

Germany: Trial against former SS member Herbertus Bikker abandoned

Elisabeth Zimmermann**24 March 2004**

On February 2 the trial against Herbertus Bikker, a former member of the Nazi SS (Schutzstaffel) responsible for war crimes in Holland, was abandoned only five months after legal proceedings were first initiated. The reason given by the court was the defendant's "long-term inability to stand the trial."

After decades of delay, Herbertus Bikker was finally indicted for murdering the 27-year-old Dutch resistance fighter Jan Houtman in Holland on November 17, 1944. The trial had already been interrupted several times because of the state of health of the 88-year-old Bikker. Several medical experts had already declared him unfit to stand trial.

The eleventh expert witness presented to the court was the neurologist Bernd Roggenwallner, who declared that Bikker is unable to stand trial although he is able to cope with his own household and to drive a car. Age-related illnesses impair his abilities to concentrate and remember things. Because of this he was declared incapable of defending himself and properly following the course of the legal proceedings.

The court justified the abandonment of legal proceedings on the basis that the evidence put forward, including important eye-witness testimony, suggested there was no likelihood of an imminent acquittal. According to the court's logic, the hearings could have continued, despite the defendant's inability to properly participate, if the evidence tended to indicate that an acquittal would have been the outcome. The expenses for the trial, including the expenses for the defendant's legal counsel, will be chargeable to the public purse.

This trial has therefore ended like many other trials against suspected Second World War criminals in Germany. If, after decades of long delays, criminal prosecution is initiated and charges laid, legal proceedings are often abandoned after a short time,

with the defendants declared unfit to stand trial because of old age.

But it is not only the accused who have been declared "unfit to stand trial," leading to the cancellation of legal proceedings and trials or supposedly justifying lenient sentences for monstrous crimes. Nazi criminals, who were in fact sentenced after spectacular court cases, either haven't had to serve their sentences or have been released after a short period of time upon being declared unfit to be kept in prison.

This theme is taken up by Ingo Müller in his book "Dreadful Jurists—the Remorseless Past of Our Judiciary" (1987). In one chapter, "The punishment of Nazi-criminals," for example, he deals with the principal defendant of the Auschwitz trials, Robert Mulka, who was sentenced to 14 years penitentiary by a Frankfurt court. In fact, Mulka was "released just one year after the trial because of health reasons."

In conclusion, Müller writes: "A 'biological amnesty' was granted to even the most prominent of the accused—in fact, they were granted this most frequently. After decades had passed before charges were initiated, more and more Nazi criminals reported sick. The relief on the part of the courts was detectable as numerous proceedings were cancelled due to defendants being unfit to stand trial. The judiciary readily accepted the assessments and abandoned legal proceedings."

In his book Müller describes the case of two high ranking SS officers, Bruno Steckenbach and Helmut Bischoff.

Steckenbach was a high ranking SS officer in the central Reich security office and was one of the main planners of the mass murders in Poland and the Soviet Union. In the Soviet Union he had been sentenced to 25 years of forced labor, but was deported to West

Germany in 1955.

After investigations were initiated by the Hamburg judiciary, legal proceedings were at first abandoned, but, following international protests, revived in 1961. It took twelve years until the indictments were presented accusing Steckenbach of “being responsible for the death of at least one million people.”

Müller describes how “the now 72-year-old got a medical certificate. He, like many people of his age, suffered from circulatory troubles. Because of this a senior consultant at a Hamburg hospital certified that he was only partially able to stand the trial, which meant the trial would have to be interrupted several times a day. In the event, the seventh division for criminal matters of the Hamburg district court decided that these kind of legal proceedings were not compatible with the defendant’s human dignity and thus once and for all abandoned legal proceedings on April 30, 1974.”

Legal proceedings against SS officer Helmut Bischoff were also abandoned by the provincial high court and court of appeal in Hamm on May 26, 1970. The justification given by the court was that sentencing the defendant would be detrimental to his health. The reason given by the court for abandoning legal proceedings just before conclusion of the main hearing was that “if the main hearings were to be continued, there were serious grounds for assuming that the defendant ... would be accused of being guilty of murder in a manner which, according to experts, would lead to an excessive rise of blood pressure.”

The lack of enthusiasm by the West German judiciary for prosecuting and convicting Nazi war criminals becomes even clearer when the following figures published by Michael Greve in his paper: “A short balance sheet of 50 years of West German criminal prosecution regarding Nazi crimes,” are taken into account:

“Since May 8, 1945, the West German judiciary has initiated preliminary proceedings and investigations against 106,496 people, of whom 6,495 were eventually sentenced. The legal proceedings against 102,223 suspects were either abandoned or ended with acquittals, with sometimes extremely dubious reasons given. Since the Federal Republic of Germany was founded, only 157 accused were sentenced to lifelong imprisonment; all others received limited penitentiary

or prison sentences.”

An example given by Greve of lenient treatment is the case of Otto Bradfisch, who commanded the so-called “Task Group B,” which eliminated 15,000 Jews and Russian prisoners of war during the period from June 1941 to April 1942. In 1961 a Munich district court sentenced Bradfisch to only ten years imprisonment for being an accessory to murder.

Although legal proceedings have been abandoned, the trial against Herbertus Bikker has served to briefly shed light on the German occupation of the Netherlands during the Second World War. The preliminary investigations and testimony given have contributed to a better understanding, including, for example, the description to the court by 81-year-old Annie Bosch-Klink of what happened on her family’s farm on November 14, 1944.

Bikker’s murder of the resistance fighter Jan Houtman is only one example of the countless brutal war crimes committed by the Nazis. But the incident also demonstrates the breadth and depth of the broad resistance to the Nazi occupation by the Dutch population.



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