizeigesetz Nordrhein-Westfalen - PolG NRW) allows police to survey and record in various (broadly defined) geographic areas where actual indications justify the assumption that, in this type of place or at objects of this sort, offences will be committed (so called “Kriminalitätsschwerpunkte” - *criminal hot spots*).

The surveillance needs to be discernable for citizens (the secret use of cameras is therefore not permitted). Video surveillance needs to be indicated by means of signs or pictograms.

11.2.1.2 *Video surveillance of demonstrations in Germany*

The laws of assembly of the Länder regulate the video surveillance competencies of the police. Following this, filming is only allowed if significant circumstantial evidence is given that public security is endangered considerably. Public security refers to legally protected interests like health, property, and freedom. Most laws of assembly do not distinguish between simple camera-monitor surveillance and videotaping with storage of the data. The former is often used at demonstrations. Judges contend that the right to informational self-determination is infringed upon, owing to the uncertainty of those assembled as to whether they are under surveillance or not³⁵. Thus, there may be an impact on behaviour just because of the potentiality of surveillance and the general availability of the option to an officer to press the record button at any time. Demonstrators do not know, if they are being filmed in the moment

³⁴ BVerG, 1 BvR 209/83, 1 BvR 484/83, 1 BvR 440/83, 1 BvR 420/83, 1 BvR 362/83, 1 BvR 269/83 vom 15.12.1983 (Volkszählungsurteil), English translation of essential parts of the German “Volkszählungsurteil”, which established in Germany the Basic Right on Informational Self-Determination: <https://freiheitsfoo.de/census-act/>

³⁵ See OVG Münster (Higher Administrative Court of North Rhine Westfalia) - 5 A 2288/09 vom 23.11.2010.

or if their pictures are “only” transferred to a monitor where other police officers are watching.

The law determined that recordings had to be deleted immediately after an assembly except when they were needed for criminal proceedings.

11.2.1.3 Video surveillance for the protection of detained individuals

In some Länder (for example Hamburg; Hessen, and Baden-Wurtemberg), the video surveillance of places of detention is permitted. This kind of video surveillance shall serve to protect the detained individual and also shall prevent torture and ill-treatment by the police³⁶.

11.2.2 Right to collective Interest representation

The Gewerkschaft der Polizei (Trade Union of the Police) is a trade union in Germany. It represents about 180,000 police employees, and is one of eight industrial affiliations of the German Confederation of Trade Unions (DGB). The *Gewerkschaft der Polizei* is one of the three trade unions for police employees in Germany, the other two being the *Deutsche Polizeigewerkschaft* - affiliated with the German Civil Service Federation - and the *Bund Deutscher Kriminalbeamter*, which is exclusively for members of the *Kriminalpolizei*.

The *Gewerkschaft der Polizei* joined the German Confederation of Trade Unions on April 1, 1978. On a European level, the *Gewerkschaft der Polizei* is part of the European Confederation of Police (EuroCOP). The Union is open to all employees of the police - including police officers, customs agents of the *Bundeszollverwaltung*, administration workers, etc. It represents the job-related, social, economic, ecological, and cultural concerns of employees and former employees of the police. It especially seeks an improvement of their work and living conditions and of civil service and labour law. To achieve this, the organization takes part in social and political discussions.

The different Police Trade Unions have *no legal right to collective action including strike action*.

The *Bundesarbeitsgemeinschaft kritischer Polizistinnen und Polizisten* (Federal Working Group of Critical Police Officers) is an alternative to Police Trade Unions with a special focus on civil rights.

11.3 Summary: Other Legal Arrangements and Considerations in Relation to Civilian Oversight

Table 20: Other Legal Arrangements and Considerations in Relation to Civilian Oversight – enhanced

	Germany	Turkey
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³⁶ UN Committee Against Torture (2009): Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Concluding observations of the Committee against Torture: Israel, CAT/C/ISR/CO/4, 23-06-2009, 16.

	Germany	Turkey
Video surveillance laws/mechanisms	<p>Law on Video Surveillance</p> <ul style="list-style-type: none"> - Video surveillance on criminal hot spots: Most Länder allow police to survey and record in various broadly defined geographic areas where actual indications justify the assumption that, in this type of place or at objects of this sort, offences will be committed. The surveillance needs to be discernable for citizens (the secret use of cameras is therefore not permitted). Video surveillance needs to be indicated by means of signs or pictograms. - Video surveillance of demonstrations: The laws of assembly of the Länder regulate the video surveillance competencies of the police. Following this, filming is only allowed if significant circumstantial evidence is given that public security is endangered considerably. - Video surveillance for the protection of detained individuals: Only in a few Länder the video surveillance of places of detention is permitted. 	<p>Video Surveillance: None. Law on Interception of Communications</p>
Right to collective interest representation	<p>Yes: "Gewerkschaft der Polizei", "Polizeigewerkschaft" and "Bund Deutscher Kriminalbeamter" represent the job-related, social, economic, ecological, and cultural concerns of employees and former employees of the police. It especially seeks an improvement of their work and living conditions and of civil service and labour law. To achieve this, the organization takes part in social and political discussions.</p> <p>The different Police Trade Unions have no legal right to collective action including strike action.</p>	<p>No union rights for ISFs</p>
Adopted code of Ethics / Date	<p>None</p>	<p>An identical succinct document applies to both forces:</p>

	Germany	Turkey
		Police: Yes / 2007 Gendarmerie: Yes / 2007
European code of Police Ethics	Yes	Police: yes/ 2007 Gendarmerie: yes/ 2007

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Law and regulations

Code of Criminal Procedure (Strafprozessordnung)

Disciplinary regulation of the German Army (Wehrdisziplinarordnung)

German national constitution (Grundgesetz)

Law on soldiers (Soldatengesetz)

Organizational plans of MoI and regional departments (Geschäftsverteilungspläne)

Regulation of civil servants competences and setting of superior authorities with disciplinary powers, MoI, 01.03.2005.

State constitution (Landesverfassungsgesetz)

State disciplinary law (LDG, vormalis Disziplinarordnung NW)

Internet sources

http://www.mik.nrw.de/fileadmin/user_upload/Redakteure/Dokumente/Ueber_Uns/1412organisationsplan.pdf , 01.12.2014 – (Organizational plan of Ministry of Interior)

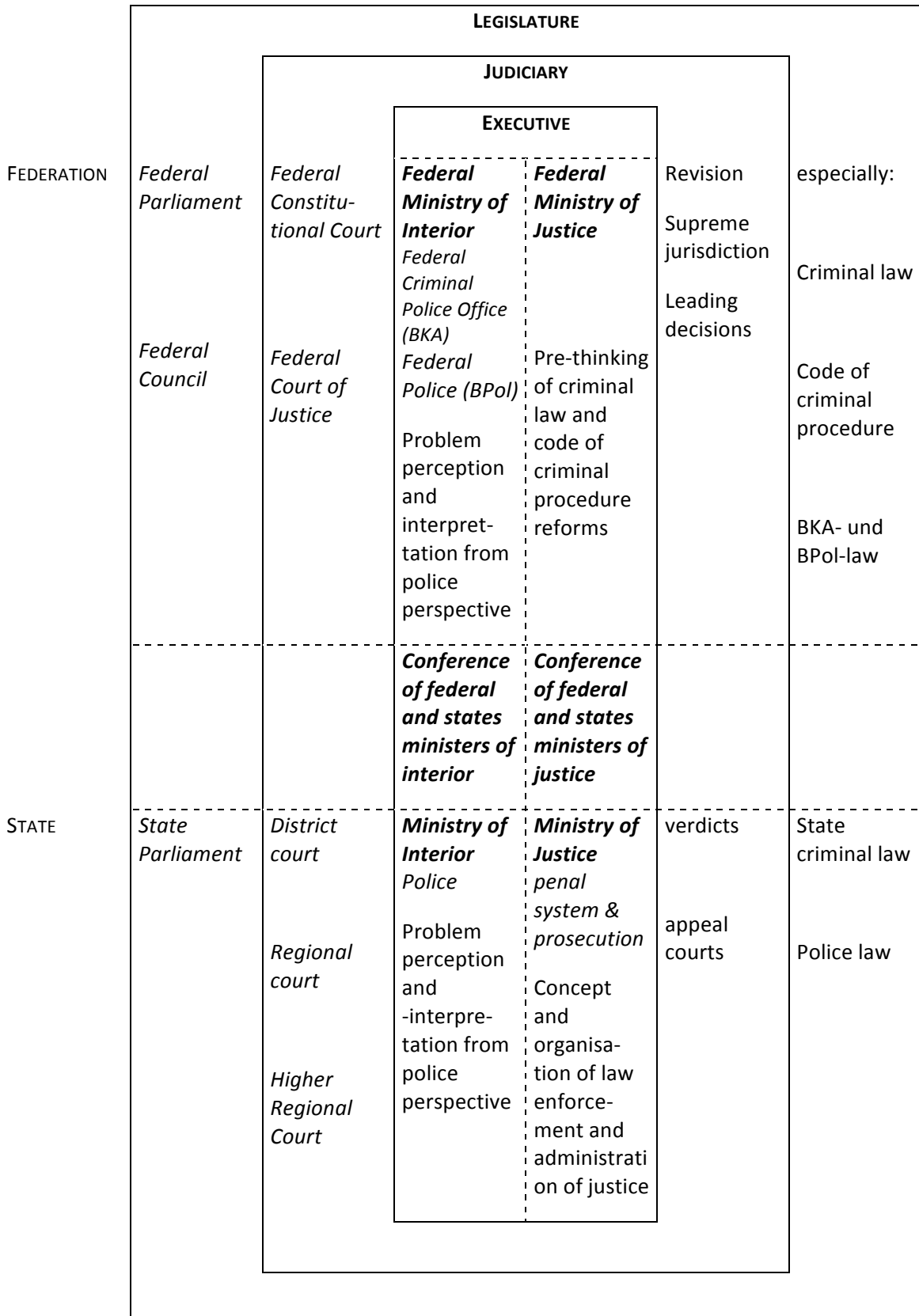
http://www.bmi.bund.de/SharedDocs/Downloads/DE/Ministerium/PDF_Organigramm_BMI.pdf?jsessionid=A58A3F2564D2AE80F1F0E4F31D6B1B56.2_cid287?__blob=publicationFile – (organizational chart of the Federal Ministry of Interior)

<http://www.landtag.nrw.de/web/WWW/haushalt/cd-fm-0914/daten/pdf/2015/hh03/kap110.pdf>, 02.12.2014. – (Current Administrative Board concerning the police authorities for the state North-Rhine Westphalia)

http://www.landtag.nrw.de/web/WWW/haushalt/cd-fm-0914/daten/html/hp_03.html, 04.12.2014.(Administrative Board 2015 - the draft)

Annex

1. Modell of internal security institutions in the political system of Germany with horizontal and vertical division of power (Frevel 2008: 112)



2. Excerpt from “Basic Law for the Federal Republic of Germany” (German Constitutional Law)³⁷

Article 1 [Human dignity – Human rights – Legally binding force of basic rights]

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

(3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

Article 19 [Restriction of basic rights – Legal remedies]

(4) Should any person’s rights be violated by public authority, he may have recourse to the courts. If no other jurisdiction has been established, recourse shall be to the ordinary courts. The second sentence of paragraph (2) of Article 10 shall not be affected by this paragraph.

Article 20 [Constitutional principles – Right of resistance]

(1) The Federal Republic of Germany is a democratic and social federal state.

(2) All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.

(3) The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.

Article 44 [Committees of inquiry]

(1) The Bundestag shall have the right, and on the motion of one quarter of its Members the duty, to establish a committee of inquiry, which shall take the requisite evidence at public hearings. The public may be excluded.

(3) Courts and administrative authorities shall be required to provide legal and administrative assistance.

Article 73 [Matters under exclusive legislative power of the Federation]

(1) The Federation shall have exclusive legislative power with respect to:

1. foreign affairs and defence, including protection of the civilian population;

9a. protection by the Federal Criminal Police Office against the dangers of international terrorism when a threat transcends the boundary of one Land, when the jurisdiction of a Land’s police authorities cannot be perceived, or when the highest authority of an individual Land requests the assumption of federal responsibility;

10. cooperation between the Federation and the Länder concerning

a) criminal police work,

³⁷ See: http://www.gesetze-im-internet.de/englisch_gg/

b) protection of the free democratic basic order, existence and security of the Federation or of a Land (protection of the constitution), and

c) protection against activities within the federal territory which, by the use of force or preparations for the use of force, endanger the external interests of the Federal Republic of Germany,

as well as the establishment of a Federal Criminal Police Office and international action to combat crime;

Article 87 [Matters]

(1) The foreign service, the federal financial administration, and, in accordance with the provisions of Article 89, the administration of federal waterways and shipping shall be conducted by federal administrative authorities with their own administrative substructures. A federal law may establish Federal Border Police authorities and central offices for police information and communications, for the criminal police, and for the compilation of data for purposes of protection of the constitution and of protection against activities within the federal territory which, through the use of force or acts preparatory to the use of force, endanger the external interests of the Federal Republic of Germany.

Article 92 [Court organisation]

The judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law, and by the courts of the Länder.

Article 97 [Judicial independence]

(1) Judges shall be independent and subject only to the law.

(2) Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the laws. The legislature may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in their districts, judges may be transferred to another court or removed from office, provided they retain their full salary.

Article 101 [Ban on extraordinary courts]

(1) Extraordinary courts shall not be allowed. No one may be removed from the jurisdiction of his lawful judge.

(2) Courts for particular fields of law may be established only by a law.

Article 103 [Fair trial]

(1) In the courts every person shall be entitled to a hearing in accordance with law.

(2) An act may be punished only if it was defined by a law as a criminal offence before the act was committed.

(3) No person may be punished for the same act more than once under the general criminal laws.

Article 104 [Deprivation of liberty]

(1) Liberty of the person may be restricted only pursuant to a formal law and only in compliance with the procedures prescribed therein. Persons in custody may not be subjected to mental or physical mistreatment.

(2) Only a judge may rule upon the permissibility or continuation of any deprivation of liberty. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The police may hold no one in custody on their own authority beyond the end of the day following the arrest. Details shall be regulated by a law.

(3) Any person provisionally detained on suspicion of having committed a criminal offence shall be brought before a judge no later than the day following his arrest; the judge shall inform him of the reasons for the arrest, examine him, and give him an opportunity to raise objections. The judge shall, without delay, either issue a written arrest warrant setting forth the reasons therefor or order his release.

(4) A relative or a person enjoying the confidence of the person in custody shall be notified without delay of any judicial decision imposing or continuing a deprivation of liberty.

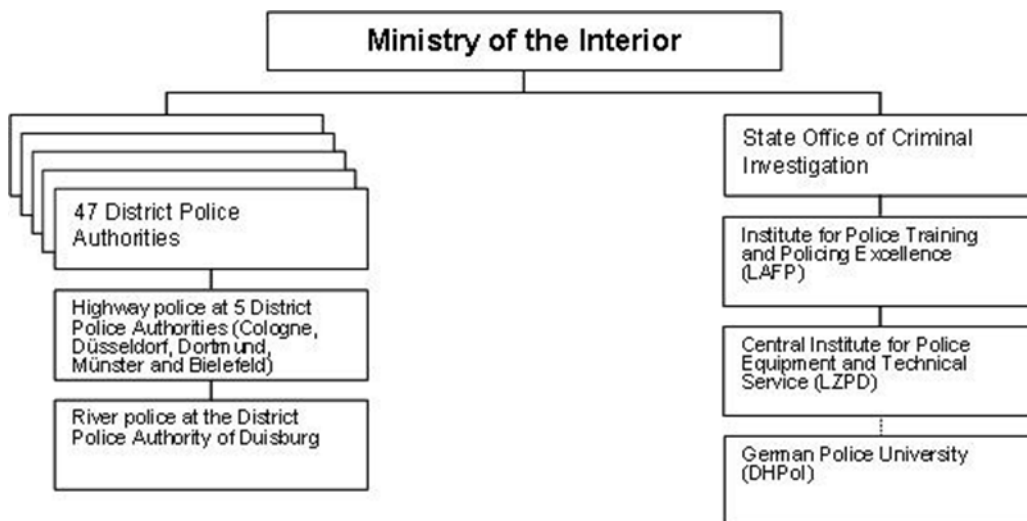
Article 114 [Submission and auditing of accounts]

(1) For the purpose of discharging the Federal Government, the Federal Minister of Finance shall submit annually to the Bundestag and to the Bundesrat an account of all revenues and expenditures as well as of assets and debts during the preceding fiscal year.

(2) The Federal Court of Audit, whose members shall enjoy judicial independence, shall audit the account and determine whether public finances have been properly and efficiently administered. It shall submit an annual report directly to the Bundestag and the Bundesrat as well as to the Federal Government. In other respects the powers of the Federal Court of Audit shall be regulated by a federal law.

3. Structure of Police

a) in North Rhine-Westphalia



see: Frevel/Kuschewski 2013: 135

b) in Hessen

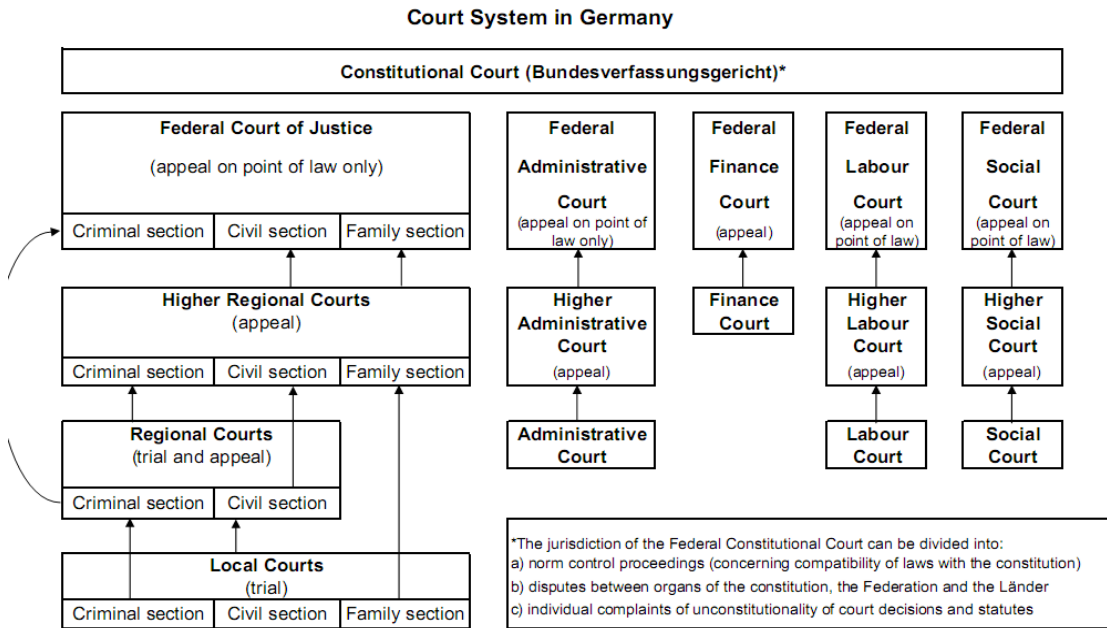
Organisation der hessischen Polizei



4. Most important Internal Security Forces in Germany – assembled in the Gemeinsames Terrorismusabwehrzentrum (GTAZ – Joint Counter-Terrorism Centre)

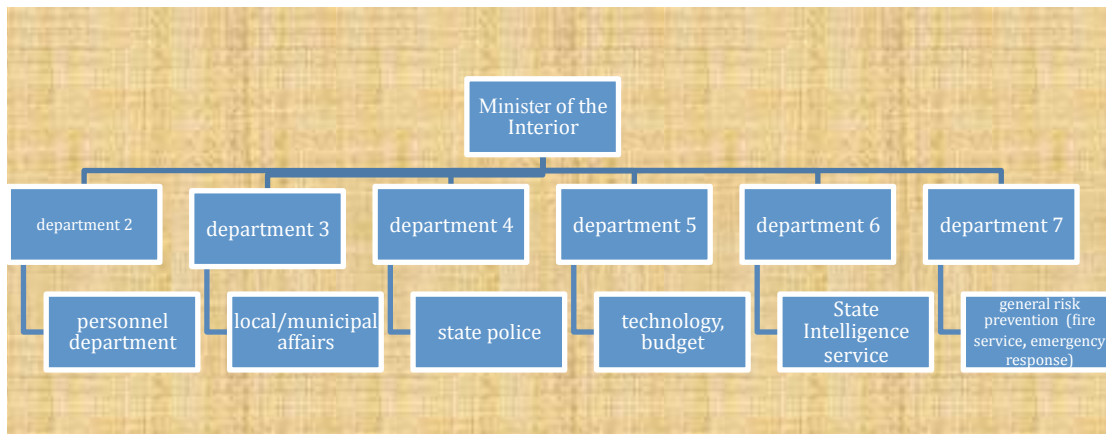
- Bundesamt für Verfassungsschutz (Federal Office for the Protection of Constitution)
- Bundeskriminalamt (Federal Criminal Police Office)
- Bundesnachrichtendienst (Federal Intelligence Service)
- Generalbundesanwalt (Federal Public Prosecutor General)
- Bundespolizei (Federal Police)
- Zollkriminalamt (Central Office of the German Customs Investigation Service)
- Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees)
- Militärischer Abschirmdienst (Military Counterintelligence Service)
- 16 Landesämter für Verfassungsschutz (intelligence services of the federal states)
- 16 Landeskriminalämter (criminal police offices of the federal states)

5. Court System in Germany (Riedel 2013³⁸)



6. Organizational chart of a MoI

(own representation based on the current organizational chart of the MoI of North Rhine-Westphalia, 01.12.2014)



³⁸ J. Riedel, Training and Recruitment of Judges in Germany, Appendix 1. International Journal for Court Administration Vol. 5 (2), October 2013. <http://www.iaajournal.org/index.php/ijca/article/download/12/98>.

7. Territorial organization of ISF and supervision authorities³⁹

Policy field	Legal, technical and administrative supervision	Federal ISF	Authority type	ISF of the states (the Länder)	Authority type
External security	Federal Chancellery	BND	Federal Intelligence Service	----	
	Ministry of Defence	MAD	Federal Intelligence Service		
Internal Security	Ministry of Interior	BfV (German Federal Bureau of Investigation)	Federal Intelligence Service	LfV (German Bureaus of Investigation of the states)	Intelligence service of the states
		BKA (Federal Criminal Police Office)	Federal police	LKA (Criminal Police Office of the states)	State police
		BPol (German Federal police)	Federal police	Police authorities (KPB)	State police
				Highway patrol	State police
				Water police	State police
		IBL (Inspector of the riot police of all states)		Riot police	State police
	Ministry of Finances	Customs investigation	Special federal police	Taxation investigation	Special state police
	Justice	Prosecutor General of the Federal Court	Federal Public Prosecutor	Chief Public Prosecutor	Public Prosecutor of the states

³⁹source: own representation based on Lange 1999:117

Policy field	Legal, technical and administrative supervision	Federal ISF	Authority type	ISF of the states (the Länder)	Authority type
		of Justice			
	President of the Parliament	Police of the German Bundestag	Federal police		

8. Key sources of budgetary organization and control

No	Regulation	Source
1	Current Federal Administrative Board of Germany, 15.07.2014	http://www.gesetze-im-internet.de/bundesrecht/hg_2014/gesamt.pdf
2	State constitution (Landesverfassung)	Especially § 81 State constitution of North Rhine-Westphalia
3	Current state administrative board (e.g. of North Rhine-Westphalia) including an oversight of savings and expenditures	http://www.landtag.nrw.de/web/WWW/haushalt/cd-fm-0914/daten/pdf/2015/hh03/kap110.pdf
4	Administrative Board 2015 (draft), including an overview of budget chapters of internal security forces, especially police	http://www.landtag.nrw.de/web/WWW/haushalt/cd-fm-0914/daten/html/hp_03.html
5	Oversight of annual Administrative Boards of the state	http://www.landtag.nrw.de/portal/WWW/Navigation_R2010/0

No	Regulation	Source
.		
	North-Rhine-Westphalia	40-Dokumente-und- Recherche/030-Gesetzgebungsportal/050-Haushaltsplaene/Inhalt.jsp

9. Disciplinary sanction regime: organization, competences, proceeding

(own representation based on mentioned legal framework)

