

# Netherlands judiciary demands extradition of Nazi war criminal from Germany

Elizabeth Zimmermann  
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On November 25, the Netherlands judiciary issued a European arrest warrant for the SS (Hitler's elite division) war criminal, Klaas Carel Faber. This warrant demands the extradition of the 88-year-old man, who has lived largely undisturbed in the Federal Republic of Germany, since his escape from a war crimes prison in the Dutch city of Breda 58 years ago.

All attempts by the Netherlands courts to bring Faber back into their judicial system after his escape on Boxing Day 1952 have so far been undermined by the hardline attitude of the German judiciary and politicians.

Faber made his escape from the prison in Breda during a film screening. He was accompanied by six other prisoners, who were also arrested for war crimes following the allied occupation of Germany. One of the organisers of the escape was the former SS operative Herbertus Bikker, who also lived in Germany largely undisturbed until his death in November 2008.

The escapees crossed the German-Dutch border in 1952 and presented themselves at a German police station. There they had to pay a fine of 10 marks for illegal border crossing, but were permitted to continue their escape unhindered. In a 1997 interview with reporters of *Stern* magazine, Bikker boasted, "The customs office director was a real comrade." A court usher gave each of the seven 20 marks—10 for the fine and 10 for their travel costs. Bikker commented on this: "In the court, they were all comrades".

Bikker, Klaas Carel Faber and his brother Pieter Johan were among the first to register themselves with the German secret service as voluntary collaborators after the occupation of the Netherlands. They became members of the SS special unit Silver Pine, led by Johannes Hendrik Feldmeijer. The father of the Faber brothers was a Dutch Nazi.

The special unit Silver Pine distinguished itself as a particularly notorious gang of thugs. It harassed prisoners in various criminal and forced labour camps, led raids into private homes, arbitrarily arrested people suspected of mounting resistance, threatened family members and looted homes. It was also responsible for the maltreatment and killing of prisoners. It was only in March of this year that the district court of Aachen succeeded in prosecuting a member of this SS unit, the 88-year-old Heinrich Boere.

Among Klaas Carel and Pieter Johan Faber's tasks was the guarding of prisoners in Westerbork labour camp and Groningen prison. There they abused and murdered prisoners—crimes that led to their prosecution after the war. Both were condemned to death in the Netherlands in 1947—Klaas Carel for the murder of 22 Jews and Pieter Johan for the murder of 27. Although the verdict against Pieter Johan was carried out in 1948, Klaas Carel's sentence was commuted to life imprisonment, which he avoided by his escape in 1952.

Immediately after the escape of the seven prisoners, the Dutch government applied for their extradition. However, although they were all quickly apprehended, only one of them was returned to the Netherlands—Jacob de Jonge, who was kidnapped by the British military police despite protests from the German government of Konrad Adenauer. All the others were recognised as German citizens by the German Federal Supreme Court and therefore, according to German Basic Law (*Grundgesetz*), could not be extradited.

The legal basis for this ruling was ascribed to the Führer's decree of May 19, 1943. This had been invoked by Hitler to grant German citizenship to non-Germans who had joined Nazi or German army units. The decree has remained in force to this day.

The public prosecutor in Dusseldorf opened proceedings against Klaas Carel Faber in 1954. However, the district court of Dusseldorf rejected admission of the indictment in 1957 on the grounds that there was insufficient evidence. At the time, the Dutch government refused to provide legal assistance to Faber, insisting instead on his extradition and rightly considering the German courts to be riddled with old Nazis.

The proceedings against Faber and the other fugitive war criminals from Breda were dismissed. Faber lived as a free citizen in Germany's Ruhr region until 1961 and then moved to Ingolstadt in Bavaria. There he worked for car manufacturer Audi as an office clerk until retirement. He now lives with his wife in the Pius quarter of Ingolstadt.

In the summer of 2002, the European Union reached agreement on the unified European Arrest Warrant. Under certain conditions, this obliges EU countries to enforce the court decisions of other member countries or to extradite their nationals to them.

Based on this new legislation, the Dutch judiciary made another attempt to bring Faber to justice in 2003. It applied for Faber to serve the life sentence, conferred by the Dutch ruling of 1948, in a German prison. However, the Ingolstadt district court decided in 2004 that an enforcement of the verdict was inadmissible because the investigation carried out in 1954 was inconclusive. The Ingolstadt prosecutor then declared the case closed.

In July 2006, German legislation was adapted to the agreement on the European Arrest Warrant. Consequently, German citizens in EU countries can be deported if the crime was committed in the territory of the state requesting the extradition. A further condition is that—in the event of an offender's conviction—the state making the request is subsequently prepared to transfer him or her back to Germany for the execution of the sentence.

In April 2008, descendants of Faber's victims asked representatives of the Dutch government to again appear in Berlin in order to achieve Faber's extradition or, alternatively, to see to it that a case was launched against him in Germany. Faber's name is on the Simon Wiesenthal Centre's list of the 10 most-wanted living Nazi criminals.

In 2009, Federal Justice Minister Sabine Leutheusser-

Schnarrenberger (FDP-Free Democratic Party) urged her Bavarian counterpart, Beate Merk (CSU-Christian Social Union), to re-examine the legality of the ruling of the Ingolstadt district court. Merk agreed to such a review only on condition that the Netherlands officially request it and, in doing so, provide new relevant facts about the case. She thereby left a way open either not to respond to the Netherlands' European Arrest Warrant, or to reject it.

However, even if the German judiciary granted the Netherlands' request, an extradition of the 88-year-old Faber is unlikely because an extradition to effect a sentencing is only permissible if the offender agrees to it.

The case of Klaas Carel Faber once again exposes the shameful handling of Nazi war criminals in the Federal Republic of Germany. As in this instance, many other cases have been dismissed or not even begun on the grounds that there was insufficient evidence. When it did come to an indictment in a few cases, the court proceedings were often held decades after the crime. Many cases were continually delayed until the accused died of natural causes or was deemed "unfit to be tried" on medical grounds.

This is what happened in the case of the above-mentioned Dutch SS member, Herbertus Bikker. Five months after opening the trial, the district court of Hagen again adjourned proceedings against him in February 2004. The justification given for this was the alleged "permanent unfitness" of the accused. Bikker lived undisturbed in Hagen for four years and died in 2008 at the age of 92.



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