

# Demjanjuk Nazi war crimes trial ends in Munich

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18 May 2011

What will probably prove to be one of the last trials of a Nazi criminal ended last week in Munich with the handing out of a relatively mild sentence. Ukrainian-born John Demjanjuk was sentenced to five years imprisonment for accessory to murder involving 28,000 Jews at the Sobibor concentration camp in occupied Poland. The Criminal Court concluded that the accused, who had fought for the Red Army before becoming a prisoner of war, had willingly volunteered to carry out the Nazis' murderous enterprise.

For now, Demjanjuk remains free, as the sentence was suspended until the verdict comes into effect. The court justified releasing Demjanjuk from captivity saying there was no risk of the stateless man trying to flee. The 91-year-old was able to leave the prison in Munich on Friday. Given his advanced age and poor health, it is more than questionable whether he will ever serve out his sentence, especially since the defence immediately lodged an appeal before the Federal Court.

At the beginning of the trial the case received much coverage in the foreign and domestic media; the *Süddeutsche Zeitung* wrote: "It is the last chance for the justice system to bring at least some recompense for the failings of the young federal republic [of Germany]! It is the last chance for the victims of the Holocaust to receive justice!"

The Demjanjuk trial began two years ago. He was deported from the United States in 2009. In 2001, a US court had already determined that he had been active as a guard in several concentration camps during the Second World War. In June 2004, his American citizenship was revoked. He had been granted US citizenship in 1945 after being removed from Flossenbürg Camp, where he was originally deployed by the SS. He was registered as a Displaced Person and employed by the US Army in Bavaria as a truck driver.

In December 2005, he was due to be deported from the US to the Ukraine, a move which he opposed. In February 2009, the Bavarian state police confirmed the authenticity of Demjanjuk's SS service card archived in the US. On 11 March 2009, Munich state prosecutors applied for an international arrest warrant, and the following day Demjanjuk was extradited to Germany.

After doctors had certified that the very old man in poor health was fit to stand trial for two 90 minute sessions a day, the trial could begin. The accused spent the most of the trial in a special bed next to his lawyers. He followed the proceedings without displaying any emotion or excitement, and was just as unmoved when the verdict was delivered. He did not wish to make any final statement to the court.

Historical documents were presented on almost every day of the trial. They proved that Demjanjuk was a "foreign auxiliary volunteer" for the SS, whose name appears in multiple documents. The most important evidence for Demjanjuk's guilt was his SS identity card, number 1393, which, like much of the other evidentiary material, came from Soviet archives. Other material came from Poland, including a bundle compiled by the counsel for the co-plaintiffs, the Cologne law professor Cornelius Nestler.

After almost 70 years, exact evidence of Demjanjuk's complicity, however, could not be produced. It was impossible to show his involvement in individual criminal acts, but after 18 months of proceedings the Criminal Court was convinced that the accused had been a Red Army prisoner of war in the Polish district of Trawniki who, as a "willing helper", was trained by the SS. He then served as a guard from March to mid-September 1943 at the Sobibor camp, as part of the machinery of destruction.

Although there are no survivors who could testify to what he actually did, the judge did not doubt that Demjanjuk, along with all foreign security guards deployed there and about 30 German SS men, was involved in all stages of the murder of the Jews. This started with the unloading of the deportation trains and ended with driving men, women and children into the gas chambers, and the disposal of the bodies. The court took the view that the accused could have evaded complicity by fleeing, and therefore had to answer for the crimes committed there.

That such escape was possible, is unequivocally clear from witness statements. *Spiegel online* quotes witness reports saying, "The foreign volunteers were surprisingly free to move around, in any event, this is what residents of the Sobibor extermination camp had said. The 'Blacks', as the Trawniki were called because of their dark uniforms, spent parts of the day unsupervised. A Polish railway worker observed that 'The guards were free after the shift and went into the nearby villages to dance and drink vodka. They had money for this from the prisoners in the camp'."

The Trawniki apparently spoke quite frankly about their terrible labours. A railway worker reported that in a chat with a security guard he learned that "the Jews arriving on the transports had to strip naked and were then sent to gas chambers". It was also proven that the guards were involved in the business of murder.

According to *Spiegel online*, the co-plaintiffs' lawyer Nestler showed how at least 160 of the 1,500 named Trawniki were able to flee from the camp. There were many opportunities to do so. The Polish farmer Rozalia Krasowska reported how her husband, a fisherman, often carried fleeing guards wearing SS insignia over the river Wieprz near Trawniki.

## Mild punishment

The Demjanjuk trial was a long and agonizing affair, not only because the health of the accused often disrupted the proceedings, but above all because the evidence was very complicated.

The prosecution alleged that Demjanjuk, in the six months he spent in Sobibor as a "foreign" security guard, had driven thousands of Jews from a total of 15 trains from the Netherlands to the death chambers. He had "willingly" participated in the killing of the Jews, and had thus absorbed

the “Nazi ideology’s willingness for racial extermination”. However, the defence merely called for a prison sentence of six years, although the maximum term possible is 15 years.

The sentencing took into account the fact that Demjanjuk had spent eight years in prison in Israel, where he was wrongly accused of being Ivan the Terrible, responsible for mass extermination at the Treblinka extermination camp. It was later established to be a case of mistaken identity, and Demjanjuk was released and received compensation for wrongful imprisonment. The court also made allowances for the fact that Demjanjuk, as a prisoner of war from the Red Army, like 3.3 million other Soviet war prisoners held by German forces, may well have died in a German camp if he had not volunteered to serve in the SS.

The former president of the Central Council of Jews in Germany, Charlotte Knobloch, praised the Munich ruling as a “symbol of Germany’s functioning rule of law”. Nazi war criminals now know “that they will be held to account, and that they must answer for their actions”. After such a long time, however, there are not too many left.

Other trial observers expressed bewilderment over the relatively mild sentence for accessory to murder in so many cases, and over the fact he was allowed to remain free. A representative of the Israeli Simon Wiesenthal Centre said of the lifting of detention: “This is a really terrible decision”.

Numerous witnesses had been party to the proceedings as co-plaintiffs. These were mainly individuals from Holland whose relatives were killed in Sobibor. Even if many of them would rather have seen Demjanjuk remain in prison, there was still a certain sense of satisfaction that the trial had brought to light the truth about Sobibor and had led to the conviction of one of the guilty.

One of 30 co-plaintiffs, Rob Fransman, who lost both parents in Sobibor, felt the sentence was just, but noted that the legal processing of the Nazi crimes was still far from over. “One of many has now been sentenced”, Fransman told the *Süddeutsche Zeitung*, adding, “there are still hundreds of Demjanjuks in Germany’s nursing homes”.

## German justice and Nazi crimes

The relatively light sentence handed down in Munich is also a consequence of decades of lack of interest on the part of the German political elite and the judiciary in the prosecution of Nazi criminals. The first Auschwitz trial was only held in Frankfurt twenty years after the war.

Only a relative few of the many thousands of Nazi criminals have been brought before the courts. Since the war, the German judiciary has investigated more than 100,000 cases in a process which led to only 6,500 convictions. Compared to the monstrous crimes in which they participated, most of those found guilty received modest sentences. As a rule, the culprits pointed to the “emergency situation”, which was recognised as an extenuating circumstance by the courts.

Many SS men who served in Sobibor got away scot-free. In 1965, the Hagen Regional Court heard the cases of 12 such SS men, and set five of them free. The acquitted SS man Erich Lachmann told the court: “I don’t feel guilty for the Jews who perished in Sobibor because I did not gas them”.

Even the man who trained Demjanjuk in Trawniki, SS Major General Karl Streibl, was acquitted in 1976 by the Hamburg Regional Court. The judges believed Streibl’s claim that he did not know how the men he trained would be used. He claimed to have only found out much later about the extermination of the Jews. Many trials ran along these lines.

Moreover, the German justice system transferred almost seamlessly from the Nazi Reich to the Federal Republic. There were no convictions

of judges or state attorneys who had reached unjust verdicts under the Nazis. Many could continue their careers unhindered, or like the Nazi judge Filbinger, who had imposed death sentences on deserters at the conclusion of the war, ended up in high government offices.

As for the foreigners who willingly served the Nazi thugs, committing crimes on their behalf abroad, the German judiciary and political establishment refused to call anyone to account on formal legal grounds for a long time.

For example, in 1982 the US Office of Special Investigations informed the German Ministry of Justice that more than a hundred men and women had had their US citizenship revoked because of their involvement in Nazi crimes. But Justice Minister Jürgen Schmude (Social Democratic Party) refused to request their extradition and bring them to justice. He justified this by saying that extradition was only possible for crimes that were “committed in the territory of the requesting state”. The statute of limitations meant that only murders could be prosecuted. The Demjanjuk trial involved accessory to such crimes.

Demjanjuk is the first foreigner to be convicted by the German judiciary for committing Nazi crimes in the foreign territories occupied by the Wehrmacht (German armed forces). If the sentence is upheld, it would be possible to bring further Trawniki guards before the courts if they are still alive.

That it has taken so long to charge and convict Demjanjuk is also thanks to the stalling tactics of the German judicial authorities. The “Central Office of the State Justice Administration for the Investigation of National Socialist [Nazi] Crimes” and other authorities delayed decades in pursuing the mountain of evidence pointing to Nazi crimes. By 1993 at the latest, following the repeal of the death sentence in Israel, it was known that Demjanjuk had been a guard at Sobibor, without the German authorities taking any action.

In 2003, after a two-week official trip to Washington where they studied documents, including those relating to Demjanjuk, a delegation from the “Central Office” came to the conclusion that, “It is not clear from the documents presented that an individual offence has occurred”. With this reasoning, the case was further placed on ice. Only in 2008 did the “Central Office” in Ludwigsburg launch an official investigation.

On the day the verdict was announced, Hans Holzhaider commented aptly on this way of proceeding with the crimes of the Nazis in the *Süddeutsche Zeitung*: “When there still were thousands of witnesses with fresh memories, when the statute of limitations had not expired on [crimes of] manslaughter and grievous bodily harm, when on factual and legal grounds it would still have been easy to investigate and convict those responsible for the violence of the Nazi regime—for so long, the German criminal justice system exercised strict restraint and meticulous legal exegesis”.

It was thus almost too late to bring Demjanjuk, the “smallest of the small fish” (as Christiaan F. Rüter, the emeritus professor for criminal law at the University of Amsterdam, put it in 2009), to trial at the last moment and hand down a relatively light sentence. In contrast, many of those with far greater responsibility for the crimes of the Nazis, can, or could, draw their pension in peace and enjoy their twilight years.



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