

THE WORKING GROUP

"RESEARCH ON NS PERPETRATORS "

FINAL REPORT OF THE CENTRAL AUSTRIAN POST-WAR JUSTICE RESEARCH UNIT

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Vienna, February 2022

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1. ESTABLISHMENT OF THE WORKING GROUP AND PURPOSE OF ITS ACTIVITIES

It was the purpose of the "Working Group Research on NS Perpetrators" (WG), established in 2010 and comprised of representatives from the Federal Ministry of Justice (FMJ) and the Central Austrian Post-War Justice Research Unit (PJRU), to explore possibilities for initiating or opening criminal proceedings against Austrian suspects of Nazi crimes on the basis of the finding aids¹ developed since the founding of the PJRU in 1998 and to make proposals to the judiciary for their possible further processing. Mag. Viktor Eggert, Leading Public Prosecutor, and Mag. Thomas Grünwald, Senior Public Prosecutor, were delegated to the working group by the Federal Ministry of Justice. The PJRU was represented by its President, a.o. Univ.-Prof. Dr Martin F. Polaschek (University of Graz) as well as by the scientific directors Dr Winfried R. Garscha and Mag.^a Dr Claudia Kuretsidis-Haider.

The starting point was the realisation that the failures in prosecuting perpetrators during the 25 years between the last trial for Nazi crimes in 1975 and the indictment of the "euthanasia" doctor Heinrich GROSS² in 1999 - i.e. at a time when dozens of suspects were still fit to stand trial, and sufficient witnesses to the crimes were still available - are to be admitted but cannot be undone. Therefore, it seemed all the more important to take action, at least in those few cases in which an indictment did not seem completely out of the question at the beginning of the WG's activities in 2010. It was clear, however, that this would be less about the exercise of "late justice" through a judicial verdict - unlikely due to the age of the suspects - but rather about a political signal sent by the Republic of Austria.

In February 2010, the Federal Ministry of Justice commissioned the Post-War Justice Research Unit to research in its electronic and other finding aids as well as in judicial files dealing with the punishment of Nazi crimes and having been evaluated in various degrees, whether there were still unknown cases in which the initiation or reopening of court proceedings for Nazi crimes would be possible.

Between 2010 and 2014, the Federal Ministry of Justice concluded a total of three contracts for work and services with the Post-War Justice Research Unit for a total amount of 27,000 euros.

¹ The finding aids developed by the PJRU are based on the evaluation of microfilms and electronic copies of selected court files as well as of registers of proceedings and main hearings. For the approximately 52,000 proceedings before the Vienna People's Court, it was also possible to carry out an alphabetical evaluation on the basis of the "phonetic card index" from the 1950s.

²Concerning his person see: Matthias Dahl: Final stop Spiegelgrund [A youth psychiatric institution in Vienna]. The Killing of Disabled Children during National Socialism using the Example of a Children's Specialist Department in Vienna 1940 to 1945, 2nd edition Vienna 2004; Johann Gross: Spiegelgrund. Life in Nazi Reformatories, Vienna 2000; Waltraud Häupl: The Murdered Children of Spiegelgrund. Memorial documentary for the victims of Nazi child euthanasia in Vienna, Vienna 2006; Oliver Lehmann / Traudl Schmidt: In the Clutches of Dr Gross. The Abused Life of Friedrich Zawrel, Vienna 2001; Wolfgang Neugebauer / Peter Schwarz: The Will to Stand Upright - Disclosing the Role of the Association of Social Democratic Academics in the Social Integration of Former National Socialists, Vienna 2005; Dr Heinrich Gross. Documentary for an exhibition at the Salzburg Museum 2008, <https://web.archive.org/web/20081227211604/http://www.lebensunwert.at/ns-euthanasie/menuepunkt/dr-heinrich-gross.html>; Martin Ladstätter: Heinrich Gross has died - The expected End of a Post-war Scandal, <https://www.bizeps.or.at/heinrich-gross-ist-gestorben-das-erwartete-ende-eines-nachkriegsskandals/>; NS-Arzt Heinrich Gross has died. In: Wiener Zeitung. 22 December 2005. https://www.wienerzeitung.at/startseite/archiv/123719_NS-Arzt-Heinrich-Gross-gestorben.html; Research without Scruples. The Scientific Evaluation of the Victims of the Nazi Psychiatric Murders in Vienna, by Herwig Czech, eForum Contemporary History 1, 2001, <https://web.archive.org/web/20050104082222/https://www.eforum-zeitgeschichte.at/framesetup.htm>. Films: Robert Altenburger/Christoph Feurstein: The Children of Spiegelgrund. Documentary. ORF, Vienna 1991; Angelika Schuster/Tristan Sindelgruber: Spiegelgrund. Documentary. 2000: Elisabeth Scharang: My Murderer. Feature film. Wega-Film, Vienna 2005; Elisabeth Scharang/Florian Klenk: My Dear Republic. Vienna 2006. <https://dok.at/film/meine-liebe-republik/>.

1. Contract for work and services dated 18 February 2010 in the amount of 15.000,- euros/Report dated 6 September 2013 (CWS 1)

The object of the contract:

- Examining those 526 People's Court cases identified by the PJRU in which sentencing decisions were issued for Nazi killings, with a view to a possible continuation of proceedings against those involved in the crimes against whom the proceedings were discontinued or for whom charges were dropped, according to the following criteria:
 - Selecting cases of direct involvement in the killings, i.e. sorting out all forms of (remote) involvement in killings that are time-barred, such as the denunciation cases included in the list of 526 judgments, even if they led to the death of the denounced person(s);
 - Eliciting the birth dates of the suspects against the background of the applicable statute of limitations and the problem of their ability to stand trial.
 - Examining (in accordance with the two criteria mentioned above) the approximately 100 major investigation cases already identified by the PJRU since 1956 for Nazi crimes of murder, primarily against Jews (mass killings by Einsatzgruppen [task forces] in the East and in concentration and extermination camps, to a lesser extent also war crimes in the narrower sense), and comparison with the investigation documents available to the Federal Ministry of Justice at the time.
 - Examining (according to the criteria mentioned above) those several hundred proceedings of the People's Court of Vienna for Nazi killings without a verdict, which had been microfilmed and described in terms of content by the PJRU by then.
 - Reconciling and completing the cases identified in the previous three steps with the investigation documents of Department 18 (formerly 2C) of the Federal Ministry of the Interior from the 1960s and early 1970s.
2. Contract for work and services dated 7 August 2013 in the amount of 9.000,- euros/Report dated 5 May 2014 (CWS 2)

The object of the contract:

- Reviewing and evaluating the file No. 25 Vr 3123/71 of the Klagenfurt Regional Court concerning the "Aktion Reinhardt" with regard to the persons Franz W. and Emil Z. who were still alive. The aim of the file review was to find relevant evidence that could justify the continuation of the proceedings against the aforementioned persons, discontinued according to Section 90, paragraph 1 Code of Criminal Procedure (old).
- Reviewing and evaluating file No. 27c Vr 7511/62 of the Vienna Regional Court für Criminal Matters regarding Nazi killings in Belarus ("KdS³ Minsk") and investigating possible suspects against the background of the applicable statute of limitations and the problem of their ability to stand trial.
- Investigating and evaluating any other available sources (in particular public prosecutor's diaries) which appeared to be useful for the above-mentioned purpose.

³ Commander of the Security Police

3. Contract for work and services dated 25 June 2014 in the amount of 3.000,- euros/Report dated 30 November 2014 (CWS 3)

The object of the contract:

- Reviewing and evaluating the files
 - No. Vg Vr 1485/47 of the Linz Regional Court concerning Oswin MERWALD⁴
 - No. Vg 6215/47 of the Linz Regional Court concerning Franz G.
 - No. 6 Vr 666/63 of the St. Pölten Regional Court concerning Franz S. and Berta T.
 - No. Vr 1936/70 of the Klagenfurt Regional Court concerning Dr Gerhard R.
 - No. Vr 3/73 of the Klagenfurt Regional Court concerning Hans Leo T.
- Investigating relevant evidence that may justify the continuation of the proceedings against the aforementioned and still living persons discontinued pursuant to Section 90, paragraph 1 Code of Criminal Procedure (old).
- Investigating and evaluating any other available sources (in particular public prosecutor's diaries) that appeared to be useful for the above-mentioned purpose.

The last meeting of the working group took place on 13 December 2015. In order to be able to make a complete overview available to the public, it was necessary to prepare an overview of the Austrian sentences handed down for Nazi killings as well as a summary of the entire research. Two further contracts for work and services were concluded for this purpose:

4. Contract for work and services dated 16 December 2019 in the amount of 5.000,- euros/Report dated 15 October 2020 (CWS 4)

The object of the contract:

- Compiling a list of the sentences handed down by Austrian courts since 1945 for Nazi killings with brief descriptions (several hundred sentences handed down by the Austrian People's Courts in Vienna, Graz - with external panels in Leoben and Klagenfurt, Linz and Innsbruck 1945 - 1955 as well as the court decisions against those 42 persons who were sentenced in 32 trials by jury courts 1955 - 1975).
- Short descriptions of court decisions with the following parameters: court, reference number[s], defendants convicted (excluding defendants against whom proceedings were discontinued before or after the indictment was filed), verdicts (in the case of a guilty verdict: sentence] including decisions through the channels of instance. A brief summary of the subject matter of the proceedings.

⁴ Concerning his person: Johann Althaus, Alleged SS Elite beheaded Prisoners of War, 07 June 2017, <https://www.welt.de/geschichte/zweiter-weltkrieg/article165279783/Vermeintliche-SS-Elite-koepfte-Kriegsgefangene.html>: Massimiliano Aferio, Storia militare delle SS. Le battaglie, le operazioni e i crimini del braccio militare nazista Condividi, Newton Compton Editors, 2020; Peter Lieb, Brutal and Incompetent. The SS Karstwehr Bataillon 1943-1944. In: Military History. Periodical for Historical Education, issue 1/2017, page 21.

5. Contract for work and services dated 24 August 2021 in the amount of 5.000,- euros/Report dated 30 November 2021, revised version dated 23 February 2022 (CWS 5)

The object of the contract:

Consolidating the three final reports on the work contracts 2010 - 2014 as well as the report on the project "Austrian sentences for Nazi killings " by the WG concerning the investigation of alleged NS perpetrators.

2. THE WORK ASSIGNMENTS TO THE POST-WAR JUSTICE RESEARCH UNIT 2010-2014

2.1. EXPLORING THE POSSIBILITIES OF INITIATING OR RESUMING CRIMINAL PROCEEDINGS AGAINST AUSTRIAN SUSPECTS FOR NAZI CRIMES (CWS 1)

The basis of the research work carried out by the PJRU from 2010 to 2014 was examining the more than 500 known People's Court cases investigated by PJRU through projects financed by third parties in which sentences were handed down for Nazi killings. The focus was on the assessment of a possible continuation of proceedings against those involved in a direct killing, against whom the proceedings were discontinued or for whom charges were dropped and for whom the statute of limitations (see chapter 4) could be ruled out. In addition, the PJRU examined the major investigation cases since 1956 concerning Nazi killings, especially of Jews in the course of mass killings by Einsatzgruppen in the East and in concentration and extermination camps, comparing them with the investigation documents available to the Federal Ministry of Justice at the time.

As a result, the Federal Ministry of Justice could be informed of more than 200 names for which, in the view of the historians of the Research Unit, the initiation or reopening of criminal proceedings could be considered if the persons in question were still alive. In order to determine this, requests as to their whereabouts were made to the Federal Office for the Protection of the Constitution and Counterterrorism (BVT). The whereabouts of eight persons still alive could be ascertained: Franz W., Emil Z., Oswin MERWALD, Franz G., Franz S., Berta T., Gerhard R. and Hans Leo T. In these cases, the PJRU conducted research into the historical facts so that possible criminal prosecution could be examined.

Additional enquiries sent to the German Central Office of the State Justice Administrations in Ludwigsburg did not yield any information on persons still alive.

2.2. RESEARCH CONCERNING THE CRIMES "AKTION REINHARDT "AND KDS/BDS ("COMMANDER "OR "COMMANDING OFFICER OF THE SECURITY POLICE AND OF THE SECURITY SERVICE ") MINSK <CWS 2)

In the course of exploring the possibilities of initiating or reopening criminal proceedings against Austrian suspects of Nazi crimes, it became apparent that there could be possible suspects in the proceedings concerning "Aktion Reinhardt", the most extensive criminal proceedings on NS crimes in Austria, conducted in the 1960s and 1970s in Salzburg, Vienna and Klagenfurt, as well as in the Minsk proceedings conducted in Vienna in the 1960s and 1970s, for which no final decision had been taken or where the proceedings had been discontinued. The reason for selecting these two proceedings was, on the one hand, that Austrian SS members had been involved in "Aktion Reinhardt" to a disproportionate degree: for the killing of almost two million Jews in eastern Poland, which went down

in history under the name of "Aktion Reinhardt", the SS and police leader of Lublin, Odilo GLOBOCNIK⁵ from Carinthia, who was primarily responsible for carrying out the action, recruited a large number of men he knew from his functions in the Austrian NSDAP. On the other hand, among the victims of the National Socialist mass extermination crimes in the Minsk area (Belarus), there was a particularly large number of Austrian Jews. Since the extermination site Maly Trostinec near Minsk has become the focus of Austrian commemoration policy in recent years, questions were and are to be expected as to the extent to which Austrian perpetrators were involved and what efforts the Austrian judiciary has made or is making to hold them accountable.

In 2013 / 2014, the extensive file material of both proceedings was evaluated. The files of the public prosecutor's offices as well as of the two corresponding ministries were also inspected for both crime schemes.

2.2.1. CRIME SCHEME „AKTION REINHARDT“

The proceedings against the suspects of "Aktion Reinhardt" were initiated by the Salzburg public prosecutor's office in 1961. The main defendant was Hermann HÖFLE⁶, one of the central figures of "Aktion Reinhardt" as head of a department in Odilo GLOBOCNIK's staff and largely responsible for the deportation of over 300,000 Warsaw Jews to the Treblinka extermination camp. Because the proceedings in Salzburg could not be continued due to a lack of staff, they were delegated to Vienna, where HÖFLE committed suicide in 1962 while in custody at the Vienna Criminal Court. It was not until nine and a half years later - the proceedings were meanwhile being conducted against 64 persons - that the public prosecutor's office, now in Klagenfurt, brought charges against two members of Odilo GLOBOCNIK's staff, namely against the head of the SS Economic Administration Main Office Helmut POHL⁷ and against the aide-de-camp of the SS and Police Leader for the Lublin District, Ernst LERCH⁸ (Klagenfurt Regional Court No. 25 Vr 3123/71). However, the main hearing was adjourned indefinitely after two days, on 17 May 1972. Four years later, on 7 May 1976, the prosecution withdrew from the charges, whereupon the Klagenfurt Regional Court dismissed the case on 11 May 1976.

The proceedings against all other accused persons had already been eliminated or discontinued over the years.

⁵ Concerning his person see: Joseph Poprzeczny: Odilo Globocnik. Hitler's Man in the East, London 2004; Berndt Rieger: Creator of Nazi Death Camps. The Life of Odilo Globocnik, London 2007; Johannes Sachslehner: We've done in two million: Odilo Globocnik – Hitler's Manager of Death, Vienna 2014; Johannes Sachslehner: Odilo Globocnik. Hitler's Manager of Death, Vienna 2018.

⁶ Concerning his person see: Winfried R. Garscha, The Failure of the "Little Eichmann Trial" in Austria, 21 August 1962: Suicide of Salzburg SS-Sturmbannführer Hermann Höfle at the Vienna Criminal Court, <http://www.nachkriegsjustiz.at/prozesse/geschworeneng/hoefle.php>; Hermann Höfle, http://www.death-camps.org/reinhard/hoefle_de.html; Hermann Höfle, SS-Obergruppenführer and General of the Waffen-SS and the Police, <https://www.archivportal-d.de/item/SUEGWUAHLRFMHD7CXD405YJTSZGWJ40S>; Richard Breitman, Report on the IRR File of Hermann Julius Hoefle, <https://www.archives.gov/iwg/research-papers/hoefle-irr-file.html>.

⁷ Concerning his person see: Bertrand Perz, The utilisation of the gold from the victims of the extermination camps of „Aktion Reinhardt“. In: Documentation Centre of the Austrian Resistance (publishers), Research on National Socialism and its Aftermath in Austria. Commemorative publication for Brigitte Bailer, Vienna 2012, pages 135-137, 141, 146, 150-153. Concerning the trial against Ernst Lerch and Helmut Pohl see: Sarah Stutzenstein, The "cold statute of limitations" of National Socialist killings in Austria 1975. In: Contributions to the Legal History of Austria 2021, page 137.

⁸ Elisabeth Postl, „Dance café Lerch“: From Nazi meeting point to Udo Jürgens' stage, Die Presse, 23 December 2014, <https://www.diepresse.com/4626036/tanzcafe-lerch-vom-nazi-treffpunkt-zu-udo-juergens-buehne>; „Dance café Treblinka“ in chamber light shows, <https://kaernten.orf.at/v2/news/stories/2821893/>; Ernst Lerch, http://www.death-camps.org/reinhard/lerch_de.html; Ernst Lerch, <https://www.jewishvirtuallibrary.org/ernst-lerch>.

When the whereabouts of two suspects - Franz W. and Emil Z., both members of the staff SSPF Lublin (= staff of the SS and Police Leader for the Lublin District) - had been established through a request as to their whereabouts to the police, the PJRU considered that possibly relevant indications for a continuation of the proceedings against the aforementioned persons, discontinued pursuant to Section 90, paragraph 1 Code of Criminal Procedure (old), could be found. However, no clear indication could be found in the court file itself for an initial suspicion that W. and Z. were directly involved in the killings. This would have had to be clarified by additional research.

Such a direct involvement of Z. in the crimes accompanying the dissolution of the so-called Lipowa camp (forced labour camp in Lublin, Lipowa street 7) and the killing of the Jews working there on 3 November 1943 as part of the action "Harvest Fest" would have been possible with respect to the time-line, but the public prosecutors' offices in Salzburg, Vienna and Klagenfurt had failed to clarify in the 1970s whether the SS local command post had been involved in the executions as part of the "Action Harvest Fest" at all. Equally unresolved at the time was the involvement of Z. as a member of the 3rd Company, SS Training and Replacement Unit, Bataillon 3, in the suppression of the Warsaw ghetto uprising from 19 April to 16 May 1943. The question of the chronology, i.e. when Z. was in Warsaw and when he was seconded to Lublin, would have been of decisive importance. Because of the statute of limitations, prosecution for crimes in Warsaw would only have been possible for the period after 21 January 1943 (the 21st birthday of Z.).

The case files also do not provide sufficient information on W.'s involvement in the killings in Lublin. In order to clarify this question, a more detailed analysis of the possible involvement of members of the SS Troop Economic Camp in executions would have been necessary, which is why the PJRU suggested that a historical expert report be obtained. Furthermore, in its final report of 5 May 2014, the PJRU recommended another expert report concerning the involvement of the SS local command post in possible executions in the context of "Aktion Harvest Fest" as well as the questioning of Z. and W. in order to clarify the chronology of their presences in Warsaw and Lublin. Although their interrogations in the 1960s had not yielded any concrete results in this regard, it might now have been possible, with the help of documents and information from archives that were not yet accessible in Poland at the time, but through their opening in recent years and as a result of the now excellent cooperation with various Polish institutions, not least by the PJRU, but also by other Austrian research institutions, a clearer picture can be drawn.

On the basis of available facts and the suggestions of the PJRU, the Federal Ministry of Justice could not find any specific indications of the direct involvement of W. and Z. in the killings. The PJRU, therefore, considered the above-mentioned additional investigations (obtaining expert opinions, questioning the aforementioned persons) in order to obtain clues for further accusations against these persons or also against hitherto unknown third parties. From a legal point of view, however, these suggested investigative actions concerning the discontinued proceedings against W. and Z. were inadmissible for lack of new facts or evidence. Due to the lack of initial specific suspicions (Section 1, paragraph 3 Code of Criminal Procedure) with regard to possible further (not yet time-barred) accusations, it was also inadmissible to initiate new preliminary proceedings against W. and Z. or against hitherto unknown third persons for the purpose of taking evidence. Ultimately, therefore, the suggestions could not be addressed for legal reasons.

The PJRU submitted requests as to the whereabouts of the remaining persons for whom the statute of limitations had not yet expired and for whom the PJRU, on the basis of the information from the available files, assumed that the Austrian judiciary could possibly (once again) become active. Some

persons had already verifiably deceased; for the others, a conclusive clarification was not possible due to the lack of clear identification.

2.2.2. CRIME SCHEME "COMMANDER "OR "COMMANDING OFFICER OF THE SECURITY POLICE AND THE SECURITY SERVICE "MINSK (KDS OR BDS MINSK)

The offices of the Commanders or Commanding Officers of the Security Police and the Security Service reported to the Reich Security Main Office in Berlin. Like the "Einsatzgruppen", they were involved, among other things, in "special treatment", i.e. the killing of Jews. The office of KdS Minsk had been established in mid-1941 and reported to the SS and Police Leader in White Ruthenia with headquarters in Minsk, which again reported to the Higher SS and Police Leader Ostland with headquarters in Riga. The Trostinez estate (Maly Trostinec), a former kolkhoz that was taken over and managed by the KdS office in April 1942, was located in its administrative area. The executions of the Jews in the area of the KdS Minsk office took place at various locations in Minsk and the surrounding area, at the latest from early summer 1942 near Maly Trostinec in the forest of Blagovshchina. From May 1942, "gas vans" were also used.

Between 1942 and 1944, up to 60,000 people were killed in Maly Trostinec. More than 9,700 Austrian Jews were killed at this place of extermination or perished in the nearby Minsk ghetto. Only 17 of them survived.

Austrians were involved in the killing of Jews but also of Soviet prisoners of war, partisans and civilians in the area of the KdS/BdS Minsk office. None of them was convicted in Austria after 1945.

In the 1960s, the Minsk/Maly Trostinec crime scheme was the subject matter of numerous West German court cases. The largest trial in the Federal Republic of Germany was conducted by the jury court at the Koblenz Regional Court between October 1962 and May 1963 (Koblenz Regional Court No. 9 Ks 2/62). In the course of its investigations, the Koblenz Public Prosecutor's Office came across more than 40 names of Austrian members of the Minsk KdS service and handed over the list containing the crimes the alleged perpetrators were charged with to the Austrian judicial authorities. The most serious accusations were made against the deputy police chief of Graz at the time, Senior Police Councillor Dr Johann KUNZ⁹, who served at the office of the KdS Minsk from the end of May 1942 until January 1943.

The Koblenz Public Prosecutor's Office forwarded a number of overwhelming pieces of evidence to the Austrian judiciary in the expectation that the suspects would be confronted with them. As a result, the Vienna Public Prosecutor's Office initiated criminal proceedings and, from October 1962 onwards, investigated almost 70 accused persons for twelve years on charges of executing Jews in Minsk and the surrounding area, especially at the Maly Trostinec extermination site (Vienna Regional Court No. 27c Vr 7511/62). However, the activities of the public prosecutor's office slowed down noticeably in the following years. From a large number of proceedings, only one case saw an indictment, namely against the "gas van driver" Josef WENDL¹⁰ (Vienna Regional Court, No. 20 Vr 1100/65). Although he had

⁹ Concerning his person see: Claudia Kuretsidis-Haider, "Deployment in Maly Trostinec": The gas van driver Josef Wendl standing trial. In: Documentation Archives of the Austrian Resistance (publishers), Deportation and Extermination - Maly Trostinec, Vienna 2019 (= Yearbook 2019), p. 159, et seq.; The Nazi Chief who planned mass killings of Jews in Minsk discovered, <https://www.jta.org/archive/nazi-chief-who-planned-mass-killing-of-jews-in-minsk-discovered>.

¹⁰ Concerning his person see: Claudia Kuretsidis-Haider, „Deployment in Maly Trostinec“: The gas van driver Josef Wendl standing trial. In: Documentation Archives of the Austrian Resistance (publishers), Deportation and Extermination - Maly Trostinec, Vienna 2019 (= Yearbook 2019).

confessed to the crime, the jury granted him a putative emergency situation and acquitted him on 9 October 1970.

In 51 cases, the public prosecutor's office discontinued the proceedings by dropping the charges for reasons of evidence or because they were time-barred. Eight suspects were declared dead after 1945 or had died in the meantime. Seven suspects could not be traced.

The PJRU carried out research on the persons against whom proceedings had been discontinued or who could not be traced in the 1960s/70s. However, when reviewing and evaluating the main and secondary proceedings against members of the KdS Minsk, it ultimately was determined that the statute of limitations had meanwhile expired for the vast majority of suspects. Enquiries were made about the others, but the result was that the persons concerned had died in the meantime, or it could no longer be determined whether they were still alive.

2.3. REVIEWING THE POSSIBILITY OF PROSECUTING THE PERSONS STILL ALIVE IN 2014 IN CONNECTION WITH OTHER CRIMES (CWS 3)

In the course of the above-mentioned examination of the more than 500 People's Court cases known up to that time, in which sentencing decisions were issued for Nazi killings, apart from the schemes dealt with so far, the whereabouts of a further six persons - namely Oswin MERWALD, Franz G., Franz S., Berta T., Gerhard R., Hans Leo T. - were ascertained in the course of pertinent enquiries. The proceedings against them were conducted by the Linz People's Court in 1947, by the St. Pölten District Court in 1963 and by the Klagenfurt Regional Court in 1970 and 1973, respectively.

In four cases, a judicial investigation seemed futile because the statute of limitations had expired, but in two cases, the PJRU suggested the initiation of criminal proceedings.

Oswin MERWALD was a SS and NSDAP member and a member of the Waffen-SS unit 3/SS "The Führer" with the rank of Obersturmführer (senior storm commander), also a member of the 2nd SS Panzer Division "Das Reich", a member of the SS Mountain Infantry Replacement Battalion North/Waffen-SS Brigade as well as a member of the SS Volunteer Mountain Infantry Division "Handschar". The Linz People's Court (Linz Regional Court No. Vg 11 Vr 251/54) investigated him in 1946/47 on the basis of the War Crimes Act (WCA) for murder since he had allegedly participated in the execution of female civilians in South Tyrol, as well as under the Prohibition Act (PA). The proceedings under the WCA were discontinued pursuant to Section 109 of the Code of Criminal Procedure. MERWALD evaded the proceedings according to the PA by taking flight. The manhunt for him remained unsuccessful for decades. In 1976, he apparently applied to the Pension Insurance Institute for Salaried Employees to obtain a pension for the "periods of service" acquired during the Nazi era. In order to check pension eligibility, the Pension Insurance Institute referred the matter to the Ministry of the Interior, and the Directorate-General of Public Security obtained the People's Court file. However, no further steps were taken.

Proceedings with regard to the accusation of murder against him were no longer possible due to the discontinuation pursuant to Section 109 of the Code of Criminal Procedure at that time. The clarification of MERWALD's possible involvement in criminal acts in the various units of the Waffen-SS, as well as his participation as a member of the SS Karstwehr Division in the massacre of female inhabitants in a village north of Udine on 2 May 1945, could, however, have led - as the PJRU suggested - to the initiation of criminal proceedings.

On the basis of these findings, the Federal Ministry of Justice, therefore, requested the Federal Office for the Protection of the Constitution and Counterterrorism to clarify whether the person named was

still alive, where he was staying and whether there were any indications that he was unable to stand trial. The information obtained was subsequently referred to the Wiener Neustadt Public Prosecutor's Office. However, since the investigations carried out did not provide any specific evidence of Oswin MERWALD's involvement in the killings or in other war crimes, the proceedings had ultimately to be discontinued pursuant to Section 190, subparagraph 1 Code of Criminal Procedure.

Gerhard R. was named in the proceedings initiated by Department 18 of the Ministry of the Interior against former members of the 2nd Company of the 143rd Mountain Infantry Regiment. He had been a member of the 6th Mountain Infantry Division and, from January 1945, battalion commander of the 2nd battalion of the 143rd Mountain Infantry Regiment, stationed in the Kilpisjärvi position in the Norway-Finland-Soviet Union triangle since the turn of the year 1944/45. In early May 1945, he was part of a "flying" summary court-martial there, prepared the execution against two mountain troopers sentenced to death, formed an escort to the execution site, assembled a firing squad and gave the order to shoot.

On 3 August 1970, the Directorate-General for Public Security requested the Federal Ministry of Justice to make further inquiries, whereupon the criminal matter was delegated to Klagenfurt (Klagenfurt Regional Court No. 14 Vr 1936/70). However, despite the confession of the accused, the public prosecutor's office there discontinued the proceedings at the end of the year pursuant to Section 90 Code of Criminal Procedure (old) without having taken any action itself. The reason for this was the assumption that the summary courts in the very last phase of Nazi rule had been a "legitimate means" of National Socialist "jurisdiction" and that, as a result, no punishable offence could retroactively arise from it. Even though research into Wehrmacht "justice" did not begin until later and the Klagenfurt Public Prosecutor's Office could therefore not rely on any legal-historical expertise, the unchecked adoption of the National Socialist understanding of "justice" by law enforcement agencies of a democratic state can only cause astonishment. In view of the unlawful nature of Wehrmacht justice legally established in Germany and Austria in autumn 2009 through the legal rehabilitation of victims of Nazi military justice, the PJRU also made a recommendation, in this case, to consider initiating criminal proceedings.

According to a legal review by the Federal Ministry of Justice, the doubts presented by the PJRU about the legitimacy of the court-martial (and thus the circumstance presented by the accused R. to justify his actions), however, did not allow for a continuation or reopening of the proceedings discontinued for legal reasons. A possibly incorrect legal assessment of a completed procedure can be corrected, neither by continuation nor by reopening proceedings.

3. OVERVIEW: AUSTRIAN SENTENCES FOR NAZI KILLINGS (CWS 4)

In the past, Austria has repeatedly been accused of being a "paradise for Nazi criminals" (see, for example, Efraim Zuroff, newspaper Der Standard, 1 February 2006). The publication of the relevant case law with scientific editing - in compliance with data protection standards - would offer the possibility of transparency and could - following the example of Germany - enable a comprehensive picture of the punishment of Nazi killings by the Austrian judiciary. (See chapter 5.2.).

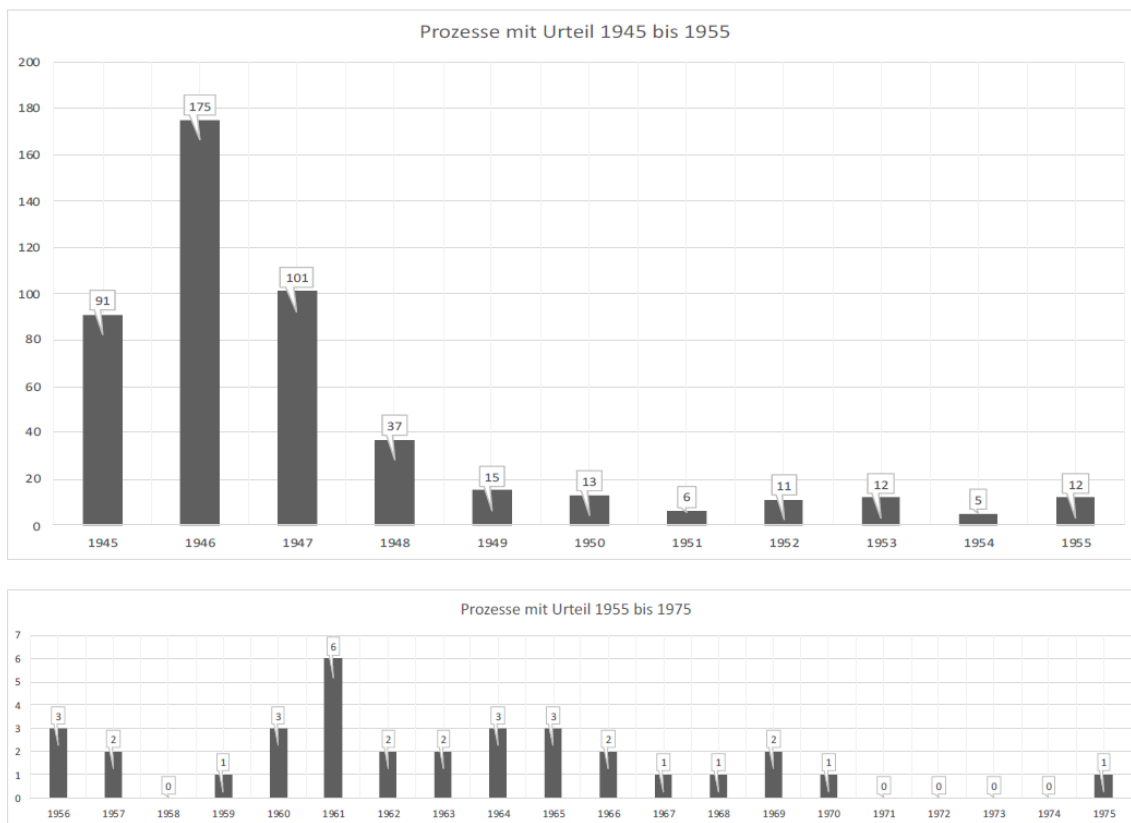
In order to obtain a quantitative overview of the court sentences handed down and to set the framework for a future online project, the Federal Ministry of Justice commissioned the PJRU at the end of 2019 to compile an overview with the following parameters: the sentencing court, case number[s], names and birth dates of the sentenced defendants (in case of death sentence also the date of execution), the subject matter of the proceedings, the category of victim, the country and place where

the crime took place, function of the defendant(s), judgment[s] - in case of a guilty verdict: sentence, annotations and place of keeping the original file.

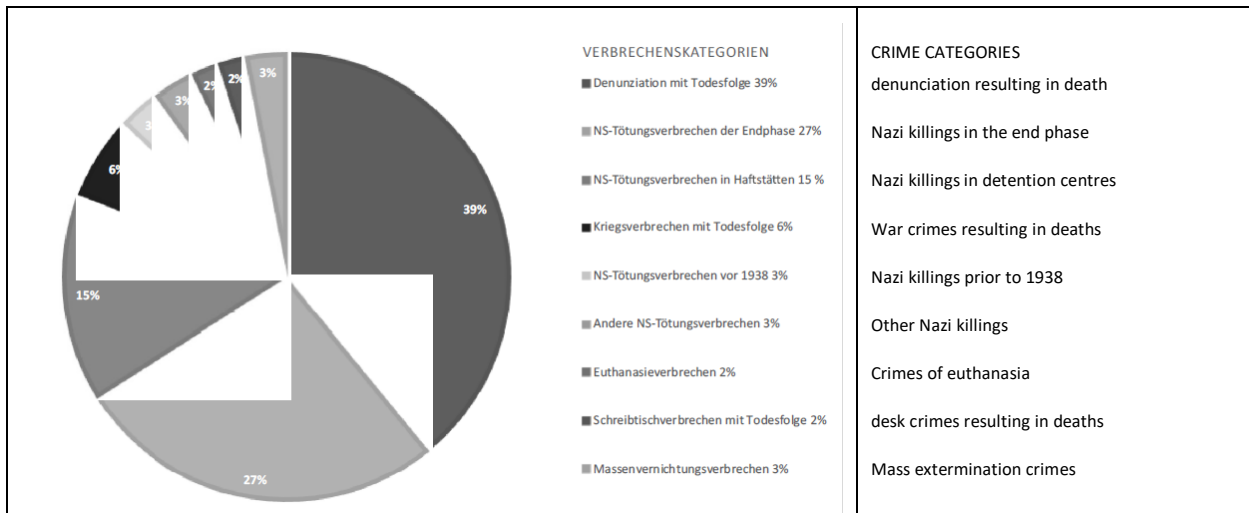
For the period from 1945 to 1975, 511 trials for Nazi killings were concluded with a verdict. Ninety-four per cent of these were in the decade from 1945 to 1955, when the People's Courts in Vienna, Graz, Linz and Innsbruck punished Nazi crimes on the basis of the WCA and the PA. Once the people's courts were abolished, ordinary courts handed down only six per cent of the above number of sentences in the 19 years up to 1975. However, the 20 guilty verdicts and 22 acquittals contrast with around 1,000 investigative proceedings initiated by Austrian public prosecutors for Nazi crimes up to the recent past. These proceedings have not led to a verdict in a single case since 1975 and only once to an indictment (against the court expert and "euthanasia" doctor" Heinrich GROSS in 2000).

Chart 1: Trials with judgments 1945 to 1955

Chart 2: Trials with judgments 1955 to 1975



The most frequently punished National Socialist crimes were: denunciation resulting in death, crimes at the end of the war and of the Nazi regime ("end phase crimes"), crimes in detention centres, war crimes, crimes prior to 1938, crimes within the framework of the National Socialist euthanasia campaign, desk crimes resulting in deaths, mass extermination crimes (including in camps or by Einsatzgruppen).



4. IMPETUS FOR LEGISLATIVE MEASURES IN THE AREA OF THE STATUTE OF LIMITATIONS FOR JUVENILE OFFENDERS AND YOUNG ADULTS

Once the People's Courts were abolished, the number of NS trials concluded with a verdict declined rapidly - as the charts show. This can be attributed to a lack of political will, a lack of human resources and general social disinterest. In addition, the fact played an important role that the statute of limitations, even for serious crimes committed by young adults between the ages of 18 and 21, which was provided for in Austrian criminal law until 2015, no longer permitted their prosecution from the birth years of 1924 onwards.

The statute of limitations required that the crime was not punishable by life imprisonment. According to the provisions of Section 36 of the Austrian Criminal Code, which were valid until 2001, "a person who had not yet reached the age of twenty at the time of the crime [...] could not be sentenced to life imprisonment. If such a person has committed an offence which is exclusively punishable by life imprisonment, the threat of lifelong imprisonment shall be replaced by a prison term of ten to twenty years." The Juvenile Court Amendment 2001 (Federal Act amending the Juvenile Court Act 1988, the Criminal Code and the Court Organisation Act, Federal Law Gazette I No. 19/2001) introduced the category of "young adults" into both the Juvenile Court Act and the Criminal Code. Section 36 Criminal Code has since then precluded the imposition of a lifelong prison sentence on young adults. This provision on the statute of limitations has played a considerable role in Austria being considered a "safe haven" for Nazi and war criminals for decades.

This problem became public knowledge in 2009 when the USA deported Josias KUMPF¹¹ to Austria, who was allegedly involved in the mass murder of "Aktion Harvest Fest" on 3 November 1943 in the Lublin area. In its interim report of 2011, the WG formulated conditions under which prosecution of such suspects could be possible even if they were younger than 21 at the time of the alleged crime:

"Persons who committed crimes in German uniform at the time of Nazi rule acted as "office holders" of the German Reich and can therefore be charged in the Federal Republic of Germany regardless of their

¹¹ Concerning his person see: Der Standard: Concentration camp guard Josias Kumpf has died in Vienna hospital (17 October 2009), <https://www.derstandard.at/story/1254311680872/kz-waechter-josias-kumpf-in-wiener-spital-gestorben>; Profil: The man nobody wants: Austria wants to get rid of sick ex-concentration camp guard (23 June 2009); United States of America, plaintiff-appellee, v. Josias Kumpf, defendant-appellant, 438 F3d 785 (7th Cir. 2006, <https://law.justia.com/cases/federal/appellate-courts/F3/438/785/598223/>.

citizenship. As long as Austria cannot conduct its own proceedings against persons who were not yet 21 years old at the time of committing a crime due to the statute of limitations, it would have to be negotiated under which conditions Germany would be willing to "take over" such suspects. The possibility of proceedings being brought against the persons in question in Germany would justify initiating investigations against them as soon as they are transferred from the USA to Austria and, in this way, obliging them to be available to the prosecuting authorities. Since they are not Austrian citizens, there should be no obstacle to their extradition to Germany."

Such criminal prosecution can be filed in Germany if prosecution is not possible in the home country of the person concerned.

In several statements, including public ones, the Post-War Justice Research Unit has called for an early change in privileging suspects under 21 in the case of "macro-crimes", as this would not only be effective with regard to alleged Nazi criminals. The aforementioned interim report to the Federal Ministry of Justice from 2011 stated in this regard:

"It is to be feared that also in cases of war crimes and crimes against humanity in the recent past, such as during the armed conflicts in Yugoslavia 1991-1998, after the expiry of the twenty-year statute of limitations for perpetrators who were not yet 21 years of age at the time of the crime, cases will become known in which such perpetrators and/or victims have fled to Austria and have obtained Austrian citizenship, which means that the Austrian judiciary has jurisdiction. In April 1992, the war in Bosnia-Herzegovina began; from 1992 onwards, crimes such as mass rapes were committed, especially in camps; from the end of 1992 to/beginning of 1993, reports of individual crimes increased; in April 1993, Bosnian authorities handed over a list of 1,000 alleged perpetrators to the UN; in July 1995, the Srebrenica massacre took place. This means that the twenty-year period of privileged limitation under Section 36 Criminal Code for perpetrators under 21 years of age - depending on the time of the crime committed - will expire between 2011 and 2014. Hence the urgency of the question raised here. The likelihood that direct perpetrators of such war crimes and crimes against humanity were under the age of 21 stems from the fact that young men were conscripted into the armed forces of their respective republics at the age of 18 to 20 or joined the various paramilitary formations. Should they be exposed, they would be safe from prosecution in Austria; should they have become Austrian citizens, they would even be protected from extradition. Austria would once again prove to be a "safe haven" for war criminals. "

The WG proposed to link the necessary amendment of the statute of limitations provisions in the Austrian Criminal Code with the implementation of the Rome Statute of the International Criminal Court. The inclusion of the relevant provisions in the Criminal Code by expanding the 25th Chapter of the Criminal Code (and not as a separate law along the lines of the German International Criminal Code) would, on the one hand, tie in with an old Austrian tradition - the Criminal Code of 1852 until 1918 contained provisions for military personnel in its last Chapter - and, on the other hand, would have the advantage that the relevant provisions would also be included in the standard editions of the Criminal Code and would thus be on every lawyer's desk.

In fact, by the amendment to the Criminal Code (Federal Act amending the Criminal Code and the Code of Criminal Procedure 1975, Federal Law Gazette I No. 106/2014), which entered into force on 1 January 2015, the 25th Chapter of the Criminal Code was expanded to include provisions on the punishment of crimes against humanity and war crimes (Sections 321a to 321j Criminal Code). The Criminal Law Amendment Act 2015 added Section 321k Criminal Code, which specifies the crime of belligerent aggression.

At the same time, all crimes under Chapter 25 were exempted from the statute of limitations (Section 57, paragraph 1 Criminal Code), which also meant that the previous privileging of perpetrators who were under 21 years of age at the time of the offence ceased to apply in the case of war crimes and crimes against humanity.

With this, Austria turned away from the dogma that only the punishment threatened is decisive for the statute of limitations of crimes. Since 2015, an entire group of crimes - namely war crimes and crimes against humanity as defined in the Rome Statute of the International Criminal Court - has been exempt from the statute of limitations, although the crimes defined in the 25th Chapter carry very different sentences starting at one year, and not only life imprisonment.

However, these amendments do not alter the fact that the statute of limitations concerning criminal prosecution is a ground for annulment of the sentence: If the conditions for applying the statute of limitations are met, the punishability of the crimes expires pursuant to section 57, paragraph 2, sentence 1 Criminal Code. Accordingly, once the statute of limitations has expired, it cannot be reversed and cannot be undone even by changes to the statute of limitations provisions. Whether National Socialist crimes of violence committed by persons who were not yet 20 years old at the time of the crime (or, since 2001: not yet 21 years old) can be prosecuted today can only be examined in individual cases. It should be noted that various legal questions arise, especially regarding intertemporal criminal law.

5. CONCLUSION AND OUTLOOK

5.1. AN END TO THE WORK OF THE WORKING GROUP - NOT AN END TO THE WORK OF THE JUDICIARY

Unlike in Germany, where the Central Office of the German State Justice Administrations in Ludwigsburg is tasked with conducting preliminary investigations into National Socialist crimes, the Central Austrian Post-War Justice Research Unit is not a judicial institution but a private body that documents and analyses the activities of public prosecutors' offices and courts after the judiciary have taken action. This resulted in the role and participation of the PJRU in the "Working Group for the Investigation of NS Perpetrators", namely to search the files of past court proceedings in a few selected cases (Auschwitz, Minsk, Aktion Reinhardt) for "unresolved" facts and for defendants who could still be brought before the court. This could not replace the investigative activities of the public prosecutor's offices.

The work of the PJRU in the WG has been completed. It cannot be definitively ruled out - although it is becoming less likely from year to year - that the Austrian judiciary would be obliged to initiate more criminal proceedings for alleged Nazi crimes. The PJRU's research within the framework of the WG has revealed only a few starting points for the reopening or initiation of proceedings. In Germany, however, in the wake of the trial of John DEMJANJUK¹², who was sentenced to five years imprisonment in 2011 - without specific evidence of having committed a crime - the Central Office in Ludwigsburg began to

¹² Concerning his person see: Christian Fahl, Some material and procedural considerations on the Demjanjuk case. In: Journal for Judicial Studies, 3/2011, page 229-234; Heinrich Wefing, The Demjanjuk Case. The last big NS trial, Munich 2011; Der Standard: Andreas Bachmann: The Demjanjuk trial is a political mistake of the first order. The trial of John Demjanjuk casts a skewed light on German post-war justice, says criminal lawyer Rüter (23 December 2009); Angelika Benz, The Henchman. The Trial against John (Ivan) Demjanjuk in Munich, Berlin 2011; Dick de Mildt, The Needle in the Haystack. The Amsterdam Collection of Verdicts and the Demjanjuk Trial. In: Claudia Kuretsidis-Haider / Winfried R. Garscha (Hrsg.), Justice after Dictatorship and War. Transitional Justice 1945 until today. Criminal Proceedings and their Sources, Graz 2010; Angelika Benz, The Demjanjuk Case and the Trawniki. In: Tribüne. Periodical for Understanding Judaism, 48 (2009), H. 191, pages 149-157; Dies, „Who is John Demjanjuk and what role did the Trawniki play in the Holocaust?“ In: Yearbook for Antisemitism Research 18 (2009), pages 251-266; Tom Teicholz, The Trial of Ivan the Terrible. State of Israel vs. John Demjanjuk, London 1990.

search through all criminal proceedings already conducted for similar cases and to initiate new proceedings - also against former members of the staff of concentration and extermination camps, some of whom had previously only been heard as witnesses. The German judiciary has come to the legal conclusion that no individual accusation is necessary to convict a guard in a National Socialist camp, but rather that the mere fact of belonging to the guard staff and thus being "part of the extermination machinery" is sufficient to establish guilt. In 2015, the justice ministers of the German Federal States agreed that an end to any investigative activity was not yet in sight. In the following years up to the present, the Ludwigsburg Central Office handed over cases to the competent public prosecutors' offices, mainly against guards in concentration camps. As a rule, these cases involve the accusation of having supported the systematic killings by acting in a certain capacity.

In the course of resuming these investigations by the German judicial authorities, which have been stepped up in recent years, there is, therefore, a distinct possibility that the Austrian judiciary will also be made aware of alleged NS perpetrators, as the following examples show.

In 2016, the Central Office Ludwigsburg forwarded to the Linz Public Prosecutor's Office the files of a preliminary investigation on suspicion of multiple murders against Franz P., an ethnic German born in 1925, originating from Croatia and living in Linz (No. 202 AR-Z 28/16). The former SS storm trooper and member of the Waffen-SS was sentenced by a Soviet military court in 1949 to 25 years of forced labour for allegedly having shot six civilians in the vicinity of Kowel (Ukraine) between January and March 1944 and for having participated in the mass execution of Jews on a Danube bridge in Budapest in October 1944.

The Central Office in Ludwigsburg doubts that the Soviet sentences complied with the rule of law, which - after the abolition of the death penalty in the Soviet Union in 1947 - usually amounted to 25 years of forced labour, and regards these sentences as mere evidence of crimes (statement by the present head of the Central Office Thomas Will 2014), which is why the German judiciary feels compelled to initiate criminal proceedings against these alleged perpetrators.

However, as Franz P., who was born in 1925, fell under the statute of limitations for juvenile offenders, the Linz Public Prosecutor's Office discontinued the proceedings on 13 January 2017 (Linz Public Prosecutor's Office, No. 4 St 241/16x).

When checking the former personnel of the Mauthausen concentration camp and its subcamps, the Ludwigsburg Central Office identified 16 persons whose place of birth and/or last known place of residence was in Austria. In the course of examination by the Federal Office for the Protection of the Constitution and Counterterrorism (inspection of the Central Register of Residents and/or of the database of the Central Association of Austrian Social Insurance Authorities), only Franz R., born in 1923, could be determined as still alive. In March 2018, based on a request by the Central Office Ludwigsburg (preliminary investigation No. 419 AR-Z 18/17), the prosecution against the suspect living in Kalsdorf near Graz was taken over and delegated to the Linz Public Prosecutor's Office (Linz Public Prosecutor's Office No. 20 St 12/18s). R. was accused of having shot four persons as an SS-Rottenführer in the concentration camp Mauthausen on 29 September 1944. Ludwigsburg also considered R. to be involved in the "Mühlviertel Rabbit Hunt" (the mass persecution and killing of Soviet prisoners of war who had escaped from the Mauthausen concentration camp in early February 1945). However, the Linz Public Prosecutor's Office could no longer start its investigation in March 2018, as R. had died in the same month.

The former SS man Martin W., born in 1922 and a former member of the guards at the Auschwitz, Buchenwald, Neuengamme (including the Alderney subcamp) and Mittelbau concentration camps, also

died before the conclusion of the investigation by the Wels Public Prosecutor's Office (Wels Public Prosecutor's Office No. 9 St 102/17x) in August 2018. When transferring the case to the Wels Public Prosecutor's Office (No. 208 AR-Z 5/17) by way of a takeover request, the Central Office in Ludwigsburg based its initial suspicion on the fact that W., through his work as a guard, had assisted in the systematic killings that took place in the respective camps (gassing, shooting, extermination and letting a large number of people perish due to inadequate living and working conditions) and had thereby made himself liable to prosecution for aiding and abetting the killings. However, since W. had not reached the age of 21 at the time he was deployed to the Alderney subcamp, the Wels Public Prosecutor's Office was only able to initiate proceedings for alleged crimes committed after that time.

It can be assumed that the Austrian judiciary will continue to deal with similar cases in the coming years. It is highly unlikely that the accused persons will be convicted unless it is also decided in this country to extend the criminal law assessment away from individual guilt to a rather "collectively coloured complicity" based on a corresponding level of knowledge, similar to the case of DEMJANJUK. However, there is no institution upstream of the judicial authorities, such as the preliminary investigation authority of the Ludwigsburg Public Prosecutor's Office, but such an institution would be necessary for a systematic review of all criminal proceedings conducted in Austria for Nazi crimes.

Most recently, the Linz Public Prosecutor's Office examined the suspicion against Stefan USCHAREWITZ¹³ for murder due to his activities as a member of the SS-Totenkopfsturmbann in the concentration camp Mauthausen (Linz Public Prosecutor's Office No. 18 St 159/20x). On the occasion of this case, the Federal Ministry of Justice made legal considerations regarding the applicable law and the related question of the statute of limitations for juveniles and young adults. In the specific individual case, the applicable law at the time of the offence was determined according to the type of crime, the place of the crime and the time of the crime, and in the course of the examination according to the applicable law, the application of the exclusion of the statute of limitations for such crimes (irrespective of the age of the perpetrator) was considered when subsuming the crimes under punishable acts according to the 25th Chapter of the Criminal Code (Federal Law Gazette I. No. 106/2014). In the end, the named person died during the legal examination process. It was, therefore, no longer possible to clarify the case in court. In June 2021, the Linz Public Prosecutor's Office refrained from initiating preliminary proceedings due to the death of the accused. Pursuant to Section 35c Public Prosecutor Act, the Linz Public Prosecutor's Office refrained from initiating preliminary proceedings in June 2021 due to the death of the accused.

5.2. OUTLOOK: PUBLICATION OF AUSTRIAN CASE LAW ON THE PUNISHMENT OF NS CRIMES IN AUSTRIA

Since the mid-1960s, the Dutch jurist Univ.-Prof. Dr Christiaan F. Rüter at the Faculty of Law of the University of Amsterdam, later together with the historian Dr Dick de Mildt, has promoted the project "Justice and Nazi Crimes", in the course of which the West and East German judgments for National Socialist killings were published. The collection of judgments comprises 14 volumes of East German judgments and 50 volumes of West German judgments. It was made available online as an open access

¹³ Stefan Uscharewitz had to stand trial in the Dachau Mauthausen Trial as early as 1947 (Case Number: 000-50-5-13 U.S. vs. John Haider et al). He was sentenced to serve a 7 year prison term, which was reduced to 2 years on appeal. In the trial against the accused Johann Vinzenz Gogl in 1971, the prosecution of Stefan Uscharewitz was refrained from pursuant to Section 34, paragraph 2, subparagraph 1 Code of Criminal Procedure in view of the prison sentence already served according to the American military court proceedings. See: Gregor Holzinger: "as circumstances qualifying for murder cannot be sufficiently proven...". The criminal prosecution of members of the SS guard team of the Mauthausen Concentration Camp for "shooting" on the run. In: Documentations archives of the Austrian Resistance (publishers), Perpetrators. Austrian Participants in National Socialism, Vienna 2014 (= Yearbook 2014), pages 151, et seq., 155, 159; Gregor Holzinger, The last judgment. The two trials against Johann Vinzenz Gogl. In: Yearbook Mauthausen 2014, pages 75-78.

version in 2021 in cooperation with the Federal Government Commissioner in Germany for Culture and the Media and the German Resistance Memorial Center Foundation: <https://junsv.nl>.

Following this example, the PJRU plans in the medium term to make the Austrian judiciary on the punishment of Nazi crimes accessible in a similar way. In broad cooperation of the Post-War Justice Research Unit with the Federal Ministry of Justice and other ministries, the Rectorate of the University of Graz, the Institute for Legal and Constitutional History of the University of Vienna, the Institute for Contemporary History of the University of Vienna, the provincial archives and, where judicial records have not yet been handed over to them, the courts, there could also be established a research tool for Austria similar to the one for Germany, and judgments and other judicial documents should be published in compliance with all data protection and scientific standards.

In this way, this unique source inventory of Austrian legal history could be made accessible for scientific research as well as for an interested public and be given a sustainable purpose. Because, as Simon Wiesenthal said:

"The value of my activity is to warn the murderers of tomorrow that crimes can never be committed with impunity."