CHAPTER NINE

Criminal justice following the genocide of the Sinti and Roma

Peter Sandner
Translated from the German by Bill Templer

Introduction

In January 1991, the Siegen District Court (North Rhine-Westphalia) sentenced the former SS guard in the Gypsy Camp at Auschwitz-Birkenau, Ernst-August König, to life imprisonment. Although this judgment never became final, due to the subsequent suicide of the accused, in the German public's eyes the verdict was considered the very first sentencing of one of the perpetrators of National Socialist crimes against the Sinti and Roma. Even the respected newspaper *Frankfurter Allgemeine Zeitung* spoke of the "one and only German court trial to date dealing with the National Socialist genocide of the Sinti and Roma."[1]

It was all too easy for this mistaken impression to arise, since the efforts in German criminal justice to grapple with the genocide of the Sinti and Roma were far more hesitant and ridden with gaps than the pursuit of other crimes by the National Socialists. In reality, the König case was neither the first court proceeding nor the first conviction in this matter. Rather, it represents to date the last in a series of several judgments handed down on Nazi persecution of the Sinti and Roma.

The verdict in Siegen was a return to the arena where confrontation in the justice system with this dimension of the Nazi past had begun: the District Court in Siegen not only handed down what is still the last German verdict in such cases, but in 1949 it had also been responsible for what was probably the first sentence by a German court in such cases. Then, several months before the establishment of the Federal Republic of Germany, the court had heard a case brought against several defendants from the local administration and the Criminal Investigation Department of the Dortmund police, and gave sentences of up to 18 months in prison for organizing the deportation to Auschwitz of March 1943.[2]

Citation: Sandner, Peter: Criminal justice following the genocide of the Sinti and Roma. Translated from the German by Bill Templer, in: Kenrick, Donald (editor): The Final Chapter (The Gypsies during the Second World War 3), Hatfield (UK): University of Hertfordshire Press 2006, p. 151–168, 250–254.

The two court proceedings in Siegen are characteristic for the first and last of five identifiable phases in West German[3] prosecution of Nazi crimes. These phases are applicable not only to the efforts to deal in the courts with the crimes against Sinti and Roma, but also for the punishment of National Socialist murders more generally.

The five phases of justice

1. The years immediately after the liberation of Germany down to the establishment of the two German states in 1949 were marked by a sense of new hope: while still under the supervision of the Allied occupation agencies, German courts began to dedicate themselves to investigating and prosecuting Nazi crimes. There were comparatively stiff sentences handed down against the perpetrators. One example is the two trials on 'euthanasia' crimes.[4]

2. The following period, the early and mid-1950s, was marked by an aura of greater silence and suppression than other phases. The Federal Republic devoted itself more to reconstruction and orientation to the present and future than to coming to terms with the past. The committed legal expert Fritz Bauer (1903–68), himself a victim of Nazi persecution, complained about the standstill, which he attributed to the prevailing attitude of the federal government in Bonn. Down to the mid-1950s, state prosecutors and courts believed they could conclude, from statements by the federal German vice-chancellor, "that in the view of the legislative branch (Parliament) and the Executive (government), the process of coming to terms with the past in the sphere of criminal justice had been concluded."[5]

3. The creation in Ludwigsburg, at the end of 1958, of the Central Office of the Judicial Administrations of the States (Länder) for Investigation of Nazi Crimes marked a turning point. The years down to 1970 were characterized by a more intensive effort toward adequate prosecution of Nazi perpetrators. This new line was closely associated with the tenure of Fritz Bauer as Attorney General of the state of Hesse in Frankfurt am Main (1956–68). The major Auschwitz trial in Frankfurt (1963–5), and a number of suits against defendants accused of involvement in crimes in other concentration camps, in 'euthanasia' murder institutions or in the framework of SS Task Forces (Einsatzgruppen), were brought to court in this period.[6] Increasingly, the National Socialist past also became a focal point for the crystallization of

social debates and changes that ultimately came to explosive expression in the extra-parliamentary opposition and the student movement of the late 1960s.

4. In the 1970s, there was a marked decline in the prosecution of Nazi crimes under the chancellorship of Willy Brandt (1969–74), who had emigrated from National Socialist Germany. The more public confession and recognition of German guilt determined official policy, the more the interest in the actual concrete deeds seemed to wane.

5. Only toward the end of the 1970s did the Nazi crimes return to the focus of social attention in West Germany. The airing of the U.S. TV series *Holocaust*, in 1979, generated strong public interest. The crimes now became an ever more frequent topic in the schools. A final phase of prosecution of the perpetrators who were still alive began in the courts. Among important factors, the emerging historical inquiry[7] and the intensified activity in civil rights and consciousness-raising of the Sinti and Roma[8] contributed to pointing out gaps in the way the justice system was dealing with crimes against this population group.

Why were so few tried?

What steps has the German justice system taken during the fifty years to punish Nazi injustice against the Sinti and Roma and prosecute the perpetrators? Where were the state prosecutors and courts successful in attempting to deal juridically with genocide, and where did they fail? The results are few and far between, since only in a small number of individual cases were those guilty actually punished for the murders of the Sinti and Roma. There were various reasons for this deficiency. In part it was due to a lack of will to see justice prevail, and at times one can sense that anti-Gypsy sentiments and bias against the victims were operative as part of the judicial equation. In part, however, it was also due to the basic inability to cope with the sheer enormity of the crime utilizing the means of justice available in a constitutional state. But objective difficulties also emerged, as for example when it was impossible to clearly demonstrate premeditated intent to murder.

The five arms of genocide

An analysis of how the National Socialist genocide of the Sinti and Roma was dealt with in the courts points to the differences evident in the

juridical treatment of the various groups of perpetrators involved in these crimes. Each of the following groups had taken on specific tasks in the framework on a genocide based on a strict division of labour:

1. The personnel in the concentration and extermination camps.
2. The members of the Task Forces and the civil administration in the occupied territories.
3. The scientists engaged in race-biological examination and registration of the Roma and Sinti.
4. Those responsible for the deportation in the National Security Headquarters (RSHA).
5. Regional and local individuals in the police and civil administration who bore responsibility.

The present essay will detail for each group in what way its representatives were confronted with possible prosecution after the war.

The personnel in the concentration and extermination camps

The most readily identifiable perpetrators were those who had served as SS personnel in the concentration and extermination camps and committed murders of prisoners there. Initially, it seemed easiest to the courts in many cases to establish individual excessive acts of murder and convict the accused. Thus, in 1960 the Munich District Court I (Bavaria) sentenced the former SS Unterführer (Sergeant) Richard Bugdalle to life imprisonment. As a member of the commandant's staff of the Sachsenhausen concentration camp near Berlin, he had personally murdered several inmates. One of the victims in July 1940 had been a Sinto or Rom, who in Bugdalle's eyes was not marching in a disciplined enough manner. As the court determined, the SS guard "ordered this Gypsy to step forward, and then punched him with all the strength he could muster in the side of his abdomen, so that his ribs snapped and penetrated his lungs." The victim died within the course of a few hours in the washroom of the camp.[9] In the subsequent period as well, German courts handed down individual sentences against former concentration camp guards for individual crimes of murder in cases where Sinti and Roma also figured among the victims.[10]

Not until the major Auschwitz trial in Frankfurt am Main, and a number of parallel and follow-up trials in the 1960s, did the practice become established to prosecute not only the acts of individual

perpetrators against individual victims, but also to investigate responsibility for the mass murders in the gas chambers as a whole. In such proceedings, the courts often convicted the defendants from the camps not of the charge of murder but a lesser offence: being an accessory or accomplice to murder. This approach was criticized by Fritz Bauer: "Lurking behind the popular assumption of being a mere accessory is the underlying wishful thought that in the Nazi totalitarian state, in actuality there were only very few who bore full responsibility, just Hitler and a handful of his closest associates."[11] Bauer pressed fundamentally for the notion that the institutionalized mass murder, based on a division of labour, should be viewed as a complex in which all those involved ought to be seen as accomplices, merely by dint of their complicity in the operation of the extermination camps. By contrast, many of his legal colleagues only regarded concrete and intentional premeditated individual action, which led directly to the murder of the victims, as a crime.

Another facet of criminal justice now appeared problematic: namely that the penal code described murder as a punishable crime, but that for obvious reasons genocide organized by the state was not specifically mentioned as a felony. Nonetheless, the trials now resulted in convictions. Thus, for example, the District Court in Bonn, in the trial surrounding the Chelmno (Kulmhof) extermination camp, handed down prison terms against eight defendants for being accessories to murder, including several sentences of up to thirteen years behind bars. In its judgment, the court expressly took into account the murder of some 5,000 Sinti and Roma along with the far more numerous murders of Jews in the Chelmno camp, after a former Jewish staff worker in the ghetto administration in Lodz and a former criminal inspector of the state police department in Lodz had given evidence on these murders of Sinti and Roma prisoners.[12]

The Treblinka trial in Düsseldorf in 1964–5 was the attempt to deal in juridical terms with the gassing of hundreds of thousands of Jews and a far smaller number of Sinti and Roma in the extermination camp where the so-called Operation Reinhard (1942–3) was carried out. Just as in all other such proceedings, the justice authorities concentrated on selected main perpetrators whom it had been able to apprehend, and whose responsibility was most readily demonstrable. Ultimately, eight defendants were also convicted here, some receiving life sentences, even though it was incontrovertible that far more persons had been involved in the day-to-day running of the Treblinka camp. Among those convicted

was the master tailor Franz Suchomel, who later gained international publicity through his interview in 1985 in Claude Lanzmann's documentary film *Shoah.*

In a trial by jury in Düsseldorf, the court sentenced him "for being an accessory to the mass murder of at least 300,000 persons" to six years imprisonment, but acquitted him of other charges of murderous conduct. These accusations of murder also involved the shooting of Sinti and Roma in Treblinka and were described before the court as follows: "Five or six Gypsy women from the vicinity of Treblinka were brought through the entrance gate into the extermination camp… Suchomel led the Gypsy women, one holding a child in her arms… to the camp sick bay, where the Gypsies and the child were shot." The court concluded that by bringing the victims to where they were murdered, Suchomel had "significantly aided and abetted their murder." However, it "should not be forgotten that he may have been "acting here on orders from a superior", and it was probable "that he had not killed the women and child himself, but rather that they were shot by an SS man on duty in the sick bay." The uncertainties influenced the court to decide in this case in favour of the defendant. The court also considered not proven the accusation of a witness that Suchomel took some fifty Sinti and Roma in groups of two to three persons to the camp sick bay and shot them there.[13] The evaluation of the shootings points to the difficulty the court encountered to clarify beyond any doubt certain circumstances after the lapse of some twenty years on the basis of testimony by witnesses. The principle of 'in dubio pro reo' [in doubt find for the accused] resulted in a situation where, at least in a few cases, the impression of a partisan attitude on the part of the courts in favour of the Nazi perpetrators could arise.

In the major Auschwitz trial in Frankfurt am Main (1963–5), the genocide of the Sinti and Roma was also broached a number of times. Yet, unlike in the Chelmno trial, these murders ultimately had no influence on the outcome and convictions. In particular, the defendant Friedrich Wilhelm Boger, who in the meantime had been employed in a commercial office in Bavaria, was accused in the trial of having participated in the liquidation of the Gypsy Camp in Auschwitz in early August 1944, and, thus, of sharing responsibility for the murder of several thousand Sinti and Roma in the gas chambers of the extermination camp. Although Boger ultimately was sentenced to life imprisonment plus fifteen years as a result of other crimes in Auschwitz, it was not because of the murders of Sinti and Roma of which he had been accused. The

court stated that "despite the considerable doubt that the accused Boger had taken part in the liquidation of the Gypsy Camp due to the fact that he belonged to the Political Department, it could not be determined beyond the shadow of a reasonable doubt that the accused had contributed causally to the killing of the Gypsies." For that reason, on this point the court ruled that Boger should be "found not guilty due to the lack of conclusive proof."[14]

A second defendant in the Frankfurt Auschwitz trial, who played a role in the murder of Sinti and Roma, was Pery Broad. The SS man was active in the camp from 1942 to 1945 and was, like Boger, a member of the Political Department, the so-called Camp Gestapo. In the Auschwitz trial he appeared as a "dazzling personality".[15] He was born in 1921 in Rio de Janeiro, had a Brazilian father, and was raised in Berlin. A witness testified in the courtroom that Broad had not been a typical SS man, and had "read books".[16] Due to his knowledge of languages, he also worked in the camp as an interpreter. He demonstrated his adept agility when, after the war, he put his knowledge of the Auschwitz camp as a perpetrator at the disposal of the British occupation authorities. Interned in a camp for POWs, he wrote a 75-page report for the British on Auschwitz. On 7 June 1964, the court in Hamburg had the report read into the record. Broad's text also contained detailed information on the Gypsy Camp in section B II e in Auschwitz-Birkenau. In his apologetic description, he gave the impression of being an objective, seemingly uninvolved historian: "They wanted to destroy the Gypsies… In July 1944, the die was cast. Himmler had ordered that all those able to work should remain in camps. The others should be gassed."[17] Broad was accused like Boger in the Auschwitz trial of having participated in the liquidation of the Gypsy Camp in 1944, but he himself denied this.[18] In the verdict handed down in the Auschwitz trial, that charge was no longer taken into account. The court found Broad guilty of being an accessory to the murder of more than 2,000 Jewish victims, largely due to his involvement in selections at the Auschwitz ramp. He was given a four-year sentence.[19] Half a year later, in February 1966, Broad was again a free man, since his time spent in detention had counted toward the penalty.[20] In the late 1960s, the state prosecutor initiated an investigation of Broad regarding the charge that he had also been involved in the genocide of the Sinti and Roma. Only after the lapse of twenty years was the investigation actually resumed. The *Frankfurter Rundschau* had the distinct impression that the sympathies of the investigative office were

slanted all too one-sidedly in favour of the accused. Broad's assertions were given considerable credence, and it ultimately appeared that no one really wanted to get down to brass tacks and deal seriously with this whole matter.

The extensive efforts undertaken by the Central Council of German Sinti and Roma in the 1990s did not result in a new case being brought.

In the meantime, Broad appeared as a witness in the Siegen trial of Ernst-August König.[21] This trial in Siegen against the then seventy-year-old König mentioned at the very beginning of this paper lasted from 1987 to 1991. It clearly differed from earlier trials against suspected perpetrators. For the Siegen trial by jury, the prosecution carefully gathered evidence and interrogated 160 witnesses. Unlike earlier courts, the Siegen tribunal now recognized the statements of surviving Sinti and Roma as credible evidence. Just as a delegation of the Frankfurt court in the Auschwitz trial by jury in 1964 had travelled to Auschwitz, the Siegen court also went to look at the scene of the alleged crimes. After being in session for 177 days, the court regarded it as proven that the concentration camp guard König had himself, in 1943, tormented Sinti and Roma in the Auschwitz extermination camp, resulting in their death. Ultimately, three murders considered proven were sufficient for the court to sentence the accused to life imprisonment. Eight months after sentencing, even before an appeal hearing, Ernst-August König, held in investigative custody, hung himself in his cell.[22]

The personnel of the concentration and extermination camps were the group of perpetrators most frequently prosecuted with success, leading to a conviction. In the population, there was a large consensus that these perpetrators were indeed "really guilty" and should be held accountable. Nonetheless, even in the case of these penalties, it remains doubtful whether they were in proper relation to the gravity of the crimes committed.

The members of the Task Forces and the civil administration in the occupied territories

Large numbers of East European Roma were also murdered outside the extermination and concentration camps. Like tens of thousands of Jewish residents in the occupied territories in the East from 1941 on, they fell victim to the mass shootings of the German Task Forces (and their subsidiary units). These units had been formed from police and SS

personnel under the aegis of the National Security Main Headquarters (RSHA). Their primary task, as a court in 1961 summarized it, was the "annihilation of the Jewish population in the East, as well as other population groups deemed racially inferior, along with the functionaries of the Russian Communist Party."[23]

Only in a segment of the trials was the murder of Sinti and Roma expressly raised as an issue. One such example was the 1961 Munich trial against members of Einsatzkommando 8, a sub-unit of Einsatzgruppe B. Several leading persons in the Kommando were found guilty of being accessories to mass murder. But the court acquitted the office worker Karl R. After the war, he had obtained a position in the State Statistics Office in North Rhine-Westphalia, but for two years had been held in investigative detention. The court determined that in Bobruisk, in White Russia, in September-October 1941, members of the Einsatzkommando commanded by R. had carried out two mass shootings. In one of these operations, "30 Gypsies were killed solely because of their race." The court recognized extenuating circumstances to R.'s benefit, stating that he had only carried out these killings against his will and under threat from a superior officer. In view of the reference to the race of the Sinti and Roma, a qualifying remark by the court seems surprising: it stated that it was unable to determine whether the persons shot in Bobruisk were partisans.[24] The court here voiced an argument that was often brought to bear by the defence in the Task Force trials. If the murdered Jews and Roma could be declared to have been partisans, their shooting was then viewed in legal terms as tantamount to a military measure in wartime. Under such conditions, it could not be considered murder, or acting as accessory to murder, so that conviction based on existing criminal law was ruled out.

A few years after this Munich judgment, the Essen District Court (North Rhine-Westphalia) arrived at clear verdicts in two trials against members of Sonderkommando 7a. The former leader of the Kommando, Albert Rapp, was sentenced to life imprisonment, while other members were given shorter sentences behind bars. It is worth noting that, in 1965, Rapp was found guilty not only of being an accessory, but directly of the felony of premeditated murder. The prosecution had accused him, between February and April 1942, in the district of Klincy in White Russia, of ferreting out, apprehending and murdering thousands of persons – "of his own volition, in order to appear as an especially energetic SS leader ready to take action, and to gain new possibilities for

personal advancement and distinction, without any consideration of the cost in human lives."

There were also thirty Roma among those for whom there was solid evidence they had been murdered. That knowledge was of especial importance for the argument of the court. It refuted the defendant's claim that the persons shot were Jews, concentrated in the Klincy ghetto. Turning the argument on its head, in the eyes of the court, Rapp's special initiative was proven by the fact "that the victims were rounded up for execution in Klincy on the orders of the defendant."[25]

In 1966, the following year, the same court convicted two other participants in this shooting of being an accessory to the crime, and sentenced them to three and four years in prison. Only one of these sentences came into force, since the other man convicted died before he could be imprisoned. This second trial also involved the sales representative Kurt Matschke, commander of the successor unit of Sonderkommando 7a in Klincy in 1942. When the unit met up by chance with a group of ten to fifteen Roma, Matschke,

> *[…] without a moment's hesitation, ordered the shooting of all the Gypsies, including the women and children. In so doing, he was guided by the general order for all Security Service (SD) units, which he was familiar with, to kill all Gypsies in Russia they encountered, without concern for age and sex… The shooting took place at an execution pit on the southern edge of Klincy near a wooded area not far from the stadium. The Gypsies were brought near the pit and then shot one after the next at its edge by a bullet… to the nape of the neck. The victims murdered later could witness what happened with the companions in suffering who preceded them.*

The defendant testified in his own defence that he had had the Roma shot as "scouts for the partisans", not for racial reasons. In this case, the court viewed this as a claim to protect himself. It found Matschke guilty of being an accessory to murder and sentenced him to five years behind bars on the basis of this and a second shooting.[26]

The former commander of Einsatzkommando 9, Wilhelm Wiebens, was sentenced in 1966, by the Berlin District Court, to life imprisonment for mass murder. The basis for this judgment were two cases: the premeditated murder of twenty Roma and two Jews. In the first case, Wiebens had received a report around the end of March or early April 1942 that in the vicinity of Vitebsk in White Russia there were a "number of alien elements roving about." Wiebens immediately put together an execution unit and, as the court determined, took the initiative: "Although

it was left to his discretion what should be done with these twenty Gypsies – in a conscious and intended act of cooperation with Himmler and Heydrich, according to whose order the racially inferior Gypsies should also be liquidated – he ordered the shooting of these Gypsies, who numbered at least twenty, solely for this reason alone." Based on his initiative, the court considered Wiebens a murderer in his own right, and not simply an accomplice to murder ordered by the regime's elite. Wiebens had rejected the request of an elderly woman to let her go free, remarking: "it's better to kill one more innocent person than to let a guilty one go free." Moreover, the defendant explained, there was another reason why she could not be allowed to go free: in that case, the old woman would be able to report to the other Gypsies about the shooting she had observed.

There were a number of convictions where murders of Roma were mentioned along with members of other groups of victims. The killing of at least 3,000 Jews, Communists, Roma and "mentally ill" persons in Latvia was the object of a trial in 1971 in Hanover (Lower Saxony). Accused were members of Einsatzkommando 2 as well as men from the local German police administration in Libau (Liepaja). In six cases, sentences were handed down with penalties ranging from 18 months to seven years, and were later implemented.[27]

Just as in this trial, two years earlier the Mainz District Court (Rhineland-Palatinate) had heard a case dealing with the alleged crimes of a member of the German civil administration in the occupied territories. Leopold Windisch was sentenced to life imprisonment for his role in the civil administration of the area of Lida (in eastern Poland). In addition to several mass shootings, he was also accused of having been instrumental in connection with the arrest and execution of a group of eighty-six Sinti and Roma.[28]

At the time, the members of the German administration in the occupied territories were also helped by a broadly interpreted principle "in case of doubt, find for the defendant". That was true for example in the case of the former police officer Joseph Viellieber, stationed in 1942 in Gorlice in southern Poland. In a trial before the Karlsruhe District Court (Baden-Württemberg) in 1964, the state prosecutor accused Viellieber inter alia of having led away a Rom in Struce near Gorlice with the words: "This Gypsy's ass is mine." He took him behind some bushes and shot him on the spot. A witness who had observed the incident confirmed both the statement by Viellieber and the subsequent shot. But

since the witness had only *heard* the shot and had not been able to see who fired it, the court ruled that this statement had no evidential value. Only on the basis of other acts was the policeman sentenced to forty-two months in prison.[29]

The swift acquittal of Michael Scheftner by the Kassel District Court (Hesse) in 1991 infuriated the Central Council of German Sinti and Roma. The 73-year-old retired police officer was accused of having arrested a group of thirty Roma in May 1942 as a member of the district police, in Sivashi in the Ukraine, supposedly in order to evacuate them. In fact, however, he arranged the transport of these prisoners to a place of execution, where the victims were then shot by men of Einsatzkommando 10a. Scheftner denied the charges, and was quoted in a report on the trial in the *Wiesbadener Tagblatt*: "I was just standing there, that's all." In the trial in Kassel, the prosecution, after a short presentation of evidence, also called for acquittal. The court took the view that it was impossible to prove that the accused had been involved in a crime. In a conversation with the Berlin daily *taz*, the Central Council of German Sinti and Roma protested against the "acquittal by summary trial". The prosecution in particular had made no effort to discover any possible crimes committed by Scheftner. At the time, Romani Rose of the Central Council commented: "Such an approach in court proceedings against participants in an operation involving mass murder is ill-suited to promote trust in the legality of these procedures."[30]

In the cases here mentioned, only the commanders were convicted, while the many subordinates who carried out the orders received no punishment – possibly because they seemed to be "quite normal men."[31] Another conceivable reason was that, in their case, it did not appear possible to demonstrate a will to murder. As in other cases as well, a distinctive tendency in postwar German justice is manifest here: namely to brand individual main perpetrators symbolically as scapegoats, while at the same time sparing others involved in the crimes.

The scientists who carried out the race-biological registration of the Sinti and Roma

Not a single scientist who had taken part in the German Reich in the race-biological examination and registration of the Sinti and Roma was ever convicted and sentenced. The director of this registration scheme under the auspices of the Central Office of Public Health and the National

Security Headquarters, the head for many years of the Research Centre for Racial Hygiene, Dr Robert Ritter, had succeeded in 1947 in being appointed to a post in the Public Health Office of the Frankfurt/Main municipality as a medical officer. The following year he also arranged a job there for his closest associate from the Nazi period, Dr Eva Justin.[32]

From 1948 to 1950, the state prosecutor's office in Frankfurt conducted an investigation of Ritter but did not file charges. The preliminary proceedings were initiated after charges were preferred based on accusations by a number of Sinti and Roma. One charge against Ritter was that he had caused bodily injuries to persons during their race-biological registration. Another charge was that "on the basis of the findings of his investigation and by other measures, he had been instrumental in causing the forced sterilisation of a large number of Gypsies" and had "participated in the forced transport of many thousands of Gypsies to concentration camps during the war, and in part bore blame for their deaths." In the preliminary proceedings, sixty-two witnesses were questioned along with the accused. Ritter tried very hard to contest the credibility of the Sinti and Roma among the witnesses.

The state prosecutor's office was apparently quite receptive to Ritter's racist arguments, stating: "The fundamental question at issue here is whether and to what extent statements by Gypsies can be made the basis for a judge's convictions." At the same time, Ritter's own assertions regarding his role were accepted. He was "quite credible in arguing that he… had had nothing to do with these measures of forced sterilisation and deportation to the concentration camps." They even accepted his false statement that he had known nothing about the Auschwitz deportations until after the end of the war. Ritter only admitted that in the course of his race-biological examinations, he had "on some six occasions" struck the persons being examined. But it was impossible, due to the statute of limitations and amnesty, to enter a charge of bodily harm. The state prosecutor's office even condoned the fact that Ritter continued to endorse the sterilisation of Sinti and Roma several years after the war: in their view, this could not be seen either as "identification with Nazi race ideology" or as a "proclamation of violence" or its incitement. For that reason, the state prosecutor's office finally abandoned the investigation in August 1950, six months before Ritter's death.[33]

Only toward the end of the 1950s, when interest in the Nazi crimes had grown, were new investigations initiated into the race-biological registration scheme. The state prosecutor's office turned its attention first

in 1958–9 to Ritter's former assistant Eva Justin, who was still employed in the social services of the Frankfurt municipality, as an educational counsellor. In a departure from the way the investigation had been conducted against Ritter a decade before, the prosecutor's office went public, characterizing its new work as a pilot procedure. The chief state prosecutor announced the ambitious aim of trying to "gain a clear picture of the National Socialist measures of annihilation against Gypsies", and he placed the investigation in a series together with the Auschwitz trial which was then coming up.[34] The investigation into Justin was gradually extended to other persons, including thirteen former staff members of the Research Centre for Racial Hygiene. On the one hand, the Frankfurt prosecutor's office was seriously engaged in trying to shed light on the accusations: hundreds of National Socialist registration files for Sinti and Roma were studied and numerous witnesses interrogated. In the course of this inquiry, the prosecutor's office reached a level of knowledge concerning the genocide of the Sinti and Roma that remained exemplary and unsurpassed by historical research in the following decade. On the other hand, a number of assessments continued to be marred by various deficiencies. Thus, National Socialist coercive measures against Sinti and Roma were classified as "preventive measures" on the part of the criminal police, and various descriptions of the accused that played down their actions were accepted without criticism.

In any event, they were now able to prove that the "Auschwitz Express Letter" sent by the National Security Headquarters in January 1943, which led to the deportation of more than 20,000 German Sinti and Roma to the extermination camp, had been known to personnel in the Research Centre for Racial Hygiene. It turned out that the mass death of the deportees in Auschwitz had not remained a secret. However, the state prosecutor's office decided on this basis that all measures for profiling and registration *before* January 1943 were inadmissible as evidence in the framework of the investigation of the crimes committed. When it became possible to prove that Eva Justin had issued a "race-biological certificate" for a Sinto after January 1943, this did not lead to a charge because the man had not been deported to Auschwitz. In December 1960, the state prosecutor's office finally halted the investigative proceedings against Eva Justin.[35] She continued to work for the Frankfurt municipality until shortly before her death. For a time, the municipality even assigned her the task of gathering social data on Sinti and Roma at a Frankfurt caravan site. But, public attention in Germany had now been aroused and

sharpened to the point that her work at the municipality was permanently in the crossfire of journalistic criticism.[36]

The other staff members of the Research Centre for Racial Hygiene were also spared conviction and were able to build their careers in postwar Germany unhindered. Dr Gerhart Stein practiced as a doctor in Wiesbaden, where he died in 1979.[37] Dr Sophie Erhardt was professor of anthropology at Tübingen University. Dr Adolf Würth was employed at the State Statistics Office of Baden-Württemberg in Stuttgart.[38] Renewed investigative proceedings against Würth and Erhardt were halted by the Stuttgart prosecutor's office in 1982: they argued that especially since the accused had left the staff of Ritter's centre in 1940 and 1942, they could not be held responsible for the later Auschwitz deportations and murders on the basis of their race-biological examinations.[39] More than in the case of any other category of persons involved, scientists were able to claim that their actions had served a non-political purpose of research, and that the *consequences* of their work in connection with measures of registration, namely the genocide, was something they had neither desired nor anticipated. In no single case was the legal system successfully able to refute this assertion in a way that would have sufficed for a conviction.

Those responsible for the deportations in the National Security Headquarters

In the course of the investigation against Eva Justin, the Frankfurt state prosecutor's team had also dealt with actions by various police officials and SS members who had been on the staff of the Central Criminal Police Office (RKPA*)* in the National Security Headquarters and who might be potentially considered as persons responsible for ordering and implementing the deportations to Auschwitz. At issue was involvement in the "Auschwitz Express Letter" of January 1943 and later deportations to the camp ordered directly by the RKPA. After closing the files on Justin, the Frankfurt state prosecutor's office passed them on to colleagues in Cologne. There, in 1964, a major trial was opened against Dr Hans Maly. In addition, they were also taking steps against other police officials. In 1943, Maly had been active as a police official in the National Security Headquarters and later advanced to chief of the Criminal Police in Bonn. The charge against him of sending Sinti and Roma to the concentration camp in 1943 (deprivation of freedom leading

to death) did not result in a conviction in the 1960s. Due to the defendant not being able to participate, for reasons of health, the Maly trial was suspended; he died a year later.

In its investigations into various top-ranking police officials, the Cologne state prosecutor's team also ran up against difficulties because the accused, by dint of their important positions, had significant evidence at their disposal. That circumstance hindered for example the investigation against the Munich official Supp. Thus, the state prosecutor's team conducting the Supp investigation in Cologne thought it was problematic "that the accused, the former detective inspector Karl Wilhelm Supp, formerly employed in the Reich Criminal Investigation Department Berlin, Central Office for Gypsy Affairs, is now head of the Section for Wanted Criminals, to which the Office for Itinerants and Travellers is subordinated." Research by the historians Fings and Sparing has shown that the Munich office dragged its feet or even thwarted the transfer of the requested files to the Cologne state prosecutor's office. Ultimately, the Cologne proceedings also ended without a conviction. If the defendant had not passed away in the meantime, the proceeding was halted due to the statute of limitation or insufficient suspicion of having committed a criminal act.[40]

Accountability and officials in the local and regional police and administration

In conclusion, I will briefly return to the first trial in Germany for the genocide of the Sinti and Roma mentioned at the beginning. This trial, before the Siegen District Court, was also the only one in which persons responsible from the regional and local administrations were convicted of participation in the deportations to Auschwitz in 1943. The Dortmund detective Josef Iking was on the staff of the Criminal Police, as an expert in the Section for Gypsy Affairs. In this capacity, in February 1943 he passed on the "Auschwitz Express Letter" to the local offices in Berleburg (near Siegen). The deputy mayor Karl Schneider consulted the responsible district official, District Administrator Otto Marloh, who, in co-ordination with the district chief of the National Socialist Party, Norbert Roters, approved a comprehensive deportation of the Sinti from the Wittgenstein district. At a meeting in the office of the District Administrator, those involved, including a municipal official, city inspector Hermann Fischer, put together a list of Sinti to be deported. Of

the 132 then deported from Berleburg, 125 did not survive the Auschwitz camp. In 1949, the court sentenced all those mentioned to prison sentences, mainly for one year to eighteen months. But Marloh, who as a senior official had played a primary role, was given a four-year sentence. Two high-ranking officials from the criminal police in Dortmund, on the other hand, were acquitted. The conviction of the others was based on a law of the Allied Control Council. The deportation was seen as "deprivation of freedom and forced deportation", and "at the same time, persecution for racist reasons" and, thus, a "crime against humanity". The court emphasized that the judgment would have been the same even if all the deportees had survived and returned in good health after the war. Decisive for the conviction was that the defendants were unable to avoid accountability and pass responsibility on to those above them. Why in this instance? Because in the neighbouring town of Laasphe, in the same district, the mayor there had flatly refused to put the name of even one of the Sinti and Roma resident in the town on the list of deportees. For that reason, no one was deported from Laasphe. The mayor was not prosecuted by the National Socialist state for this decision.[41] The behaviour of Mayor Bald from Laasphe constituted a rare expression of solidarity with, and protection for, the persecuted Sinti and Roma in the Third Reich.

As far as is known, no other police official from a regional office of the criminal police, no mayor and no district administrator was ever convicted for having participated in the deportation of the Sinti and Roma to Auschwitz in 1943. Investigative proceedings against various officials were halted, such as a procedure in 1958 against officials of the Criminal Investigation Department in Frankfurt am Main[42] and in 1960 against members of the criminal police in Berlin.[43]

Conclusion

The way in which the criminal justice system dealt with the Nazi genocide of the Sinti and Roma remained rudimentary in (West) Germany. Most convictions involved perpetrators who had committed crimes as members of the SS in the extermination camps or in the framework of the Task Forces. Even there, the courts in numerous instances contented themselves with prosecuting the main perpetrators who had given the orders, or those who had committed excessive atrocities. By contrast, individuals who had contributed their share to the

persecution of the Sinti and Roma within the borders of the German Reich – as normal officials of the police and municipal administrations, or as scientists – were, aside from a very few exceptions, able to pursue their career in postwar Germany without ever having been called to justice for their acts.

9. Sandner: Criminal justice following the genocide of the Sinti and Roma

1. *FA Z*, 25 January 1991. A similar report also appeared in the Hessische/Niedersächsische Allgemeine (Kassel), 19 September 1991. For further references on this trial, see below. All the judgments cited here refer to the final version that was put into force. Otherwise, a reference is made to the fact that the verdict never became final.
2. Urteil des Landgerichts Siegen vom 4 März 1949, and Urteil im Revisionsverfahren vor dem Oberstem Gerichtshof für die Britische Zone in Köln vom 21 März 1950, in C. F. Rüter et al. (eds.) *Justiz und NS-Verbrechen. Sammlung deutscher Strafurteile wegen nationalsozialistischer Tötungsverbrechen* [hereafter: *Justiz und NS-Verbrechen*]. Amsterdam, 1970, Vol. IV, pp.157–89 and 309–27 (case nos. 124 and 127). For additional material about this trial, see below.
   An earlier trial in Mecklenburg for participation in the arrest of Sinti and Roma led merely to the imposition of a non-custodial sentence. Urteil des Landgerichts Schwerin vom 29 Dezember 1947 (Az. Kst Ks 31/47), in C. F. Rüter et al. (eds.) *DDR-Justiz und NS-Verbrechen. Sammlung ostdeutscher Strafurteile wegen nationalsozialistische Tötungsverbrechen* [hereafter: *DDR-Justiz und NS-Verbrechen*]. Amsterdam/Munich, 2000 (case no. 1716).
3. Most of the relevant trials took place in the German Federal Republic. Alongside the already mentioned trial in the Soviet occupied Zone (Schwerin) we can so far only establish three trials in East Germany which featured Roma and Sinti as victims. See Urteil des Obersten Gerichts der DDR vom 6 April 1973 (Az. 1b USt 7/73) in the Rehabilitation Proceedings reversed by Urteil des Landgerichts Chemnitz vom 10 Oktober 1994 (Az. BSRH 491/94), both in *DDR-Justiz und NS-Verbrechen*, Vol. II (case no. 1041).

4. See, for example, H. Boberach, 'Die strafrectliche Verfolgung der Ermordung von Patienten in nassauischen Heil- und Pflegeanstalten nach 1945' in Landeswohlfahrtsverband Hessen (ed.) *Euthanasie in Hadamar. Die nationalsozialistische Vernichtungspolitik in hessischen Anstalten.* 1991, pp.165–74.
5. Bauer, Fritz, 'Im Namen des Volkes. Die strafrechtliche Bewältigung der Vergangenheit' in Helmut Hammerschmidt (ed.) *Zwanzig Jahre danach. Eine deutsche Bilanz 1945–1965.* 1965, pp.301–14, here 309.
6. The Einsatzgruppen were mobile killing squads. See, for example, the extensive files on trial proceedings in the Central State Archive Hesse, Wiesbaden, sec. 631a. See also Matthias Meusch, *Von der Diktatur zur Demokratie. Fritz Bauer und die Aufarbeitung der NS-Verbrechen in Hessen (1956–1968).* 2001.
7. Zülch, Tilman (ed.) *In Auschwitz vergast, bis heute verfolgt. Zur Situation der Roma (Zigeuner) in Deutschland und Europa.* 1979; Donald Kenrick, Grattan Puxon and Tilman Zülch, *Die Zigeuner. Verkannt – verachtet – verfolgt.* 1980; Donald Kenrick and Grattan Puxon, *Destiny of Europe's Gypsies.* 1972.
8. See, for example, Gesellschaft für bedrohte Völker (ed.) 'Sinti und Roma im ehemaligen KZ Bergen-Belsen am 27 Oktober 1979. Erste deutsche und europäische Gedenkkundgebung' in *Auschwitz vergast, bis heute verfolgt.* 1980.
9. Urteil des Landgerichts München vom 20 January 1960 (Az. 1 Ks 3/59) in *Justiz und NS-Verbrechen,* Vol. XVI, Amsterdam, 1976, pp.275–89 (series no. 488), here 280.
10. Urteil des Landgerichts München II vom 22 Dezember 1969 and Urteil des Langerichts Essen vom 8 Mai 1970 in *Justiz und NS-Verbrechen*, Vol. XXXIII (case nos. 721 and 731); Urteil des Landgerichts Kleve vom 15 Oktober 1976 and Urteil des Landgerichts Hannover vom 31 Juli 1981 in *Justiz und NS-Verbrechen* 1945-1999 forthcoming (case nos. 835 and 873). There were some judgements in similar cases in East Germany in the 1950s. Urteil des Landgerichts Magdeburg vom 25 Marz 1952 (Az. 11 StKs 348/48) in *DDR-Justiz und NS-Verbrechen*, Vol. VII, 2005 (case no. 1327); Urteil des Bezirkgerichts Neubrandenburg vom 12 November 1955 (Az. 1 Ks 164/55) in *DDR-Justiz und NS-Verbrechen*, Vol. III, 2003 (case no. 1099).
11. Bauer, p.307.
12. Urteil des Landgerichts Bonn vom 23 Juli 1965 (Az. 8 Ks 3/62) in *Justiz und NS-Verbrechen*, Vol. XXI, Amsterdam, 1979, pp.227–69, here 284; for the complete documentation of the judgments in this complex, see Ibid. pp.221–359 (series no. 594).
13. Urteil des Landgerichts Düsseldorf vom 3 September 1965 (Az. 8 1 Ks 2/64) in *Justiz und NS-Verbrechen*, Vol. XXII, Amsterdam, 1981, pp.19–220, here 20, 143, 146; for the complete documentation of the

judgments in this complex, see Ibid. pp.1–238 (series no. 594).

14. Urteil des Landgerichts Frankfurt a.M. vom 19/20 August 1965 (Az. 4 Ks 2/63) in *Justiz und NS-Verbrechen*, Vol. XXI, 1979, pp.381–837, here 792; for the complete documentation of the judgments in this complex, see Ibid. pp.361–887 (series no. 595).
15. Naumann, Bernhard, *Auschwitz. Bericht über die Strafsache gegen Mulka u. a. vor dem Schwurgericht Frankfurt*. 1968, p.283.
16. Urteil vom 19/20 August 1965, op. cit. p.540.
17. Ibid. p.537; Naumann, p.141–9; Staatliches Museum Auschwitz-Birkenau (ed.) *Auschwitz in den Augen der SS. Rudolf Höß, Pery Broad, Johann Paul Kremer*. 1997, pp.5–24 [here: Jerzy Rawicz, Vorwort, Ibid. p.5–24, esp. pp.7, 19–21; Pery Broad, Bericht, p.95–139, esp. pp.131–3, quotation, p.132].
18. Naumann, pp.23, 247.
19. Urteil vom 19/20 August 1965, op. cit. p.382.
20. Naumann, p.291.
21. Müller-Münch, Ingrid, 'Ein NS-Verfahren von besonderem Tempo' in *Frankfurter Rundschau*, 16 December 1987; press statements of the Central Council of German Sinti and Roma, 22 and 28 August 1991; *Oberhessische Presse* (Marburg), 23 August 1991.
22. Urteil des Landgerichts Siegen vom 24 Januar 1991 in *Justiz und NS-Verbrechen* forthcoming (series no. 909), *Frankfurter Allgemeine Zeitung*, 25 January 1991; *Frankfurter Rundschau*, 25 January 1991; *Hessische/Niedersächsische Allgemeine* (Kassel), 19 September 1991; Ulrich Friedrich Opfermann, *Siegerland und Wittgenstein im Nationalsozialismus. Personen, Daten, Literatur. Ein Handbuch zur regionalen Zeitgeschichte*. 2001, pp.90–6, 235. On the trip in 1964, see Naumann, pp.210–15.
23. Urteil des Landgerichts München I vom 21 Juli 1961 (Az. 22 Ks 1/61) in *Justiz und NS-Verbrechen*, Vol. XVII. 1977, p.658–708 (series no. 519); see also Michael Zimmermann, *Rassenutopie und Genozid*. 1996, pp.259–76.
24. Ibid. esp. pp.677, 683, 690, 697.
25. Urteil des Landgerichts Essen vom 29 März 1965 (Az. 29 Ks 1/64) in *Justiz und NS-Verbrechen*, Vol. XX, Amsterdam, 1979, pp.715–807, here 719; pp.754–8, 800f.; for the complete documentation of the judgments in this complex, see Ibid. pp.715–815 (series no. 588).
26. Urteil des Landgerichts Essen vom 10 Februar 1966 (Az. 29 Ks 1/65) in *Justiz und NS-Verbrechen*, Vol. XXIII. 1998, pp.127–200 (series no. 620), here pp.162–4, 170f. (quotation), 175; see Zimmermann, pp.260, 262.
27. Urteil des Landgerichts Hannover vom 14 Oktober 1971 and Urteil im Revisionsverfahren vor dem Bundesgerichtshof vom 11 Juni 1974 in *Justiz und NS-Verbrechen* forthcoming (series no. 760), see Zimmermann, p.262.
28. Urteil des Landgerichts Mainz vom 17 Juli 1969 in *Justiz und NS-*

Verbrechen forthcoming (series no. 712).

29. Urteil des Landgerichts Karlsruhe vom 6 März 1964 (Az. III Ks 4/63) in *Justiz und NS-Verbrechen*, Vol. XIX. 1978, pp.759–71, here pp.767, 769.
30. Urteil des Landgerichts Kassel vom 26 September 1991 in *Justiz und NS-Verbrechen* forthcoming (series no. 910), Wiesbadener Tageblatt, 18 September 1991; Die Tageszeitung *'taz'* (Berlin), 27 September 1991.
31. Browning, Christopher R., *Ganz normale Männer. Das Reserve-Polizeibataillon 101 und die Endlösung in Polen*. 1993.
32. Sandner, Peter, *Frankfurt. Auschwitz. Die nationalsozialistische Verfolgung der Sinti und Roma in Frankfurt am Main*. 1998, pp.283–91.
33. Copy, Einstellungsverfügung vom 28 August 1950 in Central State Archive North Rhine-Westphalia, Düsseldorf, list 231, no. 1535, fols. 21–37; Sandner, pp.290, 292–7.
34. *Kölner Stadtanzeiger*, 21/22 May 1960.
35. Investigation files: Central State Archive North Rhine-Westphalia, Düsseldorf, list 231, nos. 1535–40 and 1545–7, and Central State Archive Hesse, Wiesbaden, sec. 461, nos. 34141–3. On individual proofs, see Sandner, pp.302–12.
36. Ibid. pp.313–21.
37. Ibid. p.190.
38. Statements by Würth on 14 May 1959 in Stuttgart and Erhardt, 11 June 1959 in Tübingen, in Central State Archive North Rhine-Westphalia, Düsseldorf, list 231, no. 1536, fols. 194f., 217; Benno Müller-Hill, *Tödliche Wissenschaft. Die Aussonderung von Juden, Zigeunern und Geisteskranken 1933–1945*. 1985, pp.152–7, 180, 187; Zimmermann, pp.33, 390.
39. Einstellungsverfügung der Staatsanwaltschaft Stuttgart vom 29 Januar 1982 (Az. 7 [19] Js 928/81) in Central State Archive Hesse, Wiesbaden, sec. 461, no. 34142.
40. Fings, Karola and Frank Sparing, Regelung der Zigeunerfrage in Konkret 11 (1993), pp.26–9, here p.28 (quotation of the attorney); Sandner, p.311; Anklageschrift der Oberstaatsanwaltschaft Köln vom 20 Februar 1964, Verfahrenseröffnung vom 12 Mai 1964 (Az. 24 Ks 1/64) in Central State Archive North Rhine-Westphalia, Düsseldorf, list 231, no. 1547, fols. 664–96, 702a–702b.
41. Urteile des Landgerichts Siegen vom 4 März 1949, Urteile im Revisionsverfahren vor dem Obersten Gerichtshof für die Britische Zone in Köln vom 21 März 1950 in *Justiz und NS-Verbrechen*, Vol. IV. 1970, pp.157–89 (quotation p.169), pp.309–27 (series nos. 124, 127); Opfermann, pp.90–1, 94–6; Zimmermann, p.306.
42. Einstellungsverfügung des Oberstaatsanwalts bei dem Landgericht Frankfurt am Main vom 18 April 1958 (Az. 57 Js 1656/51, 4a Js 8874/54), Central State Archive Hesse, Wiesbaden, sec. 461, no. 32809, fols. 44–7; Sandner, pp.298–302.

43. Einstellungsverfügung der Staatsanwaltschaft beim Landgericht Frankenthal im Ermittlungsverfahren gegen Leo Karsten vom 30 Juli 1960 (Az. 9 Js 153/58), copy in Central State Archive North Rhine-Westphalia, Düsseldorf, list 231, no. 1538.