

The Rosenberg Files: Germany's justice ministry was a stronghold of former Nazis

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17 October 2016

It is a long-known fact that following the Second World War, hardly a single judge or prosecutor from the Nazi regime was held accountable for their vicious verdicts and enforcement of the regime's Race Laws. Almost all of them were able to continue their legal careers in the post-war Federal Republic of Germany.

Now it has become clear why. Until the 1970s, the federal justice ministry (BMJ) was a stronghold of former NSDAP (Nazi Party) members. They exercised a decisive influence on case law, legislation and the appointment of judges and prosecutors. They ensured that tens of thousands of Nazi criminals escaped prosecution and amnestied their former party comrades and placed them in leading positions. And in the struggle for their rehabilitation and compensation, they made sure the surviving victims of their jurisprudence under the Third Reich faced massive obstacles.

On Monday in Berlin, the final report of the Independent Scientific Commission on the Nazi past of the BMJ, "The Rosenberg Files," were presented to Federal Justice Minister Heiko Maas.

The commission, headed by historian Manfred Görtemaker and lawyer Christoph Safferling, was launched in 2012 by the then justice minister Sabine Leutheusser-Schnarrenberger. For four years, the commission studied a variety of sources and personnel files of the ministry and of the Supreme Court covering 1949-1973, when the ministry had its headquarters in the "Rosenburg" country villa near Bonn.

Both in terms of personnel and in pertinent facts, the commission concludes that the much vaunted 1945/46 clean break in the field of justice did not take place until the 1970s. The researchers were as surprised at the massive number of former NSDAP members at management level who had held senior posts under the Hitler regime as the former Nazis themselves.

Following the founding of the BMJ in 1949, there were hardly any efforts to appoint judges and prosecutors who had been dismissed or persecuted by the Nazis as Jews or political opponents. Instead, the ministry utilised a network

of former Nazi jurists, citing their necessary "legal experience."

Of the 170 individuals studied among the management staff—heads of department, deputy directors and division heads (known then as speakers)—53 percent had belonged to the NSDAP. One in five had even been a member of the Sturm Abteilung (SA) thugs; many had previously worked in the Reich Justice Ministry or other ministries of the Nazi regime. During the 1950s, the percentage rose even higher, in 1957 reaching a climax with 77 percent NSDAP members and 33 percent SA members. These numbers only decreased slightly at the end of the 1960s, according to the recent findings. But here too there was still a "large unknown," Manfred Görtemaker said on Monday.

The management level of the BMJ thus included more Nazis than in other ministries and federal bodies for which research has been published in recent years—such as the Foreign Ministry (2010), the Federal Criminal Office (2011), the Secret Service (2015) and the Federal Interior Ministry, which a preliminary study presented in 2015 showed comprised 66 percent former Nazi Party members.

The most scandalous cases revealed in the report on the BMJ include:

- * Franz Massfeller, responsible for family and race law in the Reich Ministry of Justice before 1945, a participant in subsequent meetings of the Wannsee Conference (which had agreed the extermination of the Jews) and commentator on the Blood Protection Act. From 1945 to 1960, he was undersecretary in the BMJ and Head of Family Law.

- * Eduard Dreher, before 1945, First Public Prosecutor at the Special Court in Innsbruck and responsible for numerous death sentences for minor matters. Active in the BMJ from 1951 to 1969, finally as Head of Section; he even wrote the commentary to the Criminal Code.

- * Ernst Kanter, before 1945 "Judge General" in occupied Denmark, where he worked on 103 death sentences. From 1949 to 1958 he was Head of Section in the BMJ.

- * Josef Schafheutle, responsible in the Reich Ministry of Justice before 1945 for political crimes and after 1949

undersecretary and Head of Department II (Criminal Law) in the BMJ.

* Walter Roemer, before 1945 First Public Prosecutor at the Munich I State Court, where he was involved in the executions of resistance fighters in Stadelheim prison. After 1949, undersecretary and director responsible for Public Law in the BMJ, which dealt with basic rights and human rights.

* Hans Gawlik, before 1945, public prosecutor at the Breslau (today, Wrocław) Special Court, participant in numerous death sentences, after 1945 defender of the SS Security Service (SD) and some Einsatzgruppe leaders in the Nuremberg trials and, after 1949, head of the Central Law Enforcement Agency in the BMJ. This body even warned German war criminals about prosecutions abroad and hindered the work of the Ludwigsburg Central Office for the Investigation of Nazi Crimes.

* Max Merten, 1942-1944 at Military Administration deputy commander of the armed forces in Thessaloniki, where he organized the plundering and deportation of more than 50,000 Greek Jews. Although this made him one of the biggest war criminals, he headed the “enforcement” unit in the BMJ for several months in 1952.

Manfred Görtemaker ascribes the employment of old Nazis in the Federal Ministry of Justice to the “incredible communist baiting” of the post-war Adenauer government. “Anti-communism was the glue” between the judiciary of the Federal Republic and the Nazi dictatorship. “In recruitment, one could be a Nazi, the main thing was to be anti-communist.”

The consequences for the legal system after the war were fatal, according to the two scientists. Christoph Safferling elucidated this with reference to the case of Eduard Dreher. This Nazi prosecutor was a key figure in the statute of limitations debate. In connection with the introduction of an “Administrative Offences Law” in 1968, he brought about a retrospective shortening of the statute of limitations from 20 to 15 years for so-called aiding and abetting, also known as a “cold statute of limitations.”

This was a “large-scale action,” Safferling said, to exonerate Nazis as mere “armchair perpetrators.” Thousands of Nazi criminals accused of aiding and abetting murder, and whose trials had already begun, were released without punishment because their crimes were now time-elapsed in 1960. These included employees of the Reich Main Security Office, whose trials did not begin until 1968/1969.

The signature of the Nazi justice system was maintained in other areas of legislation, such as in the juvenile justice system, in family law and sexual offences, and in discrimination against minorities such as Roma and Sinti or homosexuals.

Last Monday, Justice Minister Maas and Christoph Safferling directed special attention to a secret War Book with emergency decrees, which the BMJ had drafted at the beginning of the debate on the Emergency Laws. The Notstandsgesetze (Emergency Laws) were ultimately passed by a grand coalition of the Christian Democratic Union (CDU) and Social Democratic Party (SPD) in 1968 against fierce resistance. They contained provisions restricting fundamental rights in the event of a military attack, in disasters and in an “internal emergency”. The post-war German constitution had excluded these kinds of emergency regulations as a result of the experiences with the Enabling Act (Ermächtigungsgesetz) of the Nazis.

As “The Rosenberg Files” show in detail, officials at the Federal Ministry of Justice had responded as early as 1959 to a request from the government, and in just a few days had outlined 45 emergency decrees, which initially remained under wraps. The “experienced” Nazi jurists proposed seriously undermining the court system, which would have paved the way for extraordinary courts and introduced the notorious “protective custody” from the Nazi period. Among other things, they based their proposals on the war economy regulations of 1942.

Christoph Safferling underlined the Nazi continuity of BMJ regulations: “[I]n his plans, Undersecretary Schafheutle even considered occupying areas using German troops.” The secret “War Book” was an outright constitutional breach, he said.

The facts concerning the “secret martial law” had “particularly affected” him, Justice Minister Maas said on Monday, and pointed to today’s threats to “democracy and freedom, even in democratic countries.”

However, he was not referring to the recent emergency plans of the Interior Ministry for a future war in Europe; a return to an aggressive German foreign policy and the plans for domestic Bundeswehr (Armed Forces) missions. Instead, he pointed to the United States, where “excesses in the fight against terrorism” following the attacks of 9/11, which had included torture, had created a veritable “enemy criminal law” against suspected terrorists.



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