Life imprisonment for SS man Heinrich Boere

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On March 23, a district court in Aachen, Germany sentenced 88-year-old former SS man Heinrich Boere to life imprisonment for the murder of three civilians in 1944 in then Nazi-occupied Netherlands. The sentencing of Boere is at the same time an indictment of the German legal system, which for decades refused to take action against Nazi criminals.

The Aachen court found that on the evening of July 14, 1944, Boere, together with Peter Bestemann (both members of the *Schutzstaffel*—SS), shot the chemist Fritz Bicknese in Breda, Holland. On September 3 the same year, Boere, together with another SS man, killed cycle shop owner Teun de Groot in cold blood, and then killed Frans Willem Kusters in Vorschooten.

Boere and his two accomplices were members of a 15-strong special commando unit of the Dutch SS, which under the direction of Johannes Hendrik Feldmeijer, carried out "counter-terrorist" actions against Dutch resistance fighters. For each German soldier killed by the resistance, three Dutch citizens suspected of being close to the resistance were to be killed. These actions were code-named "Silver Pine," and in the period from September 1943 until the end of 1944 more than fifty people died as a result.

The victims were each carefully chosen. Boere and his accomplice rang the front door and checked the ID cards of their victims before murdering them in cold blood, or taking them away to be shot elsewhere.

"Operation Silver Pine" was part of the brutal occupation regime established by the Nazis under Reich Commissioner Arthur Seyss-Inquart. He was responsible for deporting over 100,000 Jews to the death camps, and sending half a million Dutch workers into forced labour in Germany or in German-occupied territories.

Heinrich Boere was convicted of these heinous crimes in 1949 by a special court in Amsterdam, and was sentenced to death *in absentia*. The sentence was later commuted to life imprisonment.

However, the verdict could not be enforced because Boere had fled to Germany. Not far from the Dutch border, in Eschweiler, near Aachen, he then began work as a miner.

Despite his lawful conviction in the Netherlands, Boere lived undisturbed in Eschweiler until October of last year. In 1980, the Netherlands requested his extradition, as a result of which he spent two months in custody. However, the Higher Regional Court in Cologne ruled that his extradition was inadmissible. The court cited a 19 May 1943 decree of Adolf Hitler, according to which all "foreigners of German origin" (Boere's father was Dutch and his mother was German) were granted German citizenship if they voluntarily joined the Waffen SS. And under the existing law a German citizen could not be extradited.

At that time, the Central Office for Processing Nazi Crimes took the extradition request as an opportunity to open a criminal investigation into Boere. The then head of the Central Office, Attorney General Hermann Weißinger, came to the conclusion that "Operation Silver Pine"—that is, the savage murders committed by the Feldmeijer commandos—complied with the then existing law and that therefore their "arrangement and implementation" was duly "authorized and lawful."

Boere was able to spend another two decades enjoying a quiet and undisturbed life in Eschweiler, the final years in a retirement home. During this entire time he lived under his real name and never denied the alleged crimes.

In 2003, the Dutch Ministry of Justice then applied for the Amsterdam ruling of 1949 to be enforced against Boere in Germany. It took another four years until the Aachen district court upheld the request in February 2007. Once again, the Higher Regional Court in Cologne protected Boere, who was about to start his sentence. This time, the grounds cited were that Boere had not had an adequate defence in Amsterdam, and that (since he had fled the trial) he had had no possibility of lodging an appeal.

Meanwhile, the senior manager of the Central Office for the Processing of Nazi Crimes had changed. In August 2007, the new director, chief prosecutor Ulrich Maass, began a new investigation into Boere. Together with the plaintiffs, Tuin de Groot, the 76-year-old son of Teun de Groot, and two sons of the pharmacist Fritz Bicknese, he finally agreed to the case against Boere being reopened in October last year.

Tuin de Groot and Dolf Bicknese were also present on March 23 when the verdict was announced in the Aachen District Court. Both were relieved that there would be a judgement against their fathers' murderers. Teun de Groot said he was relieved that justice was finally being served, although very late, but better than never. Dolf Bicknese expressed a similar sentiment. In the course of the trial, both had described the lifelong effects of the brutal actions on their families and their

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lives.

Because of the late ruling of the Aachen District Court sentencing him to life imprisonment, it is uncertain whether Boere will ever have his sentence enforced, and that he will go to prison. After announcing the verdict, presiding judge Günther Noll said of this issue: “If we are honest, we do not assume this to be the case.”

Directly after the verdict was announced, Boere’s defence attorneys lodged an appeal in the Federal Court. And if this court should uphold the ruling of the Aachen district court, they have announced that the case would also be submitted for a ruling by the European Court of Justice. That could take several years. Because no arrest warrant was issued against Boere, he continues to remain at liberty until the case has passed through all the courts.

The call by his defence team for the case to be taken to the European Court of Justice is based on the Lisbon Treaty, which came into force on December 1, 2009, and which established the EU’s Charter of Fundamental Rights. Pursuant to Article 50 of the Charter, no one may be tried or punished again for an offence for which he has already been convicted or acquitted in an EU member state.

Already in early December 2009, the defence had tried in vain to have the proceedings against Boere set aside with reference to the Charter of Fundamental Rights.

In this context, a statement read out by the attorney of co-plaintiff Dolf Bicknese in early December in the Aachen District Court declares: “For me, justice itself is on trial. For Germany’s sake I hope that the suspicion that war criminals can enjoy the protective hand of the law will prove a lie.”

The court refused the defence request to close the case by reference to the Schengen Agreement; according to which, the legal principle applies that one cannot be convicted twice for the same crime, only if the sentence has been served or for legal reasons cannot be enforced.

However, an appeal to the European Court of Justice could still be successful because the “enforcement of sentence” is no longer included in the Charter of Fundamental Rights, where there is only talk of a “conviction.” It would be a bitter legal irony if Boere, who has evaded justice for nearly a lifetime for his brutal crimes, now escaped justice by benefiting from the Charter of Fundamental Rights contained in the Lisbon Treaty.

Heinrich Boere voluntarily joined the Waffen-SS at the age of 18, and before committing the crimes in the Netherlands had served on the Eastern front in the Caucasus. To this day, he leaves no doubts about his former crimes.

Like most Nazi criminals who have had to answer for their deeds, he claims he was only following orders. Boere told the court he never acted in the knowledge he was committing a crime.

Boere, however, was anything but a passive follower of orders. Documents submitted by the plaintiffs prove that he acted as a convinced Nazi. In 1942, Boere was a member of the Dutch Nazi movement NSB and the Landwacht (auxiliary police).

He not only participated in the firing squads that murdered innocent civilians, but also worked as an informant for the Nazis’ Security Service (SD), helping find out who was a member of the resistance against the Nazi occupation, or who supported it. In May 1944 in Helden near the German-Dutch border, he posed as someone who had to go underground.

“He then betrayed to the Germans the farmers who gave him food and had let him stay with them. On 17 May 1944, the SD staged a raid in Helden. Heinrich Boere was there, wearing the uniform of the Landwacht. 52 men were arrested, and 20 of them were deported to Germany. Seven did not return home.” (Quoted in the *Süddeutsche Zeitung* on 19 March 2010)

The fact that former SS man Heinrich Boere was able to escape justice for so many decades is primarily a damning indictment of the German judicial system and its treatment of Nazi crimes.

In Germany, very few individuals have ever been prosecuted as Nazi war criminals. Since the end of the war, the German authorities have identified more than 100,000 cases, but only 6,500 were convicted, mostly for minor offences.

The German judiciary has shown no serious interest in prosecuting those within the legal system responsible for crimes in the Nazi era, as almost all the former judges and prosecutors continued their careers without a break in post-war Germany.

In the final analysis, not a single Nazi judge has ever been convicted. “With the conviction of just a single former Nazi judge,” Ingo Müller writes in his book, *Terrible Lawyers*, “an avalanche would have been unleashed, which would have rolled over the majority of the post-war judges, and which the members of the higher courts would have had difficulty stopping.”

The case of Heinrich Boere is an example of how hundreds of thousands of Nazi criminals have been able to use the post-war German justice system to escape punishment—if they ever faced being brought to justice in the first place.

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