

War Crime Trials in Austria

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Introduction

While Austrians within the Nazi hierarchy constituted a minority, their percentage in the killing machinery was disproportionately large. Only a small number of them were brought to trial after 1945 and not all of them were sentenced.

Until the Waldheim affair in the eighties the involvement of Austrians in the Nazi extermination machine had hardly been acknowledged inside Austria. This was partly the fault of the Austrian judicial system, which stopped prosecuting Nazi war criminals in the early seventies. Since 1975 no Nazi war criminal trial took place in Austria.

Simon Wiesenthal assumes that Austrian Nazis shared responsibility for the murder of some three million Jews, approximately half the number of Jewish victims killed during the Nazi regime. Some commandants of the extermination camps and around 70 percent of Adolf Eichmann's staff were Austrians, among them well known figures such as

- Odilo Globocnik, Hans Hoefle, and Ernst Lerch, the leaders of the "Action Reinhard", responsible for the killing of 1.8 Million Jews in the death camps in East Poland in 1942 and 1943; or:
- Franz Stangl, commandant of the Treblinka extermination camp and previously deputy chief of Hartheim, a euthanasia center in Upper Austria (Stangl was one of the experts on killing humans with gas which Henry Friedlander referred to in his book on Nazi euthanasia); or:
- Siegfried Seidl, commandant of the Theresienstadt ghetto in Bohemia.

The list could be continued.

Particularly since the discussion in the late eighties which centered around Kurt Waldheim the Austrian approach towards its Nazi past has often been

characterized by terms such as “Tabuisieren – Verdrängen – Vergessen” – that is: “making into a taboo”, “suppressing” and “forgetting”.

When Kurt Waldheim, the former Secretary General of the United Nations, was nominated a candidate for the presidential election in Austria in 1986, vivid discussions arose about Waldheim’s service in the German *Wehrmacht*. The World Jewish Congress accused him for having been involved in war crimes on the Balkans. The Austrian government convoked an independent commission of international well known historians to examine the war time activities of the former *Wehrmacht* officer Waldheim. The commission found out that Waldheim, as a high ranked information officer, knew about the crimes, but probably wasn’t personally involved; but the experts also told that the statements about his war time activities, that Waldheim had given in official documents after the war, had been incomplete. Waldheim was elected president, but the discussions went on. The affair became a turning point in the attitude of many Austrians to their past, as well as in Austrian historiography.

But despite all evidence brought to light by historians in Austria and abroad the official policy of the Austrian governments remained the same: Austria regarded itself as the first victim of the Hitlerite aggression and denied all responsibility of the state or its citizens for the crimes of the Nazi era. The official explanation for this response was that Austrian statehood had ceased to exist in 1938, after the annexation of the country by the German Reich. It was only in 1991 that the Austrian federal chancellor Franz Vranitzky assumed responsibility for “the harm which Austrian citizens had done to other human beings and peoples”. He also admitted that many Austrians participated in the oppression and persecution of the Nazi period, as he put it, “partly in prominent positions”. Subsequently the parliament established the so called Austrian National Fund in order to help those victims who had been neglected by restitution and compensation measures during the last decades.

Public Awareness of Nazi Crimes

The difference in public awareness of the involvement in Nazi crimes is striking between Austria and Germany. The Germans, who couldn’t hide behind political constructs such as the first victim ideology have been forced to deal with the Nazi crimes in public. Also the judicial coming to terms with the Nazi past has remained a subject of public discussion in Germany. In Austria the judicial aspect of coming to terms with the past has been dealt with only by a very small circle of critical researchers.

The large German trials in the sixties and seventies were an attempt of a group of state attorneys and judges to examine the most important aspects of Nazi crimes in a similar manner as the Subsequent Nuremberg Proceedings. That means, they sought to focus on main spheres of Nazi crimes such as

- the extermination camps;
- the mass shootings by the mobile murder bataillons, called Einsatzgruppen, in Poland and the East;
- the murders in the euthanasia clinics,
- and others.

In Austria, however, there was no “large trial” at that time. Of the few proceedings that took place some ended with incomprehensible acquittals:

- An Austrian court acquitted two engineers who had drawn up the construction plans for the gas chambers in Auschwitz.
- Two days into the trial the prosecuting attorney dropped the charges against Ernst Lerch. Lerch was Odilo Globocnik’s adjutant at the time of the *Aktion Reinhard* mass murders. He was responsible for the killings of hundreds of partisans in and near Trieste as well.
- Austrian authorities requested four trials to convince a jury to sentence Franz Novak, Adolf Eichmann’s infamous “stationmaster of death”.

Trials against Franz Nowak

We’d like to enumerate the trials against Novak in order to highlight the dominant political climate in Austria at the time, which was characterized by an obstinate refusal of most Austrians to tackle their own Nazi past.

On the 17th of December in 1964 Novak was sentenced for the first time – to eight years imprisonment for the role he played in the Eichmann commando in Hungary in 1944. For formal reasons the verdict was suspended by the Supreme Court. The Supreme Court upheld, however, those parts of the sentence in which Novak was acquitted from being an “accessory to murder”. On the 6th of October in 1966 a Viennese Jury Court proclaimed Novak as “not guilty on all charges”. This was justified by Novak’s alleged “obligation to obey binding orders” (“Befehlsnotstand” in German). After five years detention pending investigation Novak was set free. Two years later the Supreme Court revoked

the judgement again for formal reasons and ordered a further trial. This time a unanimous verdict of guilty was passed on the 18th of December 1969, which led to a nine year imprisonment. Novak's attorney pleaded nullity once more and therefore he was not arrested. After the third repeal by the Supreme Court, a verdict of guilty was passed again by a jury court on the 13th of April in 1972. The jury explicitly denied that Novak acted under obligation to obey binding orders. He was convicted, however, not for murder but for committing "public violence under aggravating circumstances" by transporting human beings without providing sufficient water, food and toilet facilities. Seven out of eight members of the jury did not hold him guilty of being "accessory to murder" and conceded to the limitation of the crime. As a result Novak was jailed for seven years. The Supreme Court prohibited any further appeals and pleas of nullity.

"People's Court" Tribunals (1945–1955)

But these scandalous mild sentences or even acquittals of mass murderers by jury courts in the sixties and seventies do not represent the whole story. There was another dealing with Nazis crimes by the Austrian juridical system in the immediate post-war period. Between 1945 and 1955 the prosecution of Austrian Nazi war criminals was conducted not by jury courts but by so called "Volksgerichte" ("People's Court" Tribunals). These Courts were established by the Nazi Prohibition Law (in German: "Verbotsgesetz"). The law was passed on the 8th of May in 1945 – a few hours before the capitulation of the German Wehrmacht – by the Austrian Provisional Government, which at that point had been in power for only 12 days. Until German surrender the Austrian government's jurisdiction extended approximately 25 miles to the west and 40 miles to the south of Vienna. The Austrian government, although established with Soviet permission – and contrary to initial suspicions of the Western Allies – was not a Soviet puppet. It consisted of members of the conservative People's Party, the Socialist Party and the Communist Party). The Western Allies recognized the Austrian Provisional Government only as the 20th of October in 1945. Until the first elections in November 1945 the Provisional Government held both executive and legislative powers.

On the 26th of June in 1945 a second law, the "Kriegsverbrechergesetz" or War Crimes Law (or literally: War Criminals Law), was promulgated by the Provisional Government. These laws gave the prosecution of war crimes a special legal status. The special laws were created with the aim of addressing the special nature of Nazi crimes. In sight of this, the People's Trials are compa-

rable to the proceedings conducted by the Allies according to the Control Council Law number 10 in Germany rather than to those conducted before German courts in the early post-war years. As, however, many offences were similar the German and Austrian courts faced similar problems, for example the question of how to come to terms with the great number of cases of denunciation.

Most paragraphs of the Austrian War Crimes Law were retroactive, as were many other laws in Europe at the time. Like other laws in both Eastern and Western European countries, this law preceded the London Charter of the Nuremberg Trials, passed on the 8th of August in 1945. Similar laws were also adopted by countries which at that time had no contacts with the Western Allies – for instance Austria. This shows that the legal principles of the Nuremberg proceedings were accepted by European law experts even before they were formulated by the London Charta.

According to the two extraordinary laws of May and June 1945 the following crimes (among others) were to be brought before a People's Court:

War crimes in a restricted sense and crimes against humanity, torture and acts of cruelty, violation of human dignity, expropriation, expulsion and re-settlement.

A special paragraph stated that the obligation to obey orders did not protect the perpetrator from punishment. Nevertheless, those giving the orders should have been punished more severely than those executing them.

The People's Courts were presided over by two professional judges and three lay assessors. The election of the three lay assessors was the responsibility of the Department of Justice. Each of the three political parties had to submit a list of eligible candidates to the Department of Justice. Austrian post-war courts, however, suffered from severe shortage of judges. Many of the judges were no longer allowed to perform judicial duties, due to their services in the Nazi system.

As for the legal proceedings of the People's Trials, the provisions of the Code of the Criminal Procedure on rights of appeal were pronounced invalid (that concerned: objections to indictment, appeal and plea of nullity as well as appeal against the court's decisions). The original plans for People's Trials did not even include regulations about extenuating circumstances. Those sentences passed were to be executed without any reprieve. If doubt about a sentence passed by a People's Court arose the president of the Supreme Court had the power to bring the case before a senate in the Supreme Court. The senate could reverse the sentence and organize another trial before a differently composed People's Court.

After the liberation of Austria in May 1945 People's Trials were held only in the Soviet occupied zone. The first such trial took place from the 14th to the 17th of August in 1945 – three months before the Nuremberg Trials. The accused were former members of the SA suspected shooting Hungarian Jews in Engerau, a village near Bratislava, the capital of Slovakia. In this camp nearly 2,000 Hungarian Jews were forced to work and live under inhuman circumstances. Between December 1944 and March 1945 460 Jewish workers died of exhaustion and starvation or were killed by their Nazi-guards. Onehundred and two Jews were murdered during the evacuation march on the 29th of March in 1945. During the first two People's Trials which dealt with these crimes, five perpetrators were condemned to death.

The Western Allies in their respective occupation zones installed People's Courts not before March–April 1946. Thereafter four People's Courts existed in Austria – Vienna for the Soviet zone, Graz for the British zone, Linz for the American zone and Innsbruck for the French zone.

The Austrian People's Courts launched legal proceedings against almost 137,000 individuals suspected of crimes that fell under the Nazi Prohibition Law or the War Crimes Law. 108,000 charges had been made by early 1948.

More than 28,000 people were brought to trial; 48 percent or 13,607 people were sentenced. 30 death sentences were actually executed out of 43, two of the criminals sentenced to die committed suicide before they could be hanged. 27 criminals were sentenced to life imprisonment. Sentences in the upper range (that is maximum penalty or imprisonment of more than ten years) were imposed on 350 defendants.

Six sentences to life imprisonment but no death sentences were passed after 1948. The majority of the convicted were pardoned in the fifties. Other convicted war criminals received a new trial, which usually resulted in a reduced sentence, an acquittal or complete dismissal of the case.

On the 20th of December in 1955 the People's Courts were dissolved by a constitutional law. The abolishment of the People's Courts was a sequel of the State Treaty between Austria and the four Allies on the 15th of May in 1955 and the withdrawal of the Allied troops from Austria in October 1955. When the People's Courts were dissolved, 4,742 cases were still pending.

Nazi Amnesty (1957)

A further turning point was the Nazi amnesty of 1957, which resulted in the quashing of a large number of proceedings and consequently in the down-play-

ing of Nazi crimes, a tendency that had already been evident during the previous five to six years.

The prosecution of Nazi war criminals was transferred to common Austrian penal courts. Those courts charged only 46 individuals, among them the already mentioned contractors of the Auschwitz gas chambers, the organizers of the *Aktion-Reinhard*-mass-murders, Adolf Eichmann's transportation officer Novak and others. 18 of those 46 individuals were sentenced between 1955 and 1975. Seven cases were dismissed because of the death of the defendant or because of withdrawal of the charge. As already mentioned, there have been no trials for Nazi war crimes in Austria since 1975.

The most important legal difference between the People's and the jury courts was that the Jury Courts were exclusively based on criminal law whereas the People's Courts were also able to use the two special laws against Nazi criminals. These two laws were abolished in the course of the Nazi amnesty in 1957, except some paragraphs of the Nazi Prohibition Law which forbid Nazi propaganda and the formation of neo-Nazi groups. This meant, for instance, that there was no longer any legal basis for charging perpetrators with "crimes against humanity" and "violation of human dignity". Of even greater importance was the abolition of the War Crimes Law's regulation that "obligation to obey orders" could not be regarded as legally relevant excuse for Nazi crimes.

De facto the prosecution of Nazi criminals had ceased some years earlier. The sudden decline of the prosecution of perpetrators at the end of the forties was not specific to Austria, but an international trend. It coincided with a great number of pardons for German war criminals convicted by Allied courts.

Conclusion

The Nazi amnesty of 1957, however, was not the reason for the stopping of inquiry into Nazi crimes by the Austrian authorities. After the Eichmann Trial in Jerusalem, where a great number of suspected Austrian war criminals had been mentioned, a special department of the police was established in the Federal Ministry of Interior. This department gathered vast amounts of evidence concerning the crimes of Austrian police officers and SS-men in Poland and the occupied territories of the Soviet Union. The investigations concerned around 5,000 people who had been reported to the police before; approximately one thousand of these cases led to legal inquiries. But, as already mentioned, the public prosecutor brought before a jury only 39 cases. Only 18 people were sentenced.

With regard to the ratio of more than 23,000 verdicts passed by the People's Courts between 1945 and 1955, compared to 39 verdicts passed by the Jury Courts between 1955 and 1975, there can be no doubt that the legal prosecution of Nazi crimes in Austria was conducted almost exclusively by the People's Courts in the first years after the war. But these early efforts to punish the Nazi murderers in the immediate post-war period had been suppressed in public memory.

This may well have been a result of the integration of former Nazis into the political system of the Second Austrian Republic, which became apparent in 1948/1949. After a relatively short period of time, not only the crimes themselves, but also the attempts to bring the perpetrators to trial were no longer subject of public discussion. The critical minority within the public which has recollection of the Austrian courts' proceedings concerning Nazi-criminals only remembers the acquittals of mass-murderers in the sixties and the tacit pardoning of most criminals who had previously been convicted.

However not even this minority remembers the sentences which were imposed in the immediate post-war period.